



In-depth

Client Alert To California Local Agencies

AB 361 Changes to the Ralph M. Brown Act Opening Meeting Laws

At a Glance...

On September 16, 2021, California Gov. Gavin Newsom signed California Assembly Bill 361 (AB 361) into law, as an urgency bill effective immediately. AB 361 permits legislative bodies of state and local entities, such as public retirement boards, to continue to meet virtually and remotely through telephonic and internet means (i.e., via teleconference), during a proclaimed state of emergency, without having to meet the quorum, posting, access and other requirements of traditional teleconference meetings under the Ralph M. Brown Act, Gov't Code §§ 54950–54963 (Brown Act) open meeting laws. Legislative bodies may continue to meet virtually pursuant to AB 361 until the end of the current state of emergency and during any future state of emergency, up until January 1, 2024.

On September 30, 2021, the Governor's Executive Order No. N-29-20, that suspended and modified the Brown Act's teleconferencing requirements during the COVID-19 pandemic, is set to expire. This client alert explains the requirements and procedures that local legislative bodies must adopt if they elect to continue to meet virtually after the expiration of Executive Order No. N-29-20.

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Read time approx: **8 minutes** (1633 words)

AB 361 summarized

AB 361 amended the Brown Act's teleconference rules and added new provisions for abbreviated teleconferencing procedures that deviate from the traditional teleconferencing procedures during a proclaimed state of emergency and subject to certain requirements specified in the statute.

AB 361 amended the Brown Act to add subdivision (e) to Gov't Code § 54953. This subdivision describes the circumstances and procedures for adopting abbreviated teleconferencing procedures during a proclaimed state of emergency, such as the current continuing COVID-19 pandemic. Subdivision (e)(1) of the statute provides the circumstances and requirements under which a local legislative body may adopt the abbreviated teleconferencing procedures. Once a local legislative body meets the requirements for adopting teleconferencing procedures, subdivision (e)(2) provides the requirements for the abbreviated teleconferencing procedures that the local legislative body must implement.

Adopting AB 361's abbreviated teleconferencing

A local legislative body, such as a city or county retirement board and its standing committees, may elect to use AB 361's abbreviated teleconferencing procedures where a state of emergency has been formally proclaimed, and IF:

- State or local officials have imposed or recommended measures to promote social distancing at the time the legislative body holds the meeting (Gov't Code § 54953(e)(1)(A)); or
- The legislative body holds a meeting for the first time for the purpose of determining by majority vote whether, as a result of proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees (Gov't Code § 54953(e)(1)(B)), or
- The legislative body has determined (per previous bullet) that, as a result of the proclaimed state of emergency, meeting in person would continue to present imminent risks to the health or safety of attendees (Gov't Code § 54953(e)(1)(C)).

AB 361 further imposes on local legislative bodies a duty to make factual findings to justify its election to continue to use the law's abbreviated teleconferencing procedures. (Gov't Code § 54953(e)(3). Local legislative bodies who wish to consider using AB 361's abbreviated teleconferencing procedures must make the following factual findings within 30 days after teleconferencing for the first time after the expiration of Executive Order No. N-29-20 on Sept. 30, and every 30 days thereafter:

- The legislative body has reconsidered the circumstances of the state of emergency.
- Either of the following circumstances exist:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - State or local officials continue to impose or recommend measures to promote social distancing.

Until Jan. 1, 2024, public retirement boards must reconsider these circumstances stated above and make factual findings by majority vote on whether they continue to exist in order for the local legislative body to elect and continue to use AB 361's abbreviated teleconferencing procedures. (Note that AB 361 was designed not only to deal with COVID-19 but also to other types of states of emergency, as defined in Gov't Code § 8625 of the California Emergency State Services Act.)

Abbreviated teleconference requirements for open meetings

Once a local legislative body has satisfied the requirements for using abbreviated teleconferencing, AB 361 provides the following procedures:

Notice and agenda: The legislative body must provide notice and post agendas as otherwise required under the Brown Act (setting aside traditional teleconferencing requirements), and must indicate on the notice the means by which the public may access the meeting and offer comment. Gov't Code § 54953(e)(2)(A)-(B). The agenda shall identify and include an opportunity for all persons to attend via a call-in option or internet based service. *Id.*, subd. (e)(2)(B). The agenda does not need to be posted at all teleconferencing locations. *Id.*, subd. (e)(1). Public access does not need to be assured at all teleconference locations. *Id.* Moreover, the notices and agenda do not need to list the teleconferencing locations of the members of the legislative body, and a quorum of the members of the legislative body do not need to participate within physical boundaries of the territory over which the local legislative body exercises jurisdiction. *Id.*

Public comment rules: AB 361 instituted new rules for public comments for timed and untimed public comment periods during legislative body meetings.

- **Timed general public comment period:** For legislative bodies that provide for a general public comment time, AB 361 requires that the public comment period or opportunity to register shall not be closed until the set general public comment period has elapsed. Gov't Code § 54953(e)(2)(G)(iii).
- **Untimed public comment period per agenda item:** Where a local legislative body does not provide a timed public comment period, but takes public comment separately on each agenda item, the legislative body must allow a reasonable amount of time per agenda item to allow public members the opportunity to

provide public comment, including the time for individual to register or otherwise be recognized for the purposes of providing public comment. Gov't Code § 54953(e)(2)(G)(ii).

- **Timed public comment period per agenda item:** If a local legislative body provides for a timed public comment period per agenda item, the public comment period or opportunity to register shall not be closed until the set general public comment period has elapsed. Gov't Code § 54953(e)(2)(G)(i).

AB 361 also prohibits a local legislative body from requiring public comments to be submitted in advance of the meeting and specifies that the agency must provide an opportunity for the public to address the legislative body and offer comment in real time. Gov't Code § 54953(e)(2)(E).

Registration for public comment: AB 361 changed existing law to remove the prohibition for requiring that a member register for public comment before being allowed to provide public comment, where a third-party platform (such as Zoom or Microsoft Teams) is employed. Gov't Code § 54953(e)(2)(F).

Disrupted broadcasting procedures: In the event there is a broadcasting disruption of the meeting to the public by phone or by internet, the local legislative body is prohibited from taking further action on agenda items until public access is restored. Gov't Code § 54953(e)(2)(D). Actions taken on agenda items during a disruption are subject to challenge. *Id.*

Practical considerations

Here are some practical considerations on how to transition from the rules and procedures under Executive Order No. N-29-20 to AB 361's regime, should you so choose. Note that a standing committee of the board is also considered a "legislative body" under Gov't Code § 54952 and, therefore, we recommend that any motion or resolution taken under AB 361 include standing committees as well in its scope.

First meeting immediately before or after Sept. 30: We recommend that the presiding officer of the legislative body add to the printed agenda and to the stated "Orders of the Day," if any, a statement that the Governor signed AB 361 into law as an urgency bill, effective immediately. The agenda and/or Orders of the Day should then outline the conditions and requirements for adopting AB 361's abbreviated teleconferencing requirements, and state that the board is currently holding the meeting during a proclaimed state of emergency. The agenda should include discussion and action for the board to make the required factual findings by a motion taken by majority roll call vote. (Note: All teleconference meeting votes must be by roll call.)

Second meeting within 30 days of first meeting: We recommend that the local legislative body's staff prepare a board report that contains information for the board's consideration to make the necessary findings under AB 361 to justify the continuation of remote meetings in light of the state of emergency and/or health risks imposed by meeting in person. The board report from staff should include: (1) the new law under AB 361, (2) any local orders from the Department of Health within the jurisdiction, the mayor, City Council, Board of Supervisors or other appropriate public official regarding social distancing or other restrictions to prevent risks to public health; (3) any other supporting information, such as materials from the Centers for Disease and Control Prevention, (4) staff's recommendation, and (5) a proposed resolution setting forth the applicable factual findings under AB 361.

Subsequent meetings every 30 days thereafter until Jan. 1, 2024: In order to maintain continuity of the election to use AB 361's abbreviated teleconferencing procedures provided by statute, the legislative body must meet every 30 days to make the justifying factual findings by majority vote. We understand that not all legislative bodies ordinarily meet every month, so to accommodate the continued use of remote meetings, we recommend that the legislative body consider adjusting the frequency of their meetings to accord with the 30-day requirement unless and until the proclaimed state of emergency is lifted.

Our Public Pension Fund Team is here to assist you in navigating the new regime. Please feel free to contact us at any time, as indicated below.

If you have questions or would like additional information on the material covered in this mailing, please contact one of the authors – listed below – or the Reed Smith lawyer with whom you regularly work.



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September 2021

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