


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: August 5, 2021

TO: Honorable Members of the City Council

FROM: Sharon M. Tso 
Chief Legislative Analyst

Assignment No. 21-07-0545

SUBJECT: Legislative Analysis AB 339 (Lee) to amend the Government Code, relating to public meetings

CLA RECOMMENDATION

Adopt the attached Resolution to include in the City's 2021-2022 State Legislative Program SUPPORT for AB 339 (Lee) to amend the Government Code, relating to public meetings IF AMENDED to:

- (1) extend the mandates of the bill to all State legislative bodies, including all bodies that are obligated to comply with the Brown Act or Bagley-Keene Act; and
- (2) provide State funding to offset the costs of the new requirements, or allow governments the option, rather than the requirement, of allowing public comment via telephone or the internet.

SUMMARY

AB 339 (Lee and Garcia, local government: open and public meetings) would require all city councils and boards of supervisors governing jurisdictions with at least 250,000 persons to take public comment both in-person and remotely via two-way telephone or the internet. The bill requires that equal time is provided to in-person and remote speakers. This mandate, provided without reimbursement, would present technical and practical challenges that could disrupt public meetings and disenfranchise the rights of in-person speakers. The bill was passed by the California State Assembly on June 2, 2021, and is before the California State Senate's Standing Committee on Appropriations at present.

BACKGROUND

The Ralph M. Brown Act (Government Code sections 54950-54963, Brown Act) dictates the public access requirements of local government agency meetings in California. The Brown Act requires that appropriate public notice be given for non-private meetings of a public governing body, board, commission, or committee, and that the opportunity for comment be provided to members of the public on any item before the body.

The City of Los Angeles adheres to the Brown Act's stipulations by offering multiple forms of public comment on items before its governing bodies. Every meeting complies with

requirements on public notice by posting agendas within the time limits prescribed by the Brown Act. Generally speaking and in accordance with Brown Act requirements, members of the public who wish to address the body on an item at a public meeting are afforded time per item for which they have requested to speak, or for an item for which a public hearing has not yet been held. General public comment is also permitted on request, except in the case of a special meeting. Translation services for the public comment can be requested in advance of the meeting, allowing speakers of foreign-languages to participate in public comment. In addition to in-person testimony, members of the public are also permitted to submit written electronic testimony to the Council on any item. Written electronic comments are posted publicly and made part of the public record.

Effects of AB 339 (Lee and Garcia)

AB 339 (Lee and Garcia), introduced in the California State Assembly on January 28, 2021, and amended on May 4, 2021, June 25, 2021, and July 5, 2021, would require all city councils and boards of supervisors governing jurisdictions containing at least 250,000 persons, to take public comment both in-person and remotely via two-way telephone or the internet, affording equal time to in-person and remote speakers. AB 339 would additionally require open and public meetings of a city council that currently provides video streaming to continue to do so; however, the bill suggests that all future meetings would be required to be accessible for streaming, both during and after the meeting, in perpetuity.

As a jurisdiction of well over 250,000 persons, AB 339 would apply to the City of Los Angeles, as well as 14 other cities and about half of the State's counties. AB 339 was passed by the California State Assembly on June 2, 2021 and is presently under consideration by the California State Senate's Standing Committee on Appropriations.

The City Council has adopted rules to allow members of the public their rightful opportunity to provide public comment, while addressing those who frequently disrupt in-person public meetings. These disruptions could include speech that may be considered vulgar, racist, sexist, and otherwise offensive speech which can create a toxic environment and discourage other members of the public from providing their public comment. The rules intended to protect public comment are predicated on the ability to visually identify disruptive persons after they have committed an infraction, for which they are not afforded the opportunity to speak again for a prescribed amount of time.

AB 339 would present myriad technical and practical complications for governing bodies in the City of Los Angeles. The ability to comment virtually would allow remote speakers to manipulate and willfully contravene established public comment regulations. For example, the anonymity provided by a virtual meeting would empower those who have been ejected from a remote meeting to easily re-enter under a revised title, and create additional disruptions to the governing body. Further, the inability to determine the location of a remote speaker creates the possibility that speakers from any location in the world could inundate the comments on an item. This could obfuscate a governing body's perception of the local public's opinion on an item and prevent City residents from providing comments.

AB 339 could additionally disadvantage in-person speakers. The bill would require that a body take public comment for both in-person and remote speakers. However, if there is insufficient time to hear from all speakers who requested to discuss a specific item, members of the public

who took the time to appear in-person before the governing body may be precluded from commenting in order to allow remote speakers to comment.

As written presently, AB 339 does not contain provisions for reimbursement of costs associated with remote meetings. Jurisdictions would be mandated to establish and maintain virtual meeting capabilities entirely at their own cost.

In their opposition, the League of California Cities notes that "imposing these mandated costs on local agencies under particularly challenging fiscal circumstances coupled with the overwhelming practical challenges associated with implementing such a measure makes us deeply concerned about local public agencies' ability to effectively conduct the people's business."

As originally written when introduced, AB 339 applied to all public bodies, including the State Legislature. However, subsequent revisions removed State public bodies from the bill's requirements. If transparency and public input should be goals for public bodies, these ideals should apply to all governing bodies in the State, including the legislature. It is inappropriate and contrary to the intent of the legislative purpose to target a limited number of cities and counties. Therefore, this report recommends that the Council adopt the attached Resolution (Attachment B) to include in the City's 2021-2022 State Legislative Program support for AB 339 if, and only if the bill is amended to:

- (1) extend the mandates of the bill to all State legislative bodies, including all bodies that are obligated to comply with the Brown Act or Bagley-Keene Act; and
- (2) provide State funding to offset the costs of the new requirements, or allow governments the option, rather than the requirement, of allowing public comment via telephone or the internet.

DEPARTMENTS NOTIFIED

City Attorney


BILL STATUS

1/28/21 - Introduced

6/2/21 - Passed in State Assembly, Ordered to State Senate

7/14/21 - Referred to State Senate's Standing Committee on Appropriations

8/16/21 - Scheduled hearing by State Senate's Standing Committee on Appropriations



Alex Whitehead
Legislative Analyst

Attachment A: AB 339 (Lee)

Attachment B: Resolution

AMENDED IN SENATE JULY 5, 2021

AMENDED IN SENATE JUNE 25, 2021

AMENDED IN ASSEMBLY MAY 4, 2021

AMENDED IN ASSEMBLY APRIL 15, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 339

Introduced by Assembly Members Lee and Cristina Garcia
(Coauthors: Assembly Members Arambula, Cooley, Kiley, and
Robert Rivas)
(Coauthor: Senator Stern)

January 28, 2021

An act to amend Section 54953 of, and to add and repeal Section 54953.9 of, the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 339, as amended, Lee. Local government: open and public meetings.

Existing law, the Ralph M. Brown Act, requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. Under existing law, a member of the legislative body who attends a meeting where action is taken in violation of this provision, with the intent to deprive the public of information that the member knows the public is entitled to, is guilty of a crime.

This bill would require local agencies to conduct meetings subject to the act consistent with applicable state and federal civil rights laws, as specified.

This bill would, until December 31, 2023, require 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 two-way telephonic option or a two-way internet-based service option, as specified, and would require a city council or county board of supervisors that has, as of June 15, 2021, provided video streaming, as defined, of *at least one of* its meetings to continue to provide that video streaming. 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 or an internet-based service option, as provided.

By imposing new duties on local governments and expanding the application of a crime with respect to meetings, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities and counties, including charter cities and counties.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54953 of the Government Code is
2 amended to read:

3 54953. (a) All meetings of the legislative body of a local
4 agency shall be open and public, and all persons shall be permitted
5 to attend any meeting of the legislative body of a local agency in
6 person, except as otherwise provided in this chapter. Local agencies
7 shall conduct meetings subject to this chapter consistent with
8 applicable state and federal civil rights laws, including, but not
9 limited to, the language access and other nondiscrimination
10 obligations of Section 11135 and Subchapter V (commencing with
11 Section 2000d) of Chapter 21 of Title 42 of the United States Code.

12 (b) (1) Notwithstanding any other provision of law, the
13 legislative body of a local agency may use teleconferencing for
14 the benefit of the public and the legislative body of a local agency
15 in connection with any meeting or proceeding authorized by law.
16 The teleconferenced meeting or proceeding shall comply with all
17 requirements of this chapter and all otherwise applicable provisions
18 of law relating to a specific type of meeting or proceeding.

19 (2) Teleconferencing, as authorized by this section, may be used
20 for all purposes in connection with any meeting within the subject
21 matter jurisdiction of the legislative body. All votes taken during
22 a teleconferenced meeting shall be by rollcall.

23 (3) If the legislative body of a local agency elects to use
24 teleconferencing, it shall post agendas at all teleconference
25 locations and conduct teleconference meetings in a manner that
26 protects the statutory and constitutional rights of the parties or the
27 public appearing before the legislative body of a local agency.
28 Each teleconference location shall be identified in the notice and
29 agenda of the meeting or proceeding, and each teleconference
30 location shall be accessible to the public. During the teleconference,
31 at least a quorum of the members of the legislative body shall
32 participate from locations within the boundaries of the territory
33 over which the local agency exercises jurisdiction, except as
34 provided in subdivision (d). The agenda shall provide an
35 opportunity for members of the public to address the legislative
36 body directly pursuant to Section 54954.3 at each teleconference
37 location.

1 (4) For the purposes of this section, "teleconference" means a
2 meeting of a legislative body, the members of which are in different
3 locations, connected by electronic means, through either audio or
4 video, or both. Nothing in this section shall prohibit a local agency
5 from providing the public with additional teleconference locations.

6 (c) (1) No legislative body shall take action by secret ballot,
7 whether preliminary or final.

8 (2) The legislative body of a local agency shall publicly report
9 any action taken and the vote or abstention on that action of each
10 member present for the action.

11 (3) Prior to taking final action, the legislative body shall orally
12 report a summary of a recommendation for a final action on the
13 salaries, salary schedules, or compensation paid in the form of
14 fringe benefits of a local agency executive, as defined in
15 subdivision (d) of Section 3511.1, during the open meeting in
16 which the final action is to be taken. This paragraph shall not affect
17 the public's right under the California Public Records Act (Chapter
18 3.5 (commencing with Section 6250) of Division 7 of Title 1) to
19 inspect or copy records created or received in the process of
20 developing the recommendation.

21 (d) (1) Notwithstanding the provisions relating to a quorum in
22 paragraph (3) of subdivision (b), if a health authority conducts a
23 teleconference meeting, members who are outside the jurisdiction
24 of the authority may be counted toward the establishment of a
25 quorum when participating in the teleconference if at least 50
26 percent of the number of members that would establish a quorum
27 are present within the boundaries of the territory over which the
28 authority exercises jurisdiction, and the health authority provides
29 a teleconference number, and associated access codes, if any, that
30 allows any person to call in to participate in the meeting and the
31 number and access codes are identified in the notice and agenda
32 of the meeting.

33 (2) Nothing in this subdivision shall be construed as
34 discouraging health authority members from regularly meeting at
35 a common physical site within the jurisdiction of the authority or
36 from using teleconference locations within or near the jurisdiction
37 of the authority. A teleconference meeting for which a quorum is
38 established pursuant to this subdivision shall be subject to all other
39 requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

SEC. 2. Section 54953.9 is added to the Government Code, to read:

54953.9. (a) A city council or a county board of supervisors that governs a jurisdiction containing at least 250,000 people shall comply with the following requirements:

(1) (A) All open and public meetings shall include an opportunity for members of the public to attend via a two-way telephonic option or a two-way internet-based service option.

(B) If a city council or a county board of supervisors elects to provide a two-way internet-based service option, the local agency shall publicly post and provide a call-in option, and activate any automatic captioning function during the meeting if an automatic captioning function is included with the system.

(2) (A) If a city council or county board of supervisors has, as of June 15, 2021, provided video streaming of ~~all~~ *at least one* open and public ~~meetings, meeting~~, the city council or county board of supervisors shall continue to provide that video streaming.

(B) "Video streaming" means media in which the data from a live filming or a video file is continuously delivered via the internet to a remote user, allowing a video to be viewed online by the public without being downloaded on a host computer or device.

(3) (A) Unless there are any laws that prohibit in-person government meetings in the case of a declared state of emergency, including a public health emergency, all open and public meetings shall include an in-person public comment opportunity, wherein members of the public can report to a designated site to give public comment in person. The location of the designated site and any relevant instructions on in-person commenting shall be included with the public posting of the agenda.

1 (B) All open and public meetings shall provide the public with
2 an opportunity to comment on proposed legislation via a two-way
3 telephonic or internet-based service option, and ensure the
4 opportunity for the members of the public participating via a
5 two-way telephonic or internet-based option to comment on agenda
6 items with the same time allotment as a person attending a meeting
7 in person.

8 (b) This section shall remain in effect only until December 31,
9 2023, and as of that date is repealed.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district under this act would result either from a legislative mandate
14 that is within the scope of paragraph (7) of subdivision (b) of
15 Section 3 of Article I of the California Constitution, or because
16 this act creates a new crime or infraction, eliminates a crime or
17 infraction, or changes the penalty for a crime or infraction, within
18 the meaning of Section 17556 of the Government Code, or changes
19 the definition of a crime within the meaning of Section 6 of Article
20 XIII B of the California Constitution.

21 SEC. 4. The Legislature finds and declares that Sections 1 and
22 2 of this act, which amends Section 54953 of, and adds Section
23 54953.9 to, the Government Code, furthers, within the meaning
24 of paragraph (7) of subdivision (b) of Section 3 of Article I of the
25 California Constitution, the purposes of that constitutional section
26 as it relates to the right of public access to the meetings of local
27 public bodies or the writings of local public officials and local
28 agencies. Pursuant to paragraph (7) of subdivision (b) of Section
29 3 of Article I of the California Constitution, the Legislature makes
30 the following findings:

31 The provisions of the act allow for greater public access through
32 requiring specified entities to provide a telephonic or internet-based
33 service option and instructions on how to access these options to
34 the public for specified meetings.

35 SEC. 5. The Legislature finds and declares that improving
36 accessibility to open and public meetings of local legislative bodies
37 is a matter of statewide concern and is not a municipal affair as
38 that term is used in Section 5 of Article XI of the California
39 Constitution. Therefore, Section 2 of this act adding Section

- 1 54953.9 to the Government Code applies to all cities and counties,
- 2 including charter cities and counties.

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RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, State, or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the Ralph M. Brown Act dictates the public access requirements of local government agency meetings in California, including the City Council, requiring that appropriate public notice be given for non-private meetings of a public governing body, board, commission, or committee, and that the opportunity for comment be provided to members of the public on any item before the body; and,

WHEREAS, efforts to contain the COVID-19 pandemic required that public meetings be held virtually, and public comment was adapted to accommodate remote speakers; and,

WHEREAS, AB 339 (Lee and Garcia) would require all city councils and boards of supervisors governing jurisdictions containing at least 250,000 persons to take public comment both in-person and remotely via two-way telephone or the internet, affording equal time to in-person and remote speakers, and would additionally require open and public meetings of a city council that currently provides video streaming to continue to do so; and,

WHEREAS, as initially introduced, AB 339 applied these new requirements to all public bodies, including the State Legislature, but subsequent revisions removed State public bodies and most cities and counties from the bill's requirements; and,

WHEREAS, it is inappropriate and contrary to the intent of the legislative purpose to target a limited number of cities and counties; and,

WHEREAS, if transparency and public input should be goals for public bodies, these ideals should apply to all governing bodies in the State, including the legislature; and,

WHEREAS, AB 339 does not contain provisions for reimbursement of costs associated with remote meetings, meaning jurisdictions would be mandated to establish and maintain virtual meeting capabilities entirely at their own cost.

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2021-2022 State Legislative Program SUPPORT for AB 339 (Lee) IF AMENDED to extend the mandates of the bill to all State legislative bodies, including all bodies that are obligated to comply with the Brown Act or Bagley-Keene Act; and provide State funding to offset the costs of the new requirements, or allow governments the option, rather than the requirement, of allowing public comment via telephone or the internet.