

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 537 (Becker)  
Version: April 24, 2023  
Hearing Date: May 2, 2023  
Fiscal: No  
Urgency: Yes  
AM

**SUBJECT**

Open meetings: multijurisdictional, cross-county agencies: teleconferences.

**DIGEST**

This bill authorizes an eligible legislative body, which is a board, commission, or advisory body of a multijurisdictional, cross county, local agency with appointed members that is subject to the Brown Act, to teleconference their meetings without having to make publicly accessible each teleconference location under certain conditions and limitations. Under the measure, an agency is multijurisdictional if the legislative body includes more than one county, city, city and county, special district, or joint powers entity.

**EXECUTIVE SUMMARY**

The Ralph M. Brown Act (the Brown Act) protects public access to meetings of the legislative bodies of local agencies and prescribes specific requirements local agencies must follow if they want to hold a meeting via teleconferencing. A local agency is authorized, until January 1, 2026, to use teleconferencing without complying with the requirement that each teleconference location be identified in the notice and agenda and that each teleconference location be accessible to the public under specified circumstances and only if at least a quorum of the members of the legislative body participates in person from a singular physical location that is open to the public and situated within the local agency's jurisdiction under certain conditions and limitations. This bill seeks to enact a similar authorization for an eligible legislative body until January 1, 2028.

The bill is sponsored by Peninsula Clean Energy. The bill is supported by numerous local agencies and other organizations. The bill is opposed by various organizations, including organizations that advocate for open and accessible government and associations representing news organizations. The bill passed the Senate Governance and Finance Committee on a vote of 6 to 2. The bill contains an urgency clause.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Affirms that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., art. I, § 3(b)(1).)
  - a) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 2) Establishes the Brown Act, which secures public access to the meetings of public commissions, boards, councils, and agencies in the state. (Gov. Code, tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.) The Brown Act defines the following relevant terms:
  - a) A "local agency" is a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or any other local public agency. (Gov. Code, § 54951.)
  - b) A "legislative body" is the governing board of a local agency or any other local body created by state or federal statute; a commission, committee, board, or other body of a local agency, as specified; a board, commission, or other multimember body that governs a private corporation, limited liability company, or other entity that is either created by an elected legislative body to exercise delegated authority or receives funds from a local agency and includes a member of the legislative body of the local agency; or the lessee of any hospital leased pursuant to Health and Safety Code section 21131, where the lessee exercises any material authority delegated by the legislative body. (Gov. Code, § 54952.)
- 3) Requires all meetings of the legislative body of a local agency to be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in the Brown Act. (Gov. Code, § 54953.)
- 4) Authorizes the legislative body of a local agency to use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law, provided that the teleconferenced meeting complies with all of the following conditions and all otherwise applicable laws:
  - a) Teleconferencing, as authorized, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall. (Gov. Code, § 54953(b)(2).)

- b) If the legislative body elects to use teleconferencing, it must post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or in the public appearing before the legislative body of the local agency. (Gov. Code, § 54953(b)(3).)
  - c) Each teleconferencing location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. (Gov. Code, § 54953(b)(3).)
  - d) During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercised jurisdiction, except as provided in 6). (Gov. Code, § 54953(b)(3).)
  - e) The agenda shall provide an opportunity for members of the public to address the legislative body directly, as the Brown Act requires for in-person meetings, at each teleconference location. (Gov. Code, § 54953(b)(3).)
  - f) For purposes of these requirements, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. (Gov. Code, § 54953(b)(4).)
- 5) Provides an exception to the teleconferencing quorum requirements in 4) as follows:
- a) If a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.
  - b) This exception may not be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. (Gov. Code, § 54953(d).)
- 6) Authorizes a local agency to use teleconferencing for a public meeting without complying with the Brown Act’s teleconferencing quorum, meeting notice, and agenda requirements described in 4), in any of the following circumstances:
- a) the legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing;
  - b) the legislative body holds a meeting during a proclaimed state of emergency for purposes of determining, by majority vote, whether as a

result of the emergency, meeting in person would present imminent risks to the health and safety of attendees; and

- c) the legislative body holds a meeting during a proclaimed state of emergency and has determined by majority vote pursuant to b) above that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- 7) Provides that a legislative body holding a teleconferenced meeting pursuant to the Brown Act exception provided in 6) is subject to the requirements in a) through g).
- a) The legislative body must give notice of the meeting and post agendas as otherwise required by the Brown Act.
  - b) The legislative body must allow members of the public to access the meeting, and the agenda must provide an opportunity for members of the public to address the legislative body directly pursuant to Brown Act requirements. In each instance where notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body must also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda must identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. The legislative body need not provide a physical location from which the public may attend or comment.
  - c) The legislative body must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.
  - d) In the event of a disruption that prevents the public agency from broadcasting the meeting to members of the public using the call-in or internet-based service options, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in or internet-based service options, the legislative body must take no further action on items appearing on the meeting agenda until public access to the meeting is restored. Actions taken on agenda items during a disruption preventing the broadcast of the meeting may be challenged as provided in the Brown Act.
  - e) The legislative body may not require public comments to be submitted in advance of the meeting, and it must provide an opportunity for the public to address the legislative body and offer comment in real time.
  - f) The legislative body may use an online third-party system for individuals to provide public comment that requires an individual to register with the system prior to providing comment.
  - g) If a legislative body provides a timed public comment period, it may not close the comment period or the time to register to provide comment under f) until the timed period has elapsed. If the legislative body does not provide a time-limited comment period, it must allow a reasonable time for the public to comment on each agenda item and to register as necessary under f).

- 8) Defines “state of emergency” as a state of emergency proclaimed pursuant to Government Code section 8625.
- 9) Provides that a legislative body holding a teleconferenced meeting pursuant to the Brown Act exception provided in 6) is subject to the requirements in a) through g).
  - a) The legislative body must give notice of the meeting and post agendas as otherwise required by the Brown Act.
  - b) The legislative body must allow members of the public to access the meeting, and the agenda must provide an opportunity for members of the public to address the legislative body directly pursuant to Brown Act requirements. In each instance where notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body must also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda must identify and include an opportunity for all persons to attend via call-in option or an internet-based service option. The legislative body need not provide a physical location from which the public may attend or comment.
  - c) The legislative body must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.
  - d) In the event of a disruption that prevents the public agency from broadcasting the meeting to members of the public using the call-in or internet-based service options, or in the event of a disruption within the local agency’s control that prevents members of the public from offering public comments using the call-in or internet-based service options, the legislative body must take no further action on items appearing on the meeting agenda until public access to the meeting is restored. Actions taken on agenda items during a disruption preventing the broadcast of the meeting may be challenged as provided in the Brown Act.
  - e) The legislative body may not require public comments to be submitted in advance of the meeting, and it must provide an opportunity for the public to address the legislative body and offer comment in real time.
  - f) The legislative body may use an online third-party system for individuals to provide public comment that requires an individual to register with the system prior to providing comment.
  - g) If a legislative body provides a timed public comment period, it may not close the comment period or the time to register to provide comment under f) until the timed period has elapsed. If the legislative body does not provide a time-limited comment period, it must allow a reasonable time for the public to comment on each agenda item and to register as necessary under f).

- 10) If the state of emergency remains active, or state or local officials have imposed measures to promote social distancing, the legislative body must, in order to continue meeting subject to this exemption to the Brown Act, no later than 30 days after it commences using the exemption, and every 30 days thereafter, make the following findings by majority vote:
  - a) the legislative body has reconsidered the circumstances of the state of emergency; and
  - b) either (i) the state of emergency continues to directly impact the ability of the members to meet safely in person; or (ii) state or local officials continue to impose or recommend measures to promote social distancing.
- 11) Provides that the provisions relating to the Brown Act in 6) through 9) above will remain in effect only until January 1, 2024, and as of that date be repealed.
- 12) Authorizes, until January 1, 2026, members of a legislative body of a local agency to use teleconferencing without noticing each teleconference location or making it publicly accessible, provided at least a quorum of the members of the body participates in person at a singular physical location.
  - a) The location of the in-person meeting must be clearly identified on the agenda, must be open to the public, and must be within the boundaries of the local agency's jurisdiction.
- 13) Requires the legislative body, in order to use teleconferencing under 12) above, to meet the following requirements:
  - a) provide a two-way audio-visual platform or a two-way telephonic service and a live webcasting of the meeting by which the public may remotely hear and visually observe the meeting and also remotely address the legislative body;
  - b) give notice of the means for the public to access the meeting and offer public comment in each instance the legislative body notices the meeting or posts the agenda;
  - c) identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in or internet-based service option, and at the in-person location of the meeting; and
  - d) provide an opportunity for the public to address the legislative body and offer comment in real time. A third-party internet website or online platform not under the control of the legislative body may require members of public to login or register to provide public comment.
- 14) Prohibits a local agency from requiring public comments to be submitted in advance of the meeting.
- 15) Prohibits a local agency from taking further action in the event of a disruption that prevents the legislative body from broadcasting the meeting to the public, or in the

event of a disruption within the local agency's control that prevents the public from offering public comments remotely, until it can restore public access to the meeting.

- a) The public can challenge actions taken on agenda items during such disruptions pursuant to Section 54960.1 of the Government Code.

16) Authorizes a member of a legislative body to participate in a meeting remotely only if one of the following circumstances applies:

- a) the member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting; or
  - i. The provisions of a) cannot be used by any member of the legislative body for more than two meetings per calendar year.
- b) the member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request.
  - i. The legislative body is required to request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and does not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act.
  - ii. The legislative body may take action on the member's request to participate remotely under b) at the earliest opportunity, including the beginning of the meeting at which the member has requested the ability to participate remotely.
  - iii. The member is required to make such a request at each meeting they desire to participate remotely pursuant to b).
  - iv. The member is required to participate through both audio and visual technology.

17) The provisions of 16) above cannot serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

18) Defines "just cause" as any of the following:

- a) childcare or caregiving a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely;
- b) a contagious illness that prevents a member from attending in person;

- c) a need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by 20) below; and
  - d) travel while on official business of the legislative body or another state or local agency.
- 19) Defines “emergency circumstances” as a physical or family medical emergency that prevents a member from attending in person.
- 20) Requires the legislative body to have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) (*hereafter* ADA), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.
- 21) Requires the legislative body to conduct meetings subject to the Brown Act consistent with applicable state and federal civil rights, language access, and other nondiscrimination laws.
- 22) Repeals the provisions in 16) through 21) on January 1, 2026.

This bill:

- 1) Authorizes an eligible legislative body to teleconference their meetings without having to notice and make publicly accessible each teleconference location.
- a) Provides that an eligible legislative body cannot use teleconferencing pursuant to these provisions unless the eligible legislative body has adopted a resolution that authorizes it to use teleconferencing at a regular meeting in open session.
  - b) “Eligible legislative body” means a board, commission, or advisory body of a multijurisdictional, cross-county agency, the membership of which board, commission, or advisory body is appointed and which board, commission, or advisory body is otherwise subject to this chapter.
  - c) “Multijurisdictional” means a legislative body that includes representatives from more than one county, city, city and county, special district, or a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1.
- 2) Requires the following provisions to be met for a meeting to be held pursuant to 2):
- a) At least a quorum of the members of the eligible legislative body must participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.



- b) Identify each member of the eligible legislative body who plans to participate remotely in the agenda and include the address of the publicly accessible building from where they will participate via teleconference. The specific room or location within the publicly accessible building from which a member participates via teleconference is not required to be publicly accessible.
  - c) Provide a physical location from which the public may attend or comment.
  - d) The eligible legislative body must include the means by which members of the public may access the meeting and offer public comment in each notice and posting of the time or agenda of the teleconferenced meeting. The agenda must identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.
  - e) In the event of a disruption that prevents the eligible legislative body from broadcasting the meeting to the public, or in the event of a disruption within the eligible legislative body's control that prevents the public from offering public comments remotely, the eligible legislative body cannot take further action until it can restore public access. The public can challenge actions taken on agenda items during such disruptions.
  - f) The eligible legislative body cannot require public comments to be submitted in advance of the meeting.
  - g) The eligible legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time, as specified; and
  - h) The legislative body must provide on its website a record of attendance of both community members and members of the eligible legislative body and the number of public comments in the meeting within seven days after a teleconference meeting.
- 3) Prohibits a member of the eligible legislative body from participating in a meeting remotely pursuant to these provisions unless they meet both of the following requirements:
- a) The location from which the member participates is more than 40 miles from the location of the in person meeting.
  - b) The member participates from their office or another location in a publicly accessible building.
- 4) Provides that an individual desiring to provide public comment through the use of a third-party internet website or other online platform during a meeting held pursuant to these provisions may be required to register to log in to the teleconference if both of the following conditions are met:
- a) The internet website or online platform requires that registration.
  - b) The decision to require registration is not under the control of the legislative body.
- 5) Sunsets the above provisions on January 1, 2028.

- 6) Includes under the definition of just cause an immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the member of a legislative body to participate remotely.

## COMMENTS

### 1. Stated need for the bill

The author writes:

With AB 361 (Rivas, 2021) expiring in February 2023, local multijurisdictional boards have begun to feel the impact of transitioning back to in person meetings. They are already having issues with membership retention, and are concerned about a drop in public attendance.

Many multijurisdictional legislative bodies lack the flexibility to accommodate their members and the public with hybrid teleconferencing meetings. For multijurisdictional bodies covering large areas, it can often be difficult for board members and the public to travel great lengths to actively participate in a meeting. This distance disincentivizes participation from community members, as well as prospective legislative body members.

SB 537 encourages participation by allowing some multijurisdictional boards to choose to convene remotely without limits on remote meetings and disclosure of location, therefore making it easier for all to participate. SB 537 also updates health exemptions to include immunocompromisation so that immunocompromised individuals can meet remotely without risking their health or the health of a loved one. Lastly, SB 537 also collects data on attendance of remote meetings and requires the data to be posted on agencies' websites, increasing available data and evidence on the benefit of remote meetings.

The gateways provided in this bill offer an important update to facilitate attendance and active participation in multijurisdictional agency meetings.

### 2. Background

#### *a. Right to access public meetings and COVID-19 pandemic*

The California Constitution enshrines the rights of the people to instruct their representatives and to access information concerning the conduct of government, and

requires the meetings of public bodies to be accessible for public scrutiny.<sup>1</sup> The Brown Act provides guidelines and requirements for how state and local bodies must guarantee open and public access to their meetings.<sup>2</sup> The legislative intent of the Brown Act was expressly declared in its original statute, and has remained unchanged despite numerous amendments:

The Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.<sup>3</sup>

The Brown Act generally requires that meetings of the legislative body of a local agency be open and accessible to the public, and requires local agencies to provide notice of the meeting, its agenda, and its location in advance of a meeting to ensure that the people have adequate notice and opportunity to attend.

In March 2020, due to the COVID-19 pandemic, the Governor issued executive orders suspending portions of the Brown Act requiring in-person meetings, thereby allowing members of a local legislative body to attend meetings remotely without having to publicly post their location information or allow members of the public to attend meetings from those locations.<sup>4</sup> Throughout the pandemic, many state and local bodies relied on teleconference or internet streaming services to conduct meetings on a regular basis, avoiding the COVID-19 transmission risks posed by large public gatherings. This Committee noted in its analysis of AB 361 as amended September 3, 2021 (Robert Rivas, Ch. 165, Stats. 2021), that:

Based on information received by committee staff, the move to entirely teleconferenced meetings has both expanded and contracted public access to meetings: the increased availability of teleconferencing allows participation by persons who cannot travel to a physical location or cannot attend a meeting for other reasons (e.g., persons who are immunocompromised); but can decrease participation

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<sup>1</sup> Cal. Const., art. I, § 3(a) & (b)(1).

<sup>2</sup> Ed. Code, tit. 3, div. 8, pt. 55, ch. 3, art. 1.5, §§ 89305 et seq.; Gov Code, tit. 2, div. 3, art. 9, §§ 11120 et seq., & tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.

<sup>3</sup> *Id.*, § 54950.

<sup>4</sup> Governor's Exec. Order No. N-25-20 (Mar. 12, 2020); Governor's Exec. Order No. N-29-20 (Mar. 17, 2020).

by persons who are less tech-savvy, lack access to technology, or are otherwise unable to utilize the remote access options. There are also concerns that the value of public meetings is lessened when government officials do not have to interact with the public on a face-to-face basis.

*b. AB 361 (Robert Rivas, Ch. 165, Stats. 2021)*

AB 361 authorized a local agency to use teleconferencing for a public meeting without complying with the Brown Act's teleconferencing quorum, meeting notice, and agenda requirements in any of the following circumstances until January 1, 2024:

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- The legislative body holds a meeting during a proclaimed state of emergency for purposes of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health and safety of attendees.
- The legislative body holds a meeting during a proclaimed state of emergency and has determined by majority vote as described above that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. (Gov. Code § 54953 (e)(1).)

AB 361 provided that a legislative body holding a teleconferenced meeting pursuant to this exception is subject to the various requirements, including :

- The legislative body must allow members of the public to access the meeting, and the agenda must provide an opportunity for members of the public to address the legislative body directly pursuant to Brown Act requirements. In each instance where notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body must also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda must identify and include an opportunity for all persons to attend via call-in option or an internet-based service option. The legislative body need not provide a physical location from which the public may attend or comment.
- The legislative body must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body.
- In the event of a disruption that prevents the public agency from broadcasting the meeting to members of the public using the call-in or internet-based service options, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in or internet-based service options, the legislative body must take no further action on

items appearing on the meeting agenda until public access to the meeting is restored. Actions taken on agenda items during a disruption preventing the broadcast of the meeting may be challenged as provided in the Brown Act.

- The legislative body may not require public comments to be submitted in advance of the meeting, and it must provide an opportunity for the public to address the legislative body and offer comment in real time.
- The legislative body may use an online third-party system for individuals to provide public comment that requires an individual to register with the system prior to providing comment.
- If a legislative body provides a timed public comment period, it may not close the comment period or the time to register to provide comment until the timed period has elapsed. If the legislative body does not provide a time-limited comment period, it must allow a reasonable time for the public to comment on each agenda item and to register as necessary. (Gov. Code § 54953 (e)(2).)

AB 361 also provided that if the state of emergency remains active, or state or local officials have imposed measures to promote social distancing, the legislative body must, in order to continue meeting subject to this exemption to the Brown Act, no later than 30 days after it commences using the exemption, and every 30 days thereafter, make the following findings by majority vote:

- the legislative body has reconsidered the circumstances of the state of emergency; and
- either (1) the state of emergency continues to directly impact the ability of the members to meet safely in person; or (2) state or local officials continue to impose or recommend measures to promote social distancing. (Gov. Code § 54953 (e)(3).)

*c. AB 2449 (Blanca Rubio, Ch. 285, Stats. 2022)*

AB 2449 authorized members of legislative bodies more teleconferencing flexibility in non-emergency circumstances. It allowed members of legislative bodies to participate remotely for “just cause” and “emergency circumstances” without noticing their teleconference location or making that location public. Under the measure, just cause includes:

- Childcare or caregiving need that requires them to participate remotely;
- A contagious illness that prevents a member from attending in person;
- A need related to a physical or mental disability not otherwise accommodated;
- Travel while on official business of the legislative body or another state or local agency; and
- When a physical or family medical emergency circumstance exists that prevents a member from attending in person.

To use the teleconference flexibility authorized under AB 2449, at least a quorum of the legislative body must participate in person at one physical location, which must be identified on the agenda, open to the public, and within the boundaries of the local agency's jurisdiction. AB 2449 included additional requirements on local agencies using its provisions that were modeled after many of the provisions included in AB 361.

In order for a member of a legislative body to participate in a meeting remotely using the AB 2449 authority they must do either of the following:

- Notify the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. These provisions cannot be used by any member of the legislative body for more than two meetings per calendar year; or
- Requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request.

When a member participates remotely under these provisions, they are required to participate through both audio and visual technology, and publicly disclose whether any other individuals 18 years of age or older are present at the teleconference location and the member's relationship with any such individuals. Additionally, a member cannot participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

3. This bill authorizes an eligible legislative body to meet via teleconference without having to make publicly accessible each teleconference location

This bill allows, until January 1, 2028, members of an eligible legislative body to use teleconferencing without making each teleconference location publicly accessible, provided at least a quorum of the members of the body participates in person at a singular physical location that is accessible to the public. A member can only participate in a meeting remotely if: (a) the location from which the member participates is more than 40 miles from the location of the in person meeting; and (b) the member participates from their office or another location in a publicly accessible building. The eligible legislative body must clearly identify the location of the in-person meeting on the agenda, and that location must be within the boundaries of the territory over which the local agency exercises jurisdiction.

In order to meet via teleconference under these provisions, the legislative body must meet the following requirements. These requirements are guardrails to ensure that public participation and access are still afforded to the public. The requirements are:

- Each member of the eligible legislative body who plans to participate remotely must be identified in the agenda, as well as the address of the publicly accessible building from where the member will participate via teleconference. The specific room or location within the publicly accessible building from which a member participates via teleconference is not required to be publicly accessible.
- The means by which members of the public may access the meeting and offer public comment must be included in each notice and posting of the time or agenda of the teleconferenced meeting.
- The agenda must identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.
- In the event of a disruption that prevents the eligible legislative body from broadcasting the meeting to the public, or in the event of a disruption within the eligible legislative body's control that prevents the public from offering public comments remotely, the eligible legislative body cannot take further action until it can restore public access. The public can challenge actions taken on agenda items during such disruptions.
- The eligible legislative body cannot require public comments to be submitted in advance of the meeting.
- The eligible legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time.
- The eligible legislative body must provide on its website a record of attendance of both community members and members of the eligible legislative body, and the number of public comments in the meeting within seven days after a teleconference meeting.

4. Expands the definition of "just cause" under AB 2449

The bill also expands the definition of "just cause" under the AB 2449 provisions to also include an immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.

5. Statements in support

The League of California Cities writes in support stating:

Over the past several years local agencies subject to the Brown Act were able to utilize remote participation for elected officials and for the public during the COVID-19 public health crisis. Generally, those processes worked well, allowing for local agencies to continue to conduct the public's business in a safe manner. In fact, many local agencies report increased participation and interaction with members of the public who would otherwise have been unable to access such meetings as a result. At the same time, the ability for local elected officials to participate remotely without

having to share the address of their whereabouts allowed them to do so without risking their own well-being and that of their families and neighbors.

All of these measures modernize the Brown Act to protect local officials' location when participating from a non-public, remote location while also giving the public remote participation access. While each Brown Act bill this year approaches modernization in a different way, they all should be considered by the Legislature. Developing a longterm framework for remote participation is critical. We have learned during the pandemic that such participation is effective, transparent, and actually encourages participation from a broader component of the public than was anticipated.

Additionally, the teleconferencing flexibility included in these measures enables individuals who could not otherwise accommodate the time, distance, or mandatory physical participation requirements to engage locally, providing access to leadership opportunities and providing communities with greater diversified input on critical community proposals.

#### 6. Statements in opposition

A coalition of organizations that advocate for open and accessible government and associations representing news organizations writes in opposition, stating:

The Brown Act already allows for members of bodies to participate remotely “for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law,” with some relatively modest requirements. And nothing in the law prevents bodies from truly expanding access by offering remote access and virtual methods of participation for the public. Indeed, many bodies around the state are conducting their meetings in a physical location accessible to the public while offering additional access and participation options through teleconferencing technology.

Lawmakers last year passed AB 2449, amending the Brown Act to give further flexibility to individual members of local legislative bodies to participate in public meetings remotely when certain requirements are met. Those provisions, which only took effect January 1, 2023, provide members the flexibility to participate remotely for a limited number of meetings so long as “just cause” exists. The legislation recognizes that just cause may exist where a member has caregiving responsibilities, health concerns, or a need to travel out of the jurisdiction on official business of the body. Importantly, the bill required the body to maintain a quorum of members in one physical location accessible to the public inside the jurisdiction. Whenever some members might elect to use teleconferencing to participate remotely, the legislation specifies that the public must also have the ability to access and participate through remote technology.



AB 2449 by Assemblymember Blanca Rubio was the result of careful negotiations by members of the undersigned coalition less than one year ago. After thoughtful conversations, the resulting legislation, in effect now for mere months, rigorously balanced open-government protections with the desire for members of local bodies to have increased flexibility for remote participation following the COVID-19 era of increased virtual meetings. The hard work that was done last year must be given an opportunity to play out before making additional, and in some cases, drastic changes to the Brown Act.

### **SUPPORT**

Peninsula Clean Energy (sponsor)  
California Association of Councils of Governments  
City of Brisbane  
City of San Bruno  
City of San Carlos  
City of South San Francisco  
League of California Cities  
Los Angeles County Sanitation Districts  
Menlo Park City Councilmember Betsy Nash  
Sonoma Clean Power  
Streets for All  
Town of Atherton  
Town of Colma  
1 individual

### **OPPOSITION**

ACLU California Action  
Cal Aware  
California Broadcasters Association  
California News Publishers Association  
First Amendment Coalition  
Howard Jarvis Taxpayers Association (HJTA)  
Leadership Council for Justice and Accountability

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 411 (Portantino, 2023) allows a neighborhood council that is an advisory body with the purpose to promote more citizen participation in government and make government more responsive to local needs that is established pursuant to the charter of a city with a population of more than 3,000,000 people to use alternate teleconferencing

provisions related to notice, agenda, and public participation, as provided. SB 411 is scheduled to be heard in this Committee on the same day as this bill.

AB 557 (Hart, 2023) removes the sunset under AB 361 (Robert Rivas, Ch. 165, Stats. 2021), and extends the 30-day reauthorization requirement to 45 days. The bill is currently pending on the Assembly Floor.

AB 817 (Pacheco, 2023) allows appointed bodies of subsidiary bodies to teleconference meetings without having to notice and make publicly accessible each teleconference location, or have at least a quorum participate from locations within the boundaries of the agency. The bill is currently pending in the Assembly Local Government Committee.

AB 1275 (Arambula, 2023) allows the recognized statewide community college student organization and other student-run community college organizations to use teleconferencing without having to notice and make publicly accessible each teleconference location, or have at least a quorum participate from locations within the boundaries of the agency. The bill is currently pending in the Assembly Higher Education Committee.

AB 1379 (Papan, 2023) makes numerous changes to the Brown Act's teleconferencing provisions. The bill is currently pending in the Assembly Local Government Committee.

Prior Legislation:

AB 1944 (Lee, 2022) would have authorized, until January 1, 2030, members of a legislative body of a local agency to use teleconferencing without noticing their teleconference locations and making them publicly accessible under certain conditions. This bill was never set for a hearing in the Senate Governance and Finance Committee.

AB 2449 (Blanca Rubio, Ch. 285, Stats. 2022) *see* Comment (2) above.

AB 361 (Robert Rivas, Ch. 165; Stats. 2021) *see* Comment (2) above.

AB 339 (Lee, 2021) would have required, until December 31, 2023, certain city council or county board of supervisors meetings to allow the public to attend and comment via telephone or internet. AB 339 was vetoed by Governor Newsom.

**PRIOR VOTES:**

Senate Governance and Finance Committee (6 Ayes, 2 Noes)

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