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California County Superintendents Educational Services Association



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Superintendent of Schools
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...advocates for children



LOS ANGELES COUNTY SANITATION DISTRICTS
Converting Waste Into Resources



Santa Clara County Office of Education



Valley Water

September 15, 2021

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: Assembly Bill 361 (Rivas) – Request for Signature

Dear Governor Newsom:

The undersigned organizations write to respectfully request your signature on Assembly Bill 361 (Rivas), which will provide state and local agencies with the ability to meet remotely during declared state emergencies to ensure the continued delivery of critical public services. **It is important that AB 361, an urgency measure, be signed into law as soon as possible to give local agencies as much time as possible to prepare for the September 30 rescission date of Executive Orders related to open meeting laws and the transition to AB 361's terms.**

LIMITED SCOPE, LIMITED APPLICATION

AB 361 would codify portions of your Executive Orders (“the Orders”) from March 2020 relating to the Ralph M. Brown Act (“the Brown Act”), which made it safe for local agencies to meet. The Orders limited their operation to the time period during which state or local public health officials have imposed or recommend social distancing measures. In similar fashion, the provisions of this bill are operative only in circumstances when it is unsafe for the members of the legislative body of the local agency to meet in person. The bill’s provisions are only able to be utilized pursuant to a formal state of emergency, and the declared emergency must directly threaten the safety of the agency members, staff, or the public. By establishing such an extraordinarily high standard for agencies to meet remotely, this bill avoids creating a “one-size-fits-all” approach that would otherwise apply in all future emergencies. An agency would not be able to rely upon these provisions to meet remotely if the emergency does not pose a threat to the agency.

PRESERVES EXISTING BROWN ACT TRANSPARENCY PROTECTIONS

Existing law requires that local agencies post advance notice of the intent to hold a meeting along with posting the agenda of planned meetings. This bill does not eliminate the responsibility of local agencies to post meeting notices or agendas; instead it merely allows local agencies to fulfill this requirement without physically posting these notices in areas that may have been rendered unsafe due to an emergency. Meetings must still be noticed online, and notice must still be provided in a newspaper of general circulation and/or radio or television station as may be required by statute.

This bill would also ensure that the public is guaranteed the opportunity to observe agency meetings and the opportunity to provide public comment. Meeting notices and agendas would be required to explain how the public may observe the meeting and offer public comment.

EXPLICIT REQUIREMENT TO PROVIDE PUBLIC ACCESS

When meeting remotely during an emergency, AB 361 would require a local agency both a) identify and b) include an opportunity for the public to attend via a call-in option or an internet-based service option. In this way, the public is guaranteed access to the meeting, and agency board members remain accountable to the interested public.

Similarly, the provisions of AB 361 forbid local agencies from requiring members of the public to submit their public comments in advance, a directive which is absent from the March 2020 Orders. By building upon the Orders in this way, AB 361 increases the level of transparency and accessibility of local agency boards and their meetings; local agency board members would remain directly accountable to the public in their proceedings.

ADDRESSES LINGERING QUESTIONS CONCERNING TECHNOLOGICAL DISRUPTIONS

Over the course of the last several months, local agencies have used remote meetings to continue their operations during the pandemic. The experience of these local agencies meeting remotely has provided additional insight into the challenges surrounding remote meetings – specifically, the appropriate procedures to be followed in the event that a remotely-conducted meeting becomes inaccessible as a result of a technological disruption.

AB 361 clarifies the proper procedure when there is a disruption which prevents the local agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from submitting public comments. AB 361 would specify that actions taken on agenda items during such a disruption are subject to challenge proceedings, and that the local agency must not take any action on any items appearing on the agenda without first restoring the public's access to the meeting. Given that challenge proceedings could invalidate the actions taken by a local agency, there is significant incentive for local agencies to avoid any appearance of taking any action during a disruption. In this way, AB 361 provides additional clarity surrounding local agencies' obligation to ensure public access to remote meetings, thereby protecting the public's right to participate in public meetings.

INCLUDES BUILT-IN SAFEGUARDS TO PREVENT ABUSE

Under normal circumstances, the provisions of AB 361 would be used only in exceedingly rare occasions – given the extraordinarily narrow circumstances in which local agencies would be able to utilize the provisions contained within AB 361, it is difficult to imagine a scenario wherein a local agency is relying on its provisions to meet remotely more than once or twice a year. Regardless, AB 361 contains safeguards in order to address potential concerns of abuse; local agency boards would have to approve a resolution to meet remotely by a majority vote of its members, putting those members on the record as having supported the determination that the declared emergency directly threatens the safety of the agency members, staff, or the public.

Furthermore, the resolution approving the transition to remote meetings is limited to a 30-day period, expiring no later than 30 days after teleconferencing for the first time pursuant to the terms of AB 361. While the local agency board may choose to extend this resolution, the board is required to do so again by majority vote, supporting the finding that the emergency continues to pose a threat to the safety of the agency members, staff, or the public. Additionally, neither the initial resolution nor the extending resolution are valid in the event that the formally-declared state of emergency lapses or is otherwise terminated.

PROVIDES NECESSARY FLEXIBILITIES TO CONDUCT THE PEOPLE'S BUSINESS

While California Government Code § 54953 authorizes the use of teleconferencing, this code section does not adequately address the demands of an emergency situation. California Government Code § 54953 requires the physical posting of meeting notices and agendas in locations where the physical safety of agency members and/or staff cannot be guaranteed. Furthermore, the Code requires that each of the remote meeting locations be accessible to members of the public, a mandate that runs counter to the practice of social distancing and quarantining as recommended by state and local health officials. Your Orders, recognizing the dilemma posed by this situation, waived these requirements. By providing relief from these requirements, this bill will allow local agencies to conduct business without exposing local agency board members, staff, or the public to potential harm. This bill also provides for members of a local agency's legislative body to participate in a remote meeting from beyond the agency's jurisdiction consistent with the conditions posed in an emergency.

The March 2020 Orders facilitated local agencies' transition to remote meetings so that they could continue to operate while observing directives meant to help slow the spread of disease during a pandemic. The changes made by the Orders were integral to allowing local agencies to meet; without them, local agencies would potentially have been forced to make tough decisions about meeting cancellations, potential exposures of agency board members and staff, compliance with health directives, and more. This bill strikes an appropriate balance between the intent of these executive orders – to allow local agencies to continue to meet and do business during an emergency – and the spirit of the protections woven throughout the Brown Act.

For these reasons, the undersigned organizations respectfully request your signature on Assembly Bill 361 (Rivas).

Sincerely,



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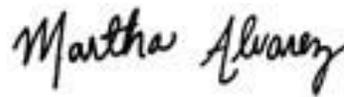
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CC: The Honorable Robert Rivas
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