April 22, 2021

The Honorable Cecilia Aguiar-Curry
Chair, Assembly Local Government Committee
Legislative Office Building, 1020 N Street, Room 157
Sacramento, CA 95814

RE: **AB 339 Local Government: Open and Public Meetings**
Notice of OPPOSITION *(As Amended April 15, 2021)*

Dear Assembly Member Aguiar-Curry:

The undersigned organizations from the public, private, and education sectors must respectfully oppose AB 339, which will purposefully add significant unfunded mandates on local public agencies by requiring them to provide both call-in and internet-based options, in addition to in-person options, for members of the public to attend and comment during any public meeting. The measure further requires extensive translation services (a) in real-time during public meetings; and (b) of extensive and often technical public meeting materials, additionally burdening local agencies with significant costs. 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.

Our diverse memberships of local public agencies take very seriously their obligations under the Brown Act to operate transparently and provide opportunities for members of the public to participate in the most local and foundational levels of democracy. This commitment is why the League of California Cities drafted the Brown Act and stewarded its passage in 1953. Much has changed since then and technology has evolved to allow for even more civic engagement. While these triumphs are to be celebrated, the mandates in this bill would create more burdens on our already struggling agencies and could actually do more to hinder local government deliberations than increase participation.

First, regarding the mandate to provide both call-in and internet-based options for attendance and public comment, local public agencies have strived to maintain a continuity of government during the pandemic while also continuing to provide essential services. However, once social distancing requirements are lifted and more legislative bodies return to their meeting rooms, AB 339 (if passed) would present an immediate technological and staffing challenge of providing a "live mic" for public comment and connecting that system to both a teleconferencing and internet-based service. That challenge is only compounded by the resource limitations affecting agencies up and down the state, as compliance with these provisions will require (a) significant one-time equipment expenses; and (b) ongoing costs for personnel and technology service subscriptions to ensure strict compliance with the bill.

Second, AB 339 fails to provide flexibility to local governments to manage their own affairs. For example, what happens if either the teleconferencing service or the internet-based option aren't available or if service disruptions occur during a meeting (whether through the service itself, or the internet service or telephone service provider)? It is our understanding if this bill passed, local public agencies would not be able to conduct Brown Act-compliant meetings without having all services advertised in meeting announcements being operational – for the entire meeting. This means that conditions necessary to operate our members' meetings but wholly outside of their control determine whether public meetings can legally take place or not. We strongly believe that conditioning the operations of local government on the operability of Zoom services, for example, dangerously destabilizes our ability to meet immediate fiscal, legal, and practical obligations to constituents. Additionally, we worry about the increasing rate of cybersecurity attacks against local agencies and are concerned that these requirements would provide another window of opportunity for bad actors to disrupt local government.

Third, as has been often chronicled in the news media, one significant challenge that has arisen in the Zoom era is of disruption of public meetings. These disruptions have taken the form of derogatory, racist, sexist, hateful, and offensive language in addition to coordinated hijackings of public meetings that involve the display of profane or pornographic images or videos. In other cases, meetings have been taken over by coordinated campaigns involving individuals from across the country calling in to provide public comment on municipal agenda items. While we do not cast aspersions on those who wish to participate, these directed campaigns are often designed to only punish local public agencies and paralyze their work by dragging out the public comment period beyond any rational length. We believe it is instructive to look at the experience the legislature had with expanded access, and what its response was; in both houses, committees have reduced public comment time for the sake of operational efficiency. While we appreciate the willingness of the author to attempt to remedy this by including a provision allowing for registration to "be permitted" this does nothing to substantively solve the issue of a participation floodgate being opened because local agencies cannot require registration or provision of any information as a condition for participating in public meetings.

Fourth, while much of our above concerns focused on the impacts to our primary legislative bodies covered under the Brown Act (city councils, boards of supervisors, special district boards, etc.), we also believe it is important to recognize the impacts of this legislation on the boards and commissions that advise and make recommendations to primary legislative bodies. By raising the bar to effectively and efficiently operate local boards and commissions, which for some agencies can number in the dozens, it becomes more difficult for our agencies to carry out their essential functions. For example, a planning commission (which is not purely advisory, and often processes entitlements subject to the Permit Streamlining Act) would only be able to

hold their meetings in the council chamber that was retrofitted to provide these new multimedia capabilities and couldn't hold its meetings out in the community without a mobile audio/visual equipment and staff trained to handle that equipment. Many of our agencies fear they will need to reduce or eliminate their use of advisory bodies simply because of the sheer enormity of the cost of complying with AB 339. This means that AB 339, instead of creating more transparency, actually could result in less opportunities for members of the public to get involved in advising and recommending changes to their local government.

Fifth, the requirement to employ translators and provide live translation services presents another deep cost requirement and operational burden that could end up paralyzing the work of local agencies. AB 339 places new translation requirements in the Brown Act that continue the troubling trend of avoiding state constitutional reimbursement requirements that do not apply to the Brown Act. Under current law, local government translation service requirements are governed by Government Code § 7290-7299.8, more commonly known as the Dymally-Alatorre Bilingual Services Act. The Act requires local public agencies to provide certain materials in multiple languages and requires agencies serving a substantial number of non-English-speaking people to employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English speaking person. However, unlike the one size fits all approach to translation requirements in AB 339, the Dymally-Alatorre Bilingual Services Act properly recognizes the diversity of local agencies in size, scope, location, services offered, and financial resources available. Under this bill, local public agencies, regardless of size, financial resources, or the public's desire for services, would be required to develop a system to receive and process requests for translation and interpretation. This again raises the question of what happens if enough translators are not available for every council, planning commissioner, or board meeting? There are thousands of local agencies in the state governed by the Brown Act and forcing them to schedule their meetings and their work around a workforce, the capacity of which is unknown, raises serious concerns about how local elected officials are to continue the work that is expected of them. Additional requirements to mandate translation of written materials poses another significant challenge, in that agenda materials can be extensive and technically complex, requiring specialized translation skills and significant amounts of time to complete appropriately.

Sixth, it is important to keep in mind that every mandate on the operation of Brown Act meetings creates a new opportunity for litigious individuals to take advantage of the Act to sue local public agencies, where Brown Act violations result in liability for a prevailing plaintiff's attorney's fees. Additionally, the opponents of a land-use decision could utilize these provisions or any technological lapse in operations of the meeting to allege a Brown Act violation and invalidate any decision made by the legislative body. The same dynamic applies if necessary translators, interpreters, or materials are not available or cannot be made ready by the meeting time.

Lastly, we are disturbed that the most recent amended version of this bill exempts the Legislature and state government and its agencies from these onerous requirements. Once again, local governments are faced with a statewide mandate, ostensibly for the greater good that does not apply to state government or the Legislature. This "one rule for thee, another rule for me" approach does nothing but create challenges for our members and codifies a double standard all too common in the state-local relationship. If the merits of this bill are so beneficial that they require the most expansive and expensive mandates on the operation of public meetings since the Brown Act's inception, it is patently offensive for the state to be exempted

given that the impact of its decisions, statutory and regulatory, are far more wide-reaching than the impact of the decisions of any one local public agency on its jurisdiction.

Collectively, we share the author's commitment to access and transparency and recognize how key those values are to local democracy. However, AB 339 will burden local governments financially and practically at a time when they are already struggling and it will undoubtedly create situations where duly elected local government officials and their dedicated staff are stymied in their ability to efficiently execute the people's business.

For these reasons, our organizations must respectfully oppose AB 339. If you have any questions, please feel free to contact our coalition at (916) 882-9886.

Sincerely,

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League of California Cities

Dillon Gibbons
Senior Legislative Representative
California Special Districts Association

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California School Boards Association

Cc: The Honorable Alex Lee, California State Assembly Member
Members, Assembly Committee on Local Government
Angela Mapp, Chief Consultant, Assembly Committee on Local Government
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