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ASSOCIATION OF CALIFORNIA  
HEALTHCARE DISTRICTS



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April 29, 2021

The Honorable Cecilia M. Aguiar-Curry  
Chair, Assembly Local Government Committee  
State Capitol  
Sacramento, CA 95814

**RE: Assembly Bill 361 (Rivas) – Support [As Amended April 6, 2021]**  
Hearing Date: May 5, 2021 – *Assembly Local Government Committee*

Dear Assembly Member Aguiar-Curry:

The undersigned organizations write to express our support of Assembly Bill 361 (Rivas), which will provide local agencies with the ability to meet remotely during declared emergencies to ensure the continued delivery of critical public services.

#### LIMITED SCOPE, LIMITED APPLICATION

AB 361 would codify portions of the Governor of California’s 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 or a declared local emergency, and in either case 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 Governor's 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 or the county-declared local 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. The 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 governor's 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 are proud to support Assembly Bill 361 (Rivas).

Sincerely,

  
Marcus Detwiler  
Legislative Analyst  
California Special Districts Association

  
Kris Anderson  
Legislative Advocate  
Association of California Water Agencies

  
Amber King  
VP, Advocacy and Membership  
Association of California Healthcare Districts

  
Jason Bryant  
Legislative Advocate  
California Downtown Association



Faith Borges  
Legislative Advocate  
California Association of  
Joint Powers Authorities



Danielle Blacet-Hyden  
Deputy Executive Director  
California Municipal Utilities Association



Geoff Neil  
Legislative Representative  
California State Association of Counties



Bijan Mehryar  
Legislative Representative  
League of California Cities



Staci Heaton  
Acting VP, Government Affairs  
Rural County Representatives of California



Jean Kinney-Hurst  
Legislative Advocate  
Urban Counties of California

CC: The Honorable Robert Rivas  
Members, Assembly Local Government Committee  
Angela Mapp, Chief Consultant, Assembly Local Government Committee  
William Weber, Consultant, Assembly Republican Caucus