AB-817 Open meetings: teleconferencing: subsidiary body. (2023-2024)

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Date Published: 03/16/2023 09:00 PM

AMENDED IN ASSEMBLY MARCH 16, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL NO. 817

Introduced by Assembly Member Pacheco
(Coauthor: Assembly Member Wilson)

February 13, 2023

An act to ~~amend Section 54950 of the Government Code, relating to local government.~~ *add Section 54953.05 to the Government Code, relating to local government.*

LEGISLATIVE COUNSEL'S DIGEST

AB 817, as amended, Pacheco. ~~Local government: open meetings.~~ *Open meetings: teleconferencing: subsidiary body.*

Existing law, the Ralph M. Brown Act, ~~requires~~ *requires, with specified exceptions,* each legislative body of a local agency to provide notice of the time and place for its regular meetings and an agenda containing a brief general description of each item of business to be transacted. The act also requires that all meetings of a legislative body be open and public, and that all persons be permitted to attend unless a closed session is authorized. *The act generally requires for teleconferencing that the legislative body of a local agency that elects to use teleconferencing post agendas at all teleconference locations, identify each teleconference location in the notice and agenda of the meeting or proceeding, and have each teleconference location be accessible to the public. Existing law also requires that, during the teleconference, at least a quorum of the members of the legislative body participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.*

Existing law, until January 1, 2024, authorizes the legislative body of a local agency to use alternate teleconferencing provisions during a proclaimed state of emergency or in other situations related to public health that exempt a legislative body from the general requirements (emergency provisions) and impose different requirements for notice, agenda, and public participation, as prescribed. The emergency provisions specify that they do not require a legislative body to provide a physical location from which the public may attend or comment.

Existing law, until January 1, 2026, authorizes the legislative body of a local agency to use alternative teleconferencing in certain circumstances related to the particular member if at least a quorum of its members participate from a singular physical location that is open to the public and situated within the agency's jurisdiction and other requirements are met, including restrictions on remote participation by a member of the legislative body.

This bill would authorize a subsidiary body, as defined, to use alternative teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency. In order to use teleconferencing pursuant to this act, the bill would require the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action to make specified findings by majority vote, before the subsidiary body uses teleconferencing for the first time and every 12 months thereafter.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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.

~~This bill would make nonsubstantive changes to a provision of the Ralph M. Brown Act.~~

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 54953.05 is added to the Government Code, to read:*

54953.05. *(a) (1) The definitions in Section 54953, as that section may be amended from time to time, apply for purposes of this section.*

(2) For purposes of this section, "subsidiary body" means a legislative body that meets all of the following:

(A) Is described in subdivision (b) of Section 54952.

(B) Serves exclusively in an advisory capacity.

(C) Is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements.

(b) A subsidiary body may use teleconferencing without complying with paragraph (3) of subdivision (b) of Section 54953, if the subsidiary body complies with all of the following:

(1) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the subsidiary body.

(2) Each member of the subsidiary body shall participate through both audio and visual technology.

(3) The subsidiary body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the subsidiary body:

(A) A two-way audiovisual platform.

(B) A two-way telephonic service and a live webcasting of the meeting.

(4) The subsidiary body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(5) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the subsidiary body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(6) The agenda shall identify and include an opportunity for all persons to attend and address the subsidiary body directly pursuant to Section 54954.3 via a call-in option or via an internet-based service option.

(7) In the event of a disruption that prevents the subsidiary body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the subsidiary body's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the subsidiary body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the subsidiary body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(8) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the subsidiary body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(9) The subsidiary body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the subsidiary body and offer comment in real time.

(A) A subsidiary body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to paragraph (8), to provide public comment until that timed public comment period has elapsed.

(B) A subsidiary body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to paragraph (8), or otherwise be recognized for the purpose of providing public comment.

(C) A subsidiary body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to paragraph (8), until the timed general public comment period has elapsed.

(c) In order to use teleconferencing pursuant to this section, the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action shall make the following findings by majority vote before the subsidiary body uses teleconferencing pursuant to this section for the first time, and every 12 months thereafter:

(1) The legislative body has considered the circumstances of the subsidiary body.

(2) Teleconference meetings of the subsidiary body would enhance public access to meetings of the subsidiary body.

(3) Teleconference meetings of the subsidiary body would promote the attraction, retention, and diversity of subsidiary body members.

SEC. 2. *The Legislature finds and declares that Section 1 of this act, which adds Section 54953.05 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 3. *The Legislature finds and declares that Section 1 of this act, which adds Section 54953.05 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:*

This act is necessary to provide opportunities for public participation in meetings of specified public agencies and to promote the attraction and retention of members of those agencies.

~~SECTION 1.Section 54950 of the Government Code is amended to read:~~

~~54950.(a)In enacting this chapter, the Legislature finds and declares that the public commissions, boards, councils, and the other public agencies in this state exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.~~

~~(b)The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed, so that they may retain control over the instruments they have created.~~