



● **Board of Directors**
Communications and Legislation Committee

3/9/2021 Board Meeting

7-6

Subject

Authorize the General Manager to express support for AB 361 (Rivas, R. D-Hollister) Open meetings: local agencies: teleconferences and AB 703 (Rubio, D-Baldwin Park) Open meetings: local agencies: teleconferences; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

The Ralph M. Brown Act (“Brown Act”), which is the California open meetings law, requires that all legislative body meetings of a local agency be open and public and that all persons be permitted to participate, unless a closed session is permitted. AB 361 and AB 703 are consistent with the intent of the Governor’s Executive Order No. N-29-20 (“Executive Order”), to improve and enhance public access to local agency meetings through teleconferencing. Each bill presents a different approach for using teleconference meetings, which will need to be reconciled through the legislative process.

Details

Background

The Governor’s Executive Order signed on March 17, 2020, waived the Brown Act requirements of having the physical presences of legislative body members or of the public as a condition of participation in, or quorum for, a public meeting. The Governor issued the Executive Order based on a proclaimed State of Emergency due to the COVID-19 pandemic. In reliance on that Executive Order, Metropolitan has been conducting its board and committee meetings by teleconference only. These bills clarify the law and codify the intent of the Executive Order, which will give public agencies certainty either in emergency situations or when conducting teleconference meetings.

The Brown Act’s Government Code Section 54953(b)(3) currently provides the option for teleconferencing of legislative body meetings so long as the teleconference location is accessible to the public and 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. The agenda shall be posted at each location and notice provided for an opportunity for the public to address the legislative body directly at each teleconference location.

AB 361 and AB 703 propose different approaches to teleconferenced meetings and public access and will need to be reconciled through the legislative process.

AB 361 adds a new section to the Brown Act’s Government Code Section 54953 to allow teleconferencing in certain defined emergency situations without complying with the quorum requirements or providing teleconference locations pursuant to Section 54953(b)(3). This means in defined emergency situations, the legislative body can hold teleconferenced meetings, but it must provide a direct way for the public to provide comment.

AB 703 deletes the requirements in Government Code Section 54953(b)(3) regarding quorum requirements and providing teleconference locations. It instead provides the option for teleconferencing so long as notice is provided for an opportunity for the public to address the legislative body directly. This means that if a legislative body elects to have teleconference meetings, the public must have a direct way to provide public comment.

Summary of AB 361 and AB 703

AB 361 amends the Brown Act's Government Code Section 54953 to allow a local agency the option to use teleconferencing if certain emergency circumstances are met. The emergency circumstances for teleconference meetings are that the legislative body holds a meeting: (1) to proclaim or ratify a local emergency; (2) during a proclaimed state of emergency, and the state and local offices have imposed or recommended measures to promote social distancing; or (3) during a declared local emergency and the body determines by majority vote that, as a result of the emergency, the attendance of the legislative body in person is hindered, or meeting in person would present risks to the health or safety of attendees. If a legislative body holds such a meeting, it shall give notice of the meeting and post agendas as otherwise required by the Brown Act, but it will not be required to provide a physical location from which the public may attend or comment. Each notice shall give the means by which the public may address the legislative body directly, access the meeting, and offer public comment.

"State of emergency" is defined by existing law under Government Code Sections 8625 and 8558. These include circumstances, for example, caused by conditions of war, disaster, or extreme peril to the safety of persons resulting from fire, flood, server energy shortage, epidemic or cyberterrorism. "Local emergency" is as defined by existing law under Government Code Section 8630 as a result of all or a portion of the jurisdiction of the local agency. Local emergencies can be proclaimed by the governing body of a city, county, city and county or by an official designated by ordinance adopted by the governing body.

AB 703 takes a broader approach than AB 361 and deletes the Government Code Section 54953(b)(3) requirement to have a quorum of the legislative body members participate from locations within the jurisdictional boundaries or territory of the legislative body or to provide teleconference locations, if a local agency elects to use teleconferencing. The proposed amendment does not require there to be any emergency circumstances. Instead it provides that if the local agency elects to use teleconferencing, it shall provide notice in the posted agenda of the means for the public to observe the meeting and offer public comment. In addition, the legislative body shall implement a procedure for receiving and resolving requests for reasonable accommodations for individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, resolving any doubt in favor of accessibility.

Potential Impacts on Metropolitan

Metropolitan currently has the means to provide telephonic access for public comment. Before the COVID-19 pandemic, Metropolitan held in-person meetings and allowed for in-person public comment. Livestream viewing of the meetings was available over the Internet. From time to time, Metropolitan has noticed teleconferenced meetings in the event that directors wished to teleconference from a different location. During the COVID-19 pandemic, under the Executive Order and following the Centers for Disease Control and Prevention social distancing and gathering guidelines, Metropolitan has only held teleconferenced meetings, allowing the public to offer comments by telephonic means. Livestreaming access has remained available as well. Clarification of Government Code Section 54953 regarding emergency situations would provide Metropolitan certainty during those situations and when providing telephonic participation and access.

Recommendation

Staff recommends Metropolitan support AB 361 and AB 703.

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves legislative proposals that do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Public Resources Code Section 21065 and Section 15378(b)(1) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize the General Manager to express support for AB 361 (Rivas, R., D-Hollister) Open meetings: local agencies: teleconferences and AB 703 (Rubio, D-Baldwin Park) Open meetings: local agencies: teleconferences.

Fiscal Impact: None

Business Analysis: Metropolitan has the capability to provide telephonic access for public comment and livestream is also available for viewing access.

Option #2

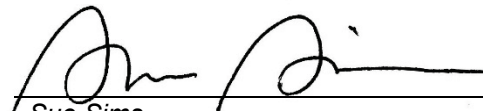
Do not support AB 361 (D-Rivas) Open meetings: local agencies: teleconferences and AB 703 (D-Rubio) Open meetings: local agencies: teleconferences.

Fiscal Impact: None

Business Analysis: None

Staff Recommendation

Option #1



Sue Sims
Group Manager - External Affairs

3/2/2021
Date



Jeffrey Lightlinger
General Manager

3/3/2021
Date