

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 361 (Robert Rivas)
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Fiscal: Yes
Urgency: Yes
AWM

SUBJECT

Open meetings: state and local agencies: teleconferences

DIGEST

This bill creates, until January 1, 2024, an exemption to teleconferenced public meeting requirements for local legislative bodies during states of emergency, as specified; and, until January 31, 2022, a similar exemption to teleconferenced public meeting requirements for certain state bodies, as specified.

EXECUTIVE SUMMARY

Consistent with California’s constitutional guarantee of public access to the meetings of public agencies and officials, California law provides requirements and procedures for the meetings of government bodies. This bill addresses three such statutory schemes: the Ralph M. Brown Act (the Brown Act), which governs the open meetings of local legislative bodies; the Bagley-Keene Open Meetings Act (Bagley-Keene Act), which governs the open meetings of state bodies; and the Gloria Romero Open Meetings Act of 2000 (Gloria Romero Act), which governs the meetings of student governments in the California State University system. All three Acts permit a teleconferencing option for public meetings, subject to certain requirements for establishing a quorum, providing notice, posting agendas, and permitting members of the public to attend at any teleconferencing location.

During the COVID-19 crisis the need for social distancing made the usual practices for public meetings – in particular, having people gather together in indoor spaces – impossible to continue. Governor Gavin Newsom, as part of a slew of emergency orders issued in response to the pandemic, suspended many of the Brown Act and Bagley-Keene Act’s requirements for teleconferenced meetings. Per the emergency orders, local agencies and state bodies must take certain steps to accommodate members of the public with disabilities and to ensure adequate notice of meetings.

This bill is intended to codify two types of exceptions to the teleconferencing requirements of the Acts. First, the bill creates a two-year statutory exception to certain Brown Act teleconferencing requirements during a declared state of emergency. This Committee previously heard and passed a version of this bill that contained only the Brown Act portions, and since its passage in the Committee, only minor changes have been made to those portions: the author added an urgency clause, chaptering amendments to avoid a conflict with AB 339 (Lee, 2021), and additional Legislative findings relating to the bill's effect on public access to local legislative meetings.

Second, as amended on September 3, 2021, this bill suspends the same teleconferencing requirements for bodies subject to the Bagley-Keene Act and/or the Gloria Romero Act; these statutory suspensions will sunset on January 31, 2022. For the bodies subject to the Bagley-Keene Act, this is simply a short-term codification of the terms of the Governor's executive orders; for bodies subject to the Gloria Romero Act, the bill will create a new authorization to meet via teleconferencing without satisfying certain requirements.

This bill is sponsored by the California Special Districts Association and supported by several dozen municipal, local, and state bodies and agencies, including the California State University. The bill is opposed by a number of civic participation, media, and other organizations. Prior to the amendments adding the Bagley-Keene Act and Gloria Romero Act provisions, this bill passed out of the Senate Governance and Finance Committee with a vote of 5-0 and out of this Committee with a vote of 10-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Affirms that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., art. I, § 3(b)(1).)
- 2) Establishes the Gloria Romero Act, which requires a legislative body of a student body organization within the California State University system to conduct its business in open public meeting, except as provided by the Act, and establishes requirements and procedures for such meetings. (Ed. Code, tit. 3, div. 8, pt. 55, ch. 3, art. 1.5, §§ 89305 et seq.)
- 3) Authorizes bodies subject to the Gloria Romero Act to provide a teleconferencing option – which may be via audio or audiovisual means – for its meetings for the benefit of the public, subject to the following relevant requirements:
 - a) A majority of the membership of the legislative body must be at one meeting location.
 - b) The legislative body must post agendas at all teleconference locations.

- c) Each teleconference location must be identified in the notice and agenda of the meeting or proceeding.
 - d) Each teleconference location must be accessible to the public.
 - e) The agenda must provide an opportunity for members of the public to address the legislative body at each teleconference location. (Ed. Code, § 89305(b)(1) & (2), (c).)
- 4) Establishes the Bagley-Keene Act, which requires state bodies to conduct their business in open public meetings, except as provided by the Act, and establishes requirements and procedures for such meetings. (Gov. Code, tit. 2, div. 3, art. 9, §§ 11120 et seq.)
- a) “State bodies” covered by the Bagley-Keene Act include every state board, commission or body created by statute or required by law to conduct official meetings, every commission created by executive order, any board or body exercising the authority of a state body by delegation, any advisory body created by formal action of a state body, any body supported by public funds and which a member of a state body serves in their official capacity, and the State Bar of California. (Gov. Code, § 11121.)
 - b) “State bodies” do not include specified legislative agencies (except the State Bar of California), agencies subject to the Brown Act, and certain educational and health-related agencies. (Gov. Code, § 11121.1.)
- 5) Authorizes state bodies subject to the Bagley-Keene Act to provide a teleconferencing option – which may be via audio or audiovisual means – for its meetings for the benefit of the public, subject to the following relevant requirements:
- a) The meeting must be audible to the public at the location specified in the notice of the meeting.
 - b) The legislative body must post agendas at all teleconference locations.
 - c) Each teleconference location must be identified in the notice and agenda of the meeting or proceeding.
 - d) Each teleconference location must be accessible to the public.
 - e) The agenda must provide an opportunity for members of the public to address the legislative body at each teleconference location.
 - f) All votes must be taken via rollcall.
 - g) At least one member of the state body must be physically present at the location specified in the notice of the meeting. (Gov. Code, § 11123.)
- 6) Authorizes state advisory boards and similar advisory bodies to hold a meeting via teleconference when it complies with the following:
- a) A member participating remotely must be listed in the minutes of the meeting.
 - b) The state body must provide public notice at least 24 hours before the meeting that identifies the member(s) participating remotely and the primary physical meeting location; the body need not disclose the remote locations.

- c) The state body must designate a primary physical location and a quorum of the members must be in attendance at the primary physical meeting location; the remote members do not count towards establishing a quorum.
 - d) The state body must provide a means by which the public may remotely hear audio of, or observe, the meeting, with access equal to the members of the state body participating remotely. Instructions for remote access must be included in the 24-hour meeting notice.
 - e) Upon discovering that a provided means of remote access has failed, the body must end or adjourn the meeting and provide notice regarding when the state body will reconvene. (Gov. Code, § 11123.5.)
- 7) Establishes the Brown Act, which secures public access to the meetings of public commissions, boards, councils, and agencies in the state. (Gov. Code, tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.) The Brown Act defines the following relevant terms:
- a) A “local agency” is a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or any other local public agency. (Gov. Code, § 54951.)
 - b) A “legislative body” is the governing board of a local agency or any other local body created by state or federal statute; a commission, committee, board, or other body of a local agency, as specified; a board, commission, or other multimember body that governs a private corporation, limited liability company, or other entity that is either created by an elected legislative body to exercise delegated authority or receives funds from a local agency and includes a member of the legislative body of the local agency; or the lessee of any hospital leased pursuant to Health and Safety Code section 21131, where the lessee exercises any material authority delegated by the legislative body. (Gov. Code, § 54952.)
- 8) Requires all meetings of the legislative body of a local agency to be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in the Brown Act. (Gov. Code, § 54953.)
- 9) Authorizes the legislative body of a local agency to use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law, provided that the teleconferenced meeting complies with all of the following conditions and all otherwise applicable laws:
- a) Teleconferencing, as authorized, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall. (Gov. Code, § 54953(b)(2).)
 - b) If the legislative body elects to use teleconferencing, it must post agendas at all teleconference locations and conduct teleconference meetings in a manner

- that protects the statutory and constitutional rights of the parties or in the public appearing before the legislative body of the local agency. (Gov. Code, § 54953(b)(3).)
- c) Each teleconferencing location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. (Gov. Code, § 54953(b)(3).)
 - d) During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercised jurisdiction, except as provided in 6). (Gov. Code, § 54953(b)(3).)
 - e) The agenda shall provide an opportunity for members of the public to address the legislative body directly, as the Brown Act requires for in-person meetings, at each teleconference location. (Gov. Code, § 54953(b)(3).)
 - f) For purposes of these requirements, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. (Gov. Code, § 54953(b)(4).)
- 10) Provides an exception to the teleconferencing quorum requirements as follows:
- a) If a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.
 - b) This exception may not be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. (Gov. Code, § 54953(d).)
- 11) Empowers the Governor to proclaim a state of emergency in an area affected or likely to be affected thereby when conditions of disaster or extreme peril to the safety of persons and property within the state, as specified, exist, and which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single local body. (Gov. Code, §§ 8558, 8625.)
- 12) Authorizes the Governor, during a state of emergency, to suspend any regulatory statute, or statute prescribing the procedure for the conduct of state business, or the orders, rules, or regulations of any state agency, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in

any way prevent, hinder, or delay the mitigation of the effects of the emergency.
(Gov. Code, § 8571.)

Existing executive orders:

- 1) Proclaim a State of Emergency to exist in California as a result of the threat of COVID-19. (Governor's Proclamation of a State of Emergency (Mar. 4, 2020).)
- 2) Provide that, notwithstanding any provision of state or local law, including the Bagley-Keene Act or the Brown Act, a local or state legislative body may, subject to the notice and accessibility requirements set forth in item 4), may hold public meetings via teleconferencing and make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. (Governor's Exec. Order No. N-25-20 (Mar. 12, 2020); Governor's Exec. Order No. N-29-20 (Mar. 17, 2020); Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).)
- 3) Waives the requirements in the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of the members, the clerk, or other personnel of the body, or the public, as a condition of participation in, or quorum for, a public meeting, including:
 - a) The requirement that state and local bodies notice each teleconference location from which a member will be participating in a public meeting.
 - b) The requirement that each teleconference location be accessible to the public.
 - c) The requirement that members of the public may address the body at each teleconference location.
 - d) The requirement that state and local bodies post agendas at all teleconference locations.
 - e) The requirement that, during teleconference meetings, at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction. (Governor's Exec. Order No. N-25-20 (Mar. 12, 2020); Governor's Exec. Order No. N-29-20 (Mar. 17, 2020); Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).)
- 4) Authorize a state or local legislative body to hold a meeting via teleconference, in which members of the public may observe and address the meeting through telephonic or other electronic means, subject to the below requirements, without having to make available any physical location from which the public may observe the meeting and offer comment:
 - a) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (ADA) and resolving any doubt whatsoever in favor of accessibility; this

procedure must be advertised each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to the notice requirements below.

- b) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Brown Act, and using the means otherwise prescribed by the Brown Act.
 - c) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. In any instance where there is a change in such means of public observation and comment, a body may satisfy this requirement by advertising such means using the most rapid means of communication available at the time within the meaning of the Bagley-Keene or Brown Act, which may include posting such means on the body's website. (Governor's Exec. Order No. N-25-20 (Mar. 12, 2020); Governor's Exec. Order No. N-29-20 (Mar. 17, 2020); Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).)
- 5) Urge state and local bodies to use sound discretion and to make reasonable efforts to adhere as closely as possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regarding the conduct of public meetings, to maximize transparency and provide the public access to their meetings. (Governor's Exec. Order No. N-29-20 (Mar. 17, 2020).)
- 6) Provide that the above provisions will remain in effect until September 30, 2021. (Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).)

This bill:

- 1) For meetings subject to the Gloria Romero Act, suspends the following teleconferencing requirements, subject to compliance with item 2), until January 31, 2022:
 - a) Identifying, in the notice of the meeting, each teleconference location from which a member will be participating.
 - b) Making each teleconference location accessible to the public.
 - c) Allowing members of the public to address the student body at each teleconference location.
 - d) Posting agendas at all teleconference locations.
 - e) Requiring at least one member of the student body to be physically present at each location.
 - f) Requiring a physical location for the meeting for members of the public to observe the meeting and offer public comment.
- 2) Requires a student body holding a teleconferenced meeting under the suspended teleconferencing requirements to do all of the following:

- a) Allow members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with notice and accessibility requirements.
 - b) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the ADA, with all doubts resolved in favor of accessibility.
 - c) Advertise the procedure for such requests each time notice is given of the means by which the public may observe the meeting and offer public comment.
 - d) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes and means otherwise required by the Gloria Romero Act.
 - e) In each instance where the notice of the meeting is given or the agenda is posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. In any instance where there is a change in the means of public observation or comment, or where the required information was not provided prior to the implementation date of the bill, the student body may satisfy the requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time, which may include posting the means on the body's website.
 - f) Use sound discretion to make reasonable efforts to adhere as closely as reasonably possible to the otherwise-applicable provisions of the Gloria Romero Act to maximize transparency and provide the public access to legislative body meetings.
- 3) Includes a sunset provision that will repeal items 1)-2) on January 31, 2022.
- 4) For meetings subject to the Bagley-Keene Act, suspends the following teleconferencing requirements, subject to compliance with item 5), until January 31, 2022:
- a) Identifying, in the notice of the meeting, each teleconference location from which a member will be participating.
 - b) Making each teleconference location accessible to the public.
 - c) Allowing members of the public to address the state body at each teleconference location.
 - d) Posting agendas at all teleconference locations.
 - e) Requiring at least one member of the state body to be physically present at each location.
 - f) Requiring a physical location for the meeting for members of the public to observe the meeting and offer public comment.
- 5) Requires a state body holding a teleconferenced meeting under the suspended teleconferencing requirements to do all of the following:

- a) Allow members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with notice and accessibility requirements.
 - b) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal ADA with all doubts resolved in favor of accessibility.
 - c) Advertise the procedure for such requests each time notice is given of the means by which the public may observe the meeting and offer public comment.
 - d) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes and means otherwise required by the Bagley-Keene Act.
 - e) In each instance where the notice of the meeting is given or the agenda is posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. In any instance where there is a change in the means of public observation or comment, or where the required information was not provided prior to the implementation date of the bill, the state body may satisfy the requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time, which may include posting the means on the body's website.
 - f) Use sound discretion to make reasonable efforts to adhere as closely as reasonably possible to the otherwise-applicable provisions of the Bagley-Keene Act, in order to maximize transparency and provide the public access to legislative body meetings.
- 6) Includes a sunset provision that will repeal items 4)-5) on January 31, 2022.
- 7) Creates statutory exemptions to the Brown Act's teleconferencing requirements during a state or local emergency, as detailed below, until January 1, 2024.
- 8) Authorizes a local agency to use teleconferencing for a public meeting without complying with the Brown Act's teleconferencing quorum, meeting notice, and agenda requirements set forth in Government Code section 54953(b)(3), in any of the following circumstances:
- a) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
 - b) The legislative body holds a meeting during a proclaimed state of emergency for purposes of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health and safety of attendees.

- c) The legislative body holds a meeting during a proclaimed state of emergency and has determined by majority vote pursuant to b) above that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- 9) Provides that a legislative body holding a teleconferenced meeting pursuant to the Brown Act exception provided in 8) is subject to the following requirements:
- a) The legislative body must give notice of the meeting and post agendas as otherwise required by the Brown Act.
 - b) The legislative body must allow members of the public to access the meeting, and the agenda must provide an opportunity for members of the public to address the legislative body directly pursuant to Brown Act requirements. In each instance where notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body must also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda must identify and include an opportunity for all persons to attend via call-in option or an internet-based service option. The legislative body need not provide a physical location from which the public may attend or comment.
 - c) The legislative body must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.
 - d) In the event of a disruption that prevents the public agency from broadcasting the meeting to members of the public using the call-in or internet-based service options, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in or internet-based service options, the legislative body must take no further action on items appearing on the meeting agenda until public access to the meeting is restored. Actions taken on agenda items during a disruption preventing the broadcast of the meeting may be challenged as provided in the Brown Act.
 - e) The legislative body may not require public comments to be submitted in advance of the meeting, and it must provide an opportunity for the public to address the legislative body and offer comment in real time.
 - f) The legislative body may use an online third-party system for individuals to provide public comment that requires an individual to register with the system prior to providing comment.
 - g) If a legislative body provides a timed public comment period, it may not close the comment period or the time to register to provide comment under f) until the timed period has elapsed. If the legislative body does not provide a time-limited comment period, it must allow a reasonable time for the public to comment on each agenda item and to register as necessary under f).

- 10) If the state of emergency remains active, or state or local officials have imposed measures to promote social distancing, the legislative body must, in order to continue meeting subject to this exemption to the Brown Act, no later than 30 days after it commences using the exemption, and every 30 days thereafter, make the following findings by majority vote:
 - a) The legislative body has reconsidered the circumstances of the state of emergency; and
 - b) Either (1) the state of emergency continues to directly impact the ability of the members to meet safely in person; or (2) state or local officials continue to impose or recommend measures to promote social distancing.
- 11) Defines “state of emergency” as a state of emergency proclaimed pursuant to Government Code section 8625.
- 12) Provides that the provisions relating to the Brown Act will remain in effect only until January 1, 2024, and as of that date be repealed.
- 13) Includes changes to Government Code section 54953 to avoid chaptering conflicts with AB 339 (Lee, 2021), and which will be repealed on January 1, 2024.
- 14) Makes findings relating to the bill’s intent to increase public participation in public meetings during the COVID-19 pandemic by allowing persons to attend public meetings regardless of their ability to travel or appear at a meeting, as well as the bill’s intent to protect the privacy and safety of public officials who would otherwise need to decide between appearing at a public meeting during a declared emergency and publishing their physical location. The bill further makes findings that the bill could limit the public’s right of access to public meetings by suspending the physical location requirements, but finds that the potential limitation is justified in light of the risks posed to the public and public officials’ health and safety without suspending the teleconferencing options.
- 15) Includes an urgency clause, so the act will take effect immediately.

COMMENTS

1. California’s right of public access to government meetings, the COVID-19 pandemic, and teleconferencing requirements

The California Constitution enshrines the rights of the people to instruct their representatives and to access information concerning the conduct of government, and requires the meetings of public bodies to be accessible for public scrutiny.¹ To that end, the Gloria Romero Act, the Bagley-Keene Act, and the Brown Act provide guidelines

¹ Cal. Const., art. I, § 3(a) & (b)(1).

and requirements for how state and local bodies must guarantee open and public access to their meetings.²

In March 2020, due to the COVID-19 pandemic, the Governor issued executive orders suspending portions of the Bagley-Keene Act and the Brown Act requiring in-person meetings, thereby allowing members of a local legislative body to attend meetings remotely without having to publicly post their location information or allow members of the public to attend meetings from those locations.³ Throughout the pandemic, many state and local bodies relied on teleconference or internet streaming services to conduct meetings on a regular basis, avoiding the COVID-19 transmission risks posed by large public gatherings. Based on information received by committee staff, the move to entirely teleconferenced meetings has both expanded and contracted public access to meetings: the increased availability of teleconferencing allows participation by persons who cannot travel to a physical location or cannot attend a meeting for other reasons (e.g., persons who are immunocompromised); but can decrease participation by persons who are less tech-savvy, lack access to technology, or are otherwise unable to utilize the remote access options. There are also concerns that the value of public meetings is lessened when government officials do not have to interact with the public on a face-to-face basis.

On June 11, 2021 – before the delta variant of COVID-19 was widespread in California – the Governor declared that the emergency Bagley-Keene and Brown Act teleconferencing provisions would expire on September 30, 2021.⁴ At the time of this analysis, the delta variant and low national vaccination numbers have caused a resurgence of COVID-19 cases and deaths in parts of the state and across the country,⁵ and reports suggest that additional, more vaccine-resistant variants could emerge this fall.⁶

It is unclear whether, in light of the ongoing risks and widespread nature of the COVID-19 virus, the executive orders relating to state and local public meetings will be continued past the current September 30, 2021, expiration date.

When this Committee heard this bill in July, it created only a general emergency exception to the Brown Act's teleconferencing requirements, set to sunset on January 1,

² Ed. Code, tit. 3, div. 8, pt. 55, ch. 3, art. 1.5, §§ 89305 et seq.; Gov Code, tit. 2, div. 3, art. 9, §§ 11120 et seq., & tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.

³ Governor's Exec. Order No. N-25-20 (Mar. 12, 2020); Governor's Exec. Order No. N-29-20 (Mar. 17, 2020).

⁴ Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).

⁵ E.g., Cha, Keating, & Dupree, *U.S. covid death toll hits 1,500 a day amid delta scourge*, Washington Post (Sept. 3, 2021), available at <https://www.washingtonpost.com/health/2021/09/03/delta-deaths-us-fourth-wave/> [last visited Sept. 5, 2021].

⁶ E.g., Suliman, *Here's what we know about the mu variant*, Washington Post (Sept. 3, 2021), available at <https://www.washingtonpost.com/world/2021/09/03/mu-coronavirus-variant-explained/> [last visited Sept. 5, 2021].

2024. Since then, the bill has been amended to create short-term statutory exemptions to the Gloria Romero Act and Bagley-Keene Act's teleconferencing requirements, in light of the ongoing dangers posed by the still-raging COVID-19 pandemic. As explained by the author:

When the COVID-19 pandemic started, public agencies struggled to conduct their meetings in compliance with the public accessibility and transparency requirements of the Brown Act and Bagley-Keene Acts while still abiding by stay-at-home orders. As a result, Governor Newsom issued several executive orders (EOs) to grant agencies the flexibility to meet remotely during the pandemic. However, these EOs are expiring soon, meaning that these flexibilities will not apply to future emergencies like wildfires, floods, pandemics, or other events that make in-person gatherings dangerous. Local and state agencies will again struggle to provide essential services like water, power, and fire protection at a time when constituents will need those services the most.

AB 361 will guarantee that local and state bodies can meet the needs of the communities they serve by allowing them to temporarily hold meetings remotely. This bill will also require the opportunity for public to join via telephone or video conference to ensure that all members of the public can participate safely.

2. This bill allows local agencies to meet during a proclaimed state of emergency via teleconference without complying with all of the Brown Act's requirements, under certain conditions and with certain restrictions

This Committee considered the bill's Brown Act provisions at its July 13, 2021, hearing. The analysis for that version of the bill is incorporated herein by reference.

In brief, the Brown Act portion of the bill will allow local legislative bodies subject to the Brown Act to implement, on their own, the teleconferencing provisions of the Governor's executive orders during a declared state of emergency, subject to the bill's conditions. Specifically, the bill allows local legislative bodies to implement the teleconference measures during a declared state emergency and when (1) state or local officials have imposed or recommended measures to promote social distancing; (2) the legislative body is meeting to determine whether an in-person meeting would present imminent health or safety risks as a result of the declared emergency; or (3) the legislative body has already determined that such health or safety risks exist as a result of the declared emergency. When the stated conditions are met, a local legislative body may hold meetings entirely via teleconference without providing a public location for the meeting, having a quorum of members present in the jurisdiction, or posting the locations of all participating members, subject to requirements for providing notice of the meeting and the means for accessing the teleconference lines, and for providing

means for the public to submit comments. The Brown Act provisions of the bill will sunset on January 1, 2024.

Since this Committee heard the bill, the author has made minor changes to the Brown Act portions. The author has added an urgency clause, so that the bill will take effect immediately; has added provisions to avoid a chaptering conflict with AB 339 (Lee, 2021); and has expanded the Legislative declarations and findings relating to the need for the bill even though it potentially restricts the public's ability to access the meetings of local legislative bodies. The author did not amend the bill to address subjects discussed at this Committee's prior hearing, such as requiring an audiovisual feed for teleconferenced meetings (the bill authorizes audio or audiovisual meetings), or translation issues.

3. This bill codifies the Governor's executive orders relating to the Bagley-Keene Act, and extends those provisions to the Gloria Romero Act, on a short-term basis

As noted above, current executive orders suspend Bagley-Keene Act requirements for teleconferenced meetings, so that state bodies may hold meetings entirely via teleconference and without requiring members' locations to be publicized and open to the public.⁷ The orders partially suspending the Bagley-Keene Act teleconferencing requirements are set to expire on September 30, 2021,⁸ and it is unclear whether the orders will be extended.

This bill, as amended after the Committee heard it, codifies the Bagley-Keene Act modifications in the COVID-19 executive orders until January 31, 2022. Under this bill, state bodies subject to the Bagley-Keene Act would be able to hold teleconferenced meetings without satisfying the following requirements:

- Having members, the clerk, or other personnel of the state body, or the public, physically present at the meeting as a condition of participation in, or quorum for, a public meeting.
- Identifying, in the notice of the meeting, each teleconference location from which a member will be participating.
- Making each teleconference location accessible to the public.
- Allowing members of the public to address the state body at each teleconference location.
- Posting agendas at all teleconference locations.
- Requiring at least one member of the state body to be physically present at each location specified in the notice of the meeting.
- Providing a physical location for the meeting.

⁷ Governor's Exec. Order No. N-25-20 (Mar. 12, 2020); Governor's Exec. Order No. N-29-20 (Mar. 17, 2020).

⁸ Governor's Exec. Order No. N-08-21 (Jun. 11, 2021).

State bodies wishing to hold teleconferenced meetings under these conditions may do so only if they comply with the following requirements, in addition to the remainder of the Bagley-Keene Act:

- Providing an electronic means for members of the public to observe and address the meeting, consistent with the notice and accessibility requirements listed below.
- Implementing a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the ADA and resolving any doubt whatsoever in favor of accessibility; this procedure must be advertised each time notice is given of the means by which members of the public may observe the meeting and offer public comment.
- Giving advance notice of the time of, and posting the agenda for, each public meeting as required under the Bagley-Keene Act.
- Providing, at each instance notice of the meeting is provided or the agenda is posted, the means by which members of the public may observe the meeting and offer public comment.
- In any instance where there is a change in the means of public observation or comment, or when the meeting was initially noticed prior to the implementation date of the bill, a state body may satisfy the requirement to provide the means of public access by advertising it using the most rapid means of communication available at the time, which may include posting the information on the state body's website.

The bill also extends the above permissions and requirements to elected student bodies within the California State University (CSU) system subject to the public meeting requirements of the Gloria Romero Act.⁹ The Gloria Romero Act is modeled after the Bagley-Keene Act and contains the same requirements and limitations on teleconferenced meetings.¹⁰ The Governor's COVID-19 executive orders authorizing modified teleconferencing procedures under the Bagley-Keene Act and the Brown Act did not, however, extend that authorization to student bodies covered by the Gloria Romero Act. This bill will, therefore, allow for the first time CSU student legislative bodies to hold fully remote teleconferenced meetings.

The bill contains an urgency clause, so these provisions will take effect immediately upon enactment. Nevertheless, the bill's modified Bagley-Keene Act and Gloria Romero Act provisions are extremely short lived: both sets of provisions will sunset on January 31, 2022.

Finally, the bill also makes findings and declarations relating to the need for these portions of the bill, namely, the ongoing COVID-19 pandemic and the continued risk to

⁹ Ed. Code, tit. 3, div. 8, pt. 55, ch. 3, art. 1.5, §§ 89305 et seq.

¹⁰ Compare Ed. Code, § 89305 with Gov. Code, § 11123.

health and safety posed by large public gatherings. The findings note that increased teleconferencing can, in some situations, expand public access to meetings by allowing individuals who would not be able to attend in person – for distance, health, or other reasons – to attend via remote means. To the extent that these measures will limit the public’s right of access, the bill finds that the concerns for health and safety, as well as the privacy of state or student body officials who would otherwise be required to publicize their physical locations, justify the potential limitation.

4. Support and opposition

With respect to the Brown Act portions of the bill, Committee staff have received no information suggesting that any of the persons and entities that weighed in on the bill when it was first heard by this Committee have changed their positions. This analysis therefore incorporates by reference the explanation of the support and opposition from the prior Committee analysis.

With respect to the new Gloria Romero Act and Bagley-Keene Act portions of the bill, the Committee has received several new letters expressing support. The Committee has not received any new opposition letters addressing the Gloria Romero Act and Bagley-Keene act provisions, nor has the Committee received information suggesting that the existing opponents of the bill object to those provisions.

5. Arguments in support

According to the California Business, Consumer Services and Housing Agency (BCSH), which writes in support of the Bagley-Keene provisions of the bill:

BCSH believes that the flexibility offered by the temporary of this Executive Order [modifying teleconferencing rules for entities subject to the Bagley-Keene Act] is essential to the ability of the many entities within our Agency to hold public meetings, particularly as our state and society continue to emerge from the COVID-19 pandemic. Though we are making great strides, there are still many threats posed by COVID-19 variants that make a full return to pre-pandemic meeting standards too great a risk.

In addition, the ability to hold meetings remotely has brought with it an unexpected outcome: many of our entities have observed a trend of greater public participation with more members of the public meeting.

SUPPORT

California Special Districts Association (sponsor)
Alameda County Mosquito Abatement District
Association of California Healthcare Districts
Association of California Water Agencies

Association of Environmental Professionals
Cal Voices
California Association of Joint Powers Authorities
California Association of Local Agency Formation Commissions
California Business, Consumer Services and Housing Agency
California Downtown Association
California Municipal Utilities Association
California State Association of Counties
California State Association of Electrical Workers
California State University, Office of the Chancellor
California Travel Association
Cameron Estates Community Services District
Cameron Park Community Services District
City of Carlsbad
City of Foster City
City of Lafayette
City of Redwood City
City of Walnut Creek
Coachella Valley Mosquito and Vector Control District
Costa Mesa Sanitary District
County of Monterey
Cucamonga Valley Water District
Disability Rights California
Department of General Services
Eastern Municipal Water District
Ebbetts Pass Fire District
Eden Township Healthcare District dba Eden Health District
El Dorado Hills Community Services District
Elsinore Valley Municipal Water District
Eric Garcetti, Mayor, Los Angeles
Fallbrook Regional Health District
Fresno Mosquito and Vector Control District
Grizzly Flats Community Services District
Honey Lake Valley Resource Conservation District
Humboldt Bay Municipal Water District
Humboldt Community Services District
Jackson Valley Irrigation District
Kayes Community Service District
Kinneloa Irrigation District
League of California Cities
Los Angeles County Sanitation Districts
Mammoth Community Water District
Mesa Water District
Metropolitan Water District of Southern California

Mountain Counties Water Resources Association
Mt. View Sanitary District
Murphys Fire Protection District
Napa County Regional Park and Open Space District
North County Fire Protection District
North Tahoe Fire Protection District
Nicholas Maduros, Director, California Department of Tax and Fee Administration
Oleventhain Municipal Water District
Orange County Employees Association
Orange County Local Agency Formation Commission
Orange County Water District
Palmdale Water District
Palos Verdes Library District
Reclamation District No. 1000
Rural County Representatives of California
Sacramento Suburban Water District
San Diego County Water Authority
Santa Barbara County Board of Supervisors
Saratoga Fire District
Southern California Regional Rail Authority (Metrolink)
Southern California Water Coalition
Stege Sanitary District
Tahoe Resource Conservation District
Templeton Community Services District
Three Valleys Municipal Water District
Town of Discovery Bay
Truckee Fire Protection District
Urban Counties of California
Valley-Wide Recreation and Park District
Vista Fire Protection District
Vista Irrigation District
Water Replenishment District of Southern California
Western Municipal Water District
Yolanda Richardson, Secretary, California Government Operations Agency
Zach Hilton, Member, Gilroy City Council

OPPOSITION

ACLU California Action
ACT for Women and Girls
California Environmental Justice Alliance
Californians Aware
First Amendment Coalition
Howard Jarvis Taxpayers association

Together We Will/Indivisible – Los Gatos

RELATED LEGISLATION

Pending Legislation:

SB 274 (Wieckowski, 2021) requires a local agency with an internet website, or its designee, to email a copy of, or website link to, the agenda or a copy of all the documents constituting the agenda packet if the person requests that the items be delivered by email. If a local agency determines it to be technologically infeasible to send a copy of the documents or a link to a website that contains the documents by email or by other electronic means, the legislative body or its designee must send by mail a copy of the agenda or a website link to the agenda and to mail a copy of all other documents constituting the agenda packet, as specified. SB 274 has been enrolled and is awaiting action by the Governor.

AB 1419 (Kiley, 2021) requires, in addition to the requirements of the Brown Act, the governing board of a school district, a county board of education, and the governing body of a charter school to make any public meeting accessible electronically online to all members of the public seeking to attend and ensure the opportunity for the members of the public participating electronically to comment on agenda items in the same manner as a person attending a meeting in person. AB 1419 is pending before the Assembly Education Committee.

AB 703 (Blanca Rubio, 2021) removes the Brown Act's notice requirements particular to teleconferencing and revises the requirements of the Brown Act to allow for teleconferencing subject to existing provisions regarding the posting of notice of an agenda and the ability of the public to observe the meeting and provide public comment, provided that the public is allowed to observe the meeting and address the legislative body directly both in person and remotely via a call-in option or internet-based service option, and that a quorum of members participate in person from a singular physical location clearly identified on the agenda that is open to the public and situated within the jurisdiction. AB 703 is pending before the Assembly Committee on Local Government.

AB 339 (Lee, 2021) requires, until December 31, 2023, all open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing least 250,000 people to include an opportunity for members of the public to attend via a telephonic option and or an internet-based service option. The bill would require all open and public meetings to include an in-person public comment opportunity, except in specified circumstances during a declared state or local emergency. The bill would require all meetings to provide the public with an opportunity to comment on proposed legislation in person and remotely via a telephonic and or an internet-based service option, as provided. AB 339 is pending on the Senate Floor.

Prior Legislation:

SB 931 (Wieckowski, 2020) would have required a local agency with an internet website, or its designee, to email a copy of, or website link to, the agenda or a copy of all the documents constituting the agenda packet if the person requests that the items be delivered by email; or, if the local agency determined it to be technologically infeasible to send a copy of the documents or a link to a website that contains the documents by email or by other electronic means, the legislative body or its designee would be required to send by mail a copy of the agenda or a website link to the agenda and to mail a copy of all other documents constituting the agenda packet, as specified. SB 931 was held in the Senate Governance and Finance Committee.

AB 428 (Ridley-Thomas, Ch. 137, Stats. 2017) removed the sunset on the provision of the Brown Act authorizing a health authority conducting a teleconference meeting to count members who are outside the jurisdiction of the authority toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction.

AB 2257 (Maienschein, Ch. 265, Stats. 2016) amended the Brown Act to require an online posting of an agenda for a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has a website to be posted on the local agency's primary homepage accessible through a prominent, direct link, as specified, and subject to exceptions.

AB 1787 (Gomez, Ch. 507, Stats. 2016) amended the Brown Act so that, if the legislative body limits time for public comment, the legislative body must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

AB 194 (Campos, 2015) would have modified the Brown Act to the agenda for a regular and special meeting to provide an opportunity for the public to directly address the legislative body on any item of interest to the public before and during the legislative body's consideration of the item, except as specified, and expanded the existing prohibition against a legislative body limiting public criticism to include criticism of the officers and employees of the legislative body, and specify other designated prohibited activities related to limiting public comment. AB 194 was vetoed by Governor Edmund Brown, Jr., whose veto message stated that the bill added certain procedures to the Brown Act, which at best would elongate but in no way enhance the quality of debate at the local level.

AB 185 (Roger Hernández, 2015) would have allowed video of public meetings recorded under the Brown Act to be destroyed after two years, and required a local agency to televise open and public meetings as specified. AB 185 died in the Assembly Committee on Local Government.

PRIOR VOTES:

Senate Judiciary Committee (Ayes 10, Noes 0)

Senate Governance and Finance Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 62, Noes 4)

Assembly Local Government Committee (Ayes 7, Noes 0)
