



Legislation Text

File #: 21-976, **Version:** 1

Memorandum

Date: September 28, 2021

To: The Honorable Lake County Board of Supervisors

From: ANITA L. GRANT County Counsel

Subject: (a) Consideration of the Effects of Assembly Bill 361; and (b) Consideration of the Adoption of a Resolution Authorizing Teleconfered Meetings during a State of Emergency, and Possible Direction to other Board-Established Commissions, Committees, and Boards Subject to the Brown Act

Executive Summary:

Assembly Bill 361 was enacted on September 16, 2021. Assembly Bill 361 authorizes the County to use teleconferencing for public meetings without following certain requirements of the Brown Act. Assembly Bill 361 essentially continues, with some limitations, the ability of local governments to meet virtually during a state- proclaimed State of Emergency as local governments have been authorized to do pursuant to Executive Orders of the Governor.

As your Board is aware, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules required under the Brown Act, (Government Code sections 54950, et seq.) if certain other requirements were met and followed. On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which provided that those provisions would remain suspended through September 30, 2021. On September 20, 2021, Governor Newsom issued Executive Order N-15-21 which clarified that, notwithstanding the passage of Assembly Bill 361, except as therein specified, the requirements of Executive Order N-08-21 would continue to govern the meeting of legislative bodies subject to the Brown Act through September 30, 2021.

Assembly Bill 361 amends Government Code section 54953 and provides that if a legislative body elects to use teleconferencing, then it must identify each teleconference location in the public notice and agenda and post agendas at all teleconference locations. (Gov. Code sec. 54953(b)(3).) All teleconference locations must be publicly accessible and there must be an opportunity for public comment at each teleconference location. Additionally, a quorum of the

members of the legislative body must participate from locations physically within the

jurisdictional boundaries of the agency. (Gov. Code sec. 54953(b)(3).)

The exemptions to these requirements only apply during a declared State of Emergency as defined under the California Emergency Services Act. (Gov. Code secs. 54953(e)(1), (e)(4).) Further, one of the following circumstances must apply:

- State or local officials have imposed or recommended measures to promote social distancing.
- The legislative body is meeting to determine whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The legislative body has determined that, as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees.
(Gov. Code sec. 54953(e)(1).)

When those circumstances apply, Government Code section 54953(e) provides an exemption from certain of the Brown Act's existing teleconferencing requirements¹ and creates alternate measures which are intended to allow for virtual meetings during a State of Emergency while still safeguarding the rights of the public to appear before local legislative bodies. The alternate measures allowed pursuant to Government Code section 54953(e) require the following:

- The agency must provide adequate notice of the meeting and post an agenda as otherwise required by the Brown Act; however, the agenda does not need to list each teleconference location or be physically posted at each teleconference location.
- The agenda must include information on the manner in which the public may access the meeting and provide comments remotely.
- Where there is a disruption in the public broadcast of the call-in or internet-based meeting service, the legislative body must cease and take no further action on agenda items until public access is restored.

Government Code section 54953(e) exempts the local entity from complying with the following requirements of section 54953(b)(3):

- Ensuring that each teleconference location is physically accessible to the public;
- Maintaining quorum with members physically within the jurisdiction; and
- Providing an opportunity for public comment at each teleconference location.
- Local agencies are also prohibited from requiring public comments to be submitted in advance of the meeting.
- All votes during a teleconferenced meeting must be by roll-call.

Finally, every 30 days during the proclaimed State of Emergency and/or the period during which state or local officials have imposed or recommended social distancing measures, the legislative body acting under the teleconference exemptions must make findings as to whether the circumstances explained above still apply. The legislative body must find that it reconsidered the circumstances of the State of Emergency and that one of the following circumstances exist:

- The emergency continues to directly impact the ability of members to safely meet in person;
OR
- State or local officials continue to impose or recommend measures to propose social distancing.” (Gov. Code sec. 54953(e)(3).)

If the legislative body cannot make these findings by majority vote, then it will no longer be exempt from the physical public access, quorum, and public comment opportunity rules applied to teleconference meetings under subsection 54953(b)(3).

Attached your Board will find a draft resolution which will authorize the implementation of teleconferenced meetings of your Board pursuant to the requirements of Assembly Bill 361 when you determine the conditions present under a State of Emergency require you to do so. If your Board wishes to adopt this resolution, you may do so by offering it for passage.

You may also wish to direct staff to notify those commissions, committees, and boards you have appointed and which are subject to the Brown Act to review the information provided here and consider whether to implement teleconferencing pursuant to the legal requirements of Assembly Bill 361.

Thank you.

If not budgeted, fill in the blanks below only:

Estimated Cost: _____ Amount Budgeted: _____ Additional Requested: _____ Future Annual Cost: _____

Consistency with Vision 2028 (check all that apply):

☐ Not applicable

- ☐ Well-being of Residents
- ☐ Economic Development
- ☐ Community Collaboration

- ☐ Public Safety
- ☐ Infrastructure
- ☐ Business Process Efficiency

- ☐ Disaster Prevention, Preparedness, Recovery
- ☐ County Workforce
- ☐ Clear Lake

Recommended Action:

(a) Consideration of the Effects of Assembly Bill 361; and (b) Consideration of the Adoption of a Resolution Authorizing Teleconferenced Meetings during a State of Emergency, and Possible Direction to other Board-Established Commissions, Committees, and Boards Subject to the Brown Act