

Date of Hearing: August 11, 2020

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 146 (Beall) – As Amended July 27, 2020

SENATE VOTE: Not relevant

SUBJECT: Regional transportation plans: sustainable communities strategies: procedural requirements.

SUMMARY: Makes changes to the procedural requirements for adopting regional transportation plans (RTPs) and sustainable communities strategies (SCSs). Specifically, **this bill:**

- 1) Requires metropolitan planning organizations (MPO) to conduct one information meeting, instead of two, in each county within the region for members of the board of supervisors and city councils on the SCS and alternative planning strategy, if any.
- 2) Authorizes these information meetings to be conducted digitally or by telephone conference call to maximize the opportunity for participation by members of the public throughout the region.
- 3) Re-characterizes the “workshops” included in a public participation plan as “gatherings.”
- 4) Specifies that at least one gathering, regardless of the county’s population, shall be available to each county in the region with outreach to residents of that county.
- 5) Specifies that these gatherings can be held by digital, telephone, or in-person means.
- 6) Requires the draft SCS or an alternative planning strategy to be prepared and circulated not less than 45 days, instead of 55 days, before adoption of a final RTP.
- 7) Provides that, regardless of the number of counties within the MPO’s region, at least two public hearings on the draft SCS in the RTP must be held, and specifies that these public hearings may be conducted digitally or by telephone conference call.
- 8) Specifies that the public hearing to adopt and submit an updated RTP to the California Transportation Commission and the Department of Transportation may be conducted digitally or by telephone conference call to maximize the opportunity for participation by members of the public in the affected county or counties.

EXISTING LAW:

- 1) Requires certain transportation planning agencies to prepare and adopt an RTP directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services.
- 2) Specifies the RTP shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state

officials, and shall consider and incorporate the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

- 3) Requires the RTP to include numerous components including an SCS designed to achieve the California Air Resource Board (ARB) targets for greenhouse gas (GHG) emission reduction.
- 4) Requires each MPO to adopt a public participation plan for development of the SCS that includes at least one public workshop and, depending on the number of counties within the MPO's region, two or three public hearings.
- 5) Requires each transportation planning agency to adopt and submit to the California Transportation Commission and the Department of Transportation an updated RTP every four or five years, as specified, and before adoption of the RTP, a public hearing shall be held.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill makes changes to the procedural requirements for the adoption of RTPs and SCSs. Specifically, this bill reduces the number of meetings and workshops that must be held and makes clear that these meetings and workshops may be held by digital or telephonic means. Lastly, this bill requires the draft SCS or an alternative planning strategy to be prepared and circulated not less than 45 days, instead of 55 days, before adoption of a final RTP. This bill is sponsored by the author.

According to the author, "California's landmark sustainable communities strategy law, which requires regional transportation agencies to plan land-use and transportation investments in a manner that reduces reliance on single-occupant vehicles and supports the state's climate goals, is now over 10 years old. The law requires a minimum number of in-person public workshops to be held, including at least three for counties greater than 500,000 in population. During the COVID-19 pandemic, agencies have had to get creative to find new ways to reach the public digitally and are finding that public engagement via technology as well as more informal "pop up" events such as bringing a table to a farmer's market, can result in a much greater degree of participation than traditional in-person public meetings. This law would provide more flexibility so that public agencies can meet their SCS public engagement requirements through digital and other creative means in order to provide broad access to the public to contribute to the regional planning process."

- 2) **Background.** The Global Warming Solutions Act, AB 32 (Núñez), Chapter 488, Statutes of 2006, required California to reduce GHG emissions to 1990 levels no later than 2020. SB 32 (Pavley), Chapter 249, Statutes of 2016, extended the GHG target for California by codifying a portion of Executive Order B-30-15, issued by Governor Brown, to reduce GHG emissions 40% below 1990 levels by 2030.

Existing federal and state law requires each of California's 18 MPOs and 26 regional transportation planning agencies to prepare a long-range (20-year) plan. This plan, known as the RTP, identifies the region's vision and goals and how to implement them. The RTP also supports the state's goals for transportation, environmental quality, economic growth, and social equity. Federal law requires that they be updated at least every four years, and state

law requires that these plans be updated every four years. ARB publishes a schedule for updates of each of these RTPs.

Existing law requires coordination of transportation and land use planning to help achieve the state's climate action goals by requiring that each RTP include an SCS. The SCS demonstrates how the region will meet its GHG emissions reduction targets through land use, housing, and transportation strategies. ARB must review the adopted SCS to confirm that it will indeed meet the regional GHG targets. If not, the MPO must prepare an alternative planning strategy, separate from the RTP.

- 3) **Public Access.** Article I, Section 3 of the California Constitution guarantees that “the people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.” This includes a right to access information concerning the meetings and writings of public officials. To ensure that the right to openly scrutinize public agencies is maintained, the Constitution requires local agencies to comply with certain state laws that outline the basic requirements for public access to meetings and public records. If a subsequent bill modifies these laws, it must include findings demonstrating how it furthers the public's access to local agencies and their officials.
- 4) **Brown Act.** The Ralph M. Brown Act (Brown Act) was first enacted by the Legislature [AB 339 (Brown), Chapter 1588, Statutes of 1953] to provide a set of state laws, which guarantee the public's right to attend and participate in local legislative bodies' meetings. The legislative intent of the Brown Act was expressly declared in its original statute, which remains unchanged:

“The Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The Brown Act establishes procedures to ensure public access to information maintained by local agencies and that the decisions made by public agencies are done in an open and transparent fashion to retain public control over those agencies. Local agencies subject to the Brown Act include cities, charter cities, counties, school districts, special districts, and other political subdivisions of the state.

Among other things, the Brown Act requires a local agency to post an agenda for a regular meeting of its legislative body at least 72 hours before the meeting in a location that is freely accessible to members of the public. The Brown Act establishes the presumption that business of local agencies' legislative bodies must be conducted in open and public meetings. No action may be taken by secret ballot, and the legislative body must publicly report the action taken and the votes cast.

The Brown Act allows local agencies' governing bodies to use teleconferencing for their meetings, as long as they post agendas at all teleconference locations, take all votes by roll call, and accommodate persons wishing to address the governing body. Each teleconference location must be identified in the notice and agenda of the meeting and must be accessible to the public. During a teleconference, at least a quorum of the members of the governing body must participate from locations within the boundaries of the local government's jurisdiction (SB 139, Kopp, 1998).

- 5) **Executive Order N-29-20.** In March, the Governor issued Executive Order N-29-20, which stated that, "Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived."

"All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures."

- 6) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Access.** In order to adopt an SCS, the MPOs must conduct a robust public participation process, allowing residents and other stakeholders ample opportunity for public engagement. This bill reduces the number of meetings and workshops that must be held and specifies these meetings can be conducted digitally or by telephone. The supporters argue that conducting these meetings remotely can result in feedback from a larger number of residents, as well as a more diverse set of perspectives than those who participate in traditional in-person workshops and meetings. Although this statement very well may be true, by foregoing the opportunity for residents to participate in-person, this bill could restrict access to those residents that may not have access to broadband internet. While the digital divide is not as wide as it used to be, access to reliable broadband internet is not universal, and the lack of access is usually concentrated in our rural and low-income communities. Additionally, digital and teleconference platforms are not fully reliable and can be subject to technical difficulties, potentially further limiting the public's ability to participate in these workshop and meetings. The Committee may wish to consider if this bill strikes the correct balance between taking advantage of new technologies to increase participation and potentially limiting access for some of California's residents.
 - b) **Executive Order.** In response to the current COVID-19 pandemic and the need for social distancing measures, the Governor issued Executive Order N-29-20 in March. This order temporarily waives many of the Brown Act requirements, and any other

provision of state or local law, to give local agencies flexibility in how local meetings are conducted. In light of this executive order, the Committee may wish to consider the immediate need for this bill.

- c) **Brown Act.** The Brown Act generally requires all meetings of the legislative body of a local agency to be open and public, and that everybody is permitted to attend any meeting of the legislative body. “Meeting” is defined as any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by law, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. If a local agency allows for teleconferencing, a number of actions must be taken to accommodate persons wishing to address the governing body. Each teleconference location must be identified in the notice and agenda of the meeting and must be accessible to the public. While these requirements likely apply to any meetings or workshops where a majority of the board is present and participating, this bill does not contain provisions making that clear. The Committee may wish to consider if lack of clarity could lead to potential violations of the Brown Act.
- 7) **Committee Amendments.** In response to the above policy considerations and other concerns, the Committee may wish to amend the bill in the following ways:
- a) Restore the number of meetings and workshops that must be held to what is specified in existing law;
 - b) Require that, if a meeting is to be conducted digitally, an option to participate by telephone is also available;
 - c) Restore the requirement that the draft SCS or an alternative planning strategy be prepared and circulated not less than 55 days before adoption of a final RTP;
 - d) Clarify that nothing in this bill is to be construed to provide an exemption to the Brown Act if it would otherwise apply; and,
 - e) Include a two-year sunset date to the bill’s provisions.
- 8) **Arguments in Support.** The Metropolitan Transportation Commission argues that, “SB 146 recognizes that meetings conducted digitally (such as via online video platforms like Zoom) or through informal in-person gatherings (like “pop up” events at farmer’s markets or festivals) can result in feedback from a larger number of residents as well as a more diverse set of perspectives than those who participate in traditional in-person “public workshops” and therefore should qualify for the purpose of the state’s SB 375 meeting requirements.

“Like many public agencies, MTC has experienced increased public participation at our Plan Bay Area 2050 (the region’s SCS) outreach meetings held during shelter-in-place than is typical for in-person meetings. However, under current law, such meetings don’t count towards the state’s minimum number of meeting requirements. Given that we finalize Plan Bay Area 2050 next fall, but are conducting extensive “remote” engagement now, we strongly support SB 146 as it will ensure that the online and multi-lingual telephone-based public engagement we are currently conducting will qualify towards satisfying the state’s

public engagement requirements even after shelter-in-place is lifted. Beyond COVID-19, SB 146 will encourage regional agencies to use best practices of incorporating digital outreach into their public engagement strategies and think creatively about how to make their public engagement efforts as inclusive as possible.”

- 9) **Arguments in Opposition.** A coalition of opponents argue that, “This bill would unnecessarily weaken the SB 375 public participation process by recharacterizing and reducing the number of meetings/hearings required and by narrowing the window of time that the public has to review a sustainable community strategy (SCS).

“We are committed to stronger, more equitable public engagement within the context of SB 375; and believe this will only be achieved if all stakeholders are working together to develop public engagement requirements that reflect the diversity of each region. Our specific concern with SB 146 is that there is nothing in state law or an executive action that prohibits MPOs from turning required workshops under law to virtual workshops, or from using additional creative methods to do outreach and engagement. It is unclear how MPOs do not already have flexibility within the current SB 375 public participation requirements since MPOs can turn required workshops into virtual workshops.

“We are also concerned that those who are most impacted by this law have had the least amount of say in shaping this bill. Public participation is often the only way that community members and organizations are able to weigh in and provide input on these regional plans. While we want to make sure that regional agencies have flexibility during the COVID-19 crisis, we also do not want to unintentionally weaken or reduce the voice of community members and organizations. To our knowledge, there has been very little community involvement on this bill, which is concerning.”

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Bay Area Governments
Metropolitan Transportation Commission
Rails-To-Trails Conservancy

Opposition

350 Bay Area Action
350 Silicon Valley
Active San Gabriel Valley (SGV)
California Climate & Agriculture Network
California Environmental Justice Alliance (CEJA) Action
Central Valley Air Quality Coalition
ClimatePlan
Coalition for Clean Air
Environmental Health Coalition
Greenbelt Alliance
Leadership Counsel for Justice & Accountability
MoveLA
Natural Resources Defense Council
Planning and Conservation League
Safe Routes Partnership
Sierra Business Council
The Climate Center

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