



May 17, 2021

The Honorable Lorena Gonzalez
Chair, Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

**RE: AB 339 Local Government: Open and Public Meetings
Notice of OPPOSITION (As Amended May 04, 2021)**

Dear Assembly Member Gonzalez:

The undersigned organizations from the public, private, and education sectors must respectfully oppose AB 339, which will purposefully add significant unfunded mandates on city councils and boards of supervisors in jurisdictions that have populations over 250,000. While this measure has been amended significantly from when it was introduced, it still imposes significant unreimbursed costs to affected local agencies and contains fatal flaws that have the potential to hinder the goals of transparency and access.

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 already struggling agencies and could do more to impede local government deliberations than increase participation.

AB 339 (Lee) – Coalition Oppose

First, AB 339 still 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, the affected 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.

Second, 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. The appearance of transparency and access that this bill would create is no replacement for genuine good faith efforts to modernize the Brown Act for the benefit of all.

Third, 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 local agency decision could utilize these provisions or any technological lapse in operations of the meeting to allege a Brown Act violation and invalidate a decision made by the legislative body.

Fourth, over the last several months our organizations have been working with various stakeholders to discuss what modernizing the Brown Act could look like and how the best practices local government have learned can be elevated to a discussion of standards and protocols. These conversations have included the author's office and the sponsors. Rather than taking the necessary time to reach consensus about how to incorporate the technology that is now available, this measure attempts to offer a perception of transparency and access on an arbitrary number of jurisdictions across the state.

Lastly, we continue to be disturbed that the most recent amended version of this bill continues to exempt the Legislature. Once again, local governments are faced with a statewide mandate, ostensibly for the greater good that does not apply to 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 must be imposed on locals, 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. We continue to seek the time necessary to develop the right policy solutions and ask the author and sponsors to continue to work with us in good faith to modernize the Brown Act in a way that empowers communities by building on learned experiences and best practices.

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,



Bijan Mehryar
Legislative Representative
League of California Cities



Dillon Gibbons
Senior Legislative Representative
California Special Districts Association



Geoff Neill
Legislative Representative
California State Association of Counties



Jean Kinney Hurst
Urban Counties of California



Staci Heaton
Acting Vice President Governmental Affairs
Rural County Representatives of California



Ryan McElhinney
Policy and Advocacy Manager
Community College League of California



Laura Preston
Legislative Advocate
Association of California School
Administrators



Amber King
Vice President, Advocacy & Membership
Association of California Healthcare
Districts



Michael W. Pott
Chief Legal Counsel
Public Risk Innovation, Solutions And
Management



Jason Bryant
California Downtown Association



Jasmine McGinty
CEO Principal Analyst
Santa Barbara County Executive Office



Karen Keeslar
Executive Director
California Association of Public
Authorities for IHSS (CAPA)



Janie Whiteford
President
California In-Home Supportive Services
Consumer Alliance



Carlos Machado
Legislative Advocate
California School Boards Association

Cc: The Honorable Alex Lee, California State Assembly Member
Members, Assembly Committee on Appropriations
Jennifer Swenson, Principal Consultant, Assembly Committee on Appropriations
William Weber, Consultant, Assembly Republican Caucus