

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2302 (Addis) – As Introduced February 12, 2024

SUBJECT: Open meetings: local agencies: teleconferences.

SUMMARY: Clarifies the number of meetings that a member of a legislative body may attend remotely pursuant to the Ralph M. Brown Act’s teleconferencing requirements, as modified by AB 2449 (Blanca Rubio), Chapter 285, Statutes of 2022. Specifically, **this bill:**

- 1) Changes provisions of law enacted by AB 2449 as follows:
 - a) Removes language specifying that the modified teleconferencing requirements authorized by AB 2449 shall not 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:
 - i) More than three consecutive months or 20% of the regular meetings for the local agency within a calendar year; or,
 - ii) More than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.
 - b) Requires, instead, that the modified teleconferencing requirements authorized by AB 2449 shall not 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 more than the following number of meetings, as applicable:
 - i) Two meetings per year, if the legislative body regularly meets once per month or less.
 - ii) Five meetings per year, if the legislative body regularly meets twice per month.
 - iii) Seven meetings per year, if the legislative body regularly meets three or more times per month.
 - c) Requires, for the purpose of counting meetings attended by teleconference pursuant to the provisions of AB 2449, a “meeting” to be defined as any number of meetings of the legislative body of a local agency that begin on the same calendar day.
- 2) Finds and declares that Section 1 of this bill furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to the aforementioned provisions of the California Constitution, the Legislature makes the following findings:

This bill is necessary to ensure minimum standards for remote participation by a member of a legislative body in teleconference meetings.

EXISTING LAW:

- 1) Provides, pursuant to Article I, Section 3 of the California Constitution, the following:
 - a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.
 - b) 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.
 - c) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in b), above, each local agency is required to comply with the California Public Records Act, the Brown Act, and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of these constitutional provisions.
- 2) Provides, pursuant to the Brown Act, requirements for local agency meetings. (GOV §§ 54950 – 54963)
- 3) Authorizes the legislative body of a local agency to use teleconferencing, subject to a number of requirements that include posting agendas at all teleconference locations, identifying each teleconference location in the notice and agenda for the meeting or proceeding, making each teleconference location accessible to the public, and requiring at least a quorum of the members of the legislative body to participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, as specified. [GOV § 54953(b)(3)]
- 4) Defines “teleconference” to mean 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 § 54953(j)(6)]
- 5) Authorizes, until January 1, 2026, pursuant to provisions of law enacted via AB 2449 (Blanca Rubio), Chapter 285, Statutes of 2022, a legislative body of a local agency to use teleconferencing without complying with the requirements of 3), above, subject to multiple conditions and requirements and limited to “just cause” or for emergency circumstances, as specified. [GOV § 54953(f)]

FISCAL EFFECT: None

COMMENTS:

- 1) **Author's Statement.** According to the author, “Remote participation in local meetings has successfully increased access to local legislative bodies for members and the public. In light of this success, in 2022, AB 2449 (Rubio) expanded access to remote participation while simultaneously instituting guardrails that prevent members of these bodies from participating in meetings by teleconference from a remote location for more than 20 percent of the regular meetings within a calendar year.

“Unfortunately, current law is unclear about whether members of legislative bodies that treat multiple sessions on the same day as two separate meetings should count these sessions as one meeting or two meetings for the purposes of this law. AB 2302 will clarify that multiple sessions on the same day are considered one meeting, ensuring that all local agencies are treated equally under the law.”

- 2) **Brown Act.** The Brown Act was enacted in 1953 and has been amended numerous times since then. The legislative intent of the Brown Act was expressly declared in its original statute, which remains unchanged:

“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.”

The Brown Act generally requires meetings to be noticed in advance, including the posting of an agenda, and generally requires meetings to be open and accessible to the public. The Brown Act also generally requires members of the public to have an opportunity to comment on agenda items, and generally prohibits deliberation or action on items not listed on the agenda.

The Brown Act defines a “meeting” as “any congregation of a majority of the member of a legislative body at the same time and location, including teleconference locations, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”

- 3) **Teleconferencing and the Brown Act.** The Brown Act first allowed meetings to be conducted via video teleconference in 1988. At the time, San Diego County was considering the use of video teleconferencing for meetings and hearings of the board of supervisors due to concerns about the long distances that some of their constituents were having to travel to participate in board meetings. They were especially concerned that these distances were so great that they prohibited some people from attending meetings at all. AB 3191 (Frazee), Chapter 399, Statutes of 1988, responded to these concerns by authorizing the legislative body of a local agency to use video teleconferencing. Since that time, a number of bills have made modifications to this original authorization.

The Brown Act generally allows the legislative body of a local agency to use teleconferencing for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding must comply with all requirements of the Brown Act and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding. Teleconferencing may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body.

If the legislative body of a local agency elects to use teleconferencing, the legislative body must comply with a number of requirements. It must conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. The legislative body must give notice of the meeting and post agendas as otherwise required by the Brown Act, and must allow members of the public to access the meeting. The agenda for the meeting must provide an opportunity for members of the public to address the legislative body directly pursuant to the Brown Act's provisions governing public comment. All votes taken during a teleconferenced meeting must be taken by roll call.

"Teleconference" is defined as 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. Teleconferencing has never been required. It has always been permissive.

- 4) **The Four Teleconferencing Rules of GOV § 54953(b)(3).** The Brown Act contains four additional specific requirements for teleconferenced meetings in GOV § 54953(b)(3). Specifically, this paragraph requires all of the following:
 - a) The legislative body shall post agendas at all teleconference locations.
 - b) Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding.
 - c) Each teleconference location shall be accessible to the public.
 - 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 exercises jurisdiction, with specified exceptions.
- 5) **Executive Order N-29-20.** In March of 2020, the Governor issued Executive Order N-29-20, which stated that, "Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived."

"All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures."

- 6) **AB 361 of 2021.** Despite the Governor's executive order, both local and state governing bodies were concerned about their ongoing ability to teleconference without having to disclose the locations of teleconferencing members or make those locations accessible to the public. In response, the Legislature passed and the Governor signed AB 361 (Robert Rivas) Chapter 165, Statutes of 2021. In addition to provisions affecting state governing bodies, AB

361 allowed exemptions to the Brown Act's teleconferencing requirements during a proclaimed state of emergency.

Specifically, AB 361 authorized a local agency's legislative body to use teleconferencing for a public meeting without having to post agendas at each teleconference location, identify each teleconference location in the notice and agenda, make each teleconference location accessible to the public, and require at least a quorum of the legislative body to participate from within the local agency's jurisdiction [the requirements of GOV § 54953(b)(3)]. This flexibility was limited to the following circumstances:

- a) A 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) A 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.
- c) A 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.

AB 361 required a legislative body that chooses to use its provisions to meet the following requirements:

- a) **Notice and Agenda.** A legislative body must give notice of the meeting and post agendas as otherwise required by the Brown Act.
- b) **Public Access.** A 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. The legislative body must 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) **Meeting Disruptions.** In the event of a disruption that prevents the agency from broadcasting the meeting to 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 the public from offering public comments using the call-in or internet-based service options, the legislative body must take no further action until public access is restored. Actions taken on agenda items during a disruption may be challenged as provided in the Brown Act.
- d) **Public Comment.** The legislative body may not require public comments to be submitted in advance, 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 registration with the system before providing comment. If a legislative body provides a timed public comment period, it may not close the comment period or the time to register

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.

If a state of emergency remains active, or state or local officials have imposed measures to promote social distancing, the legislative body must make specified findings every 30 days in order to continue using the exemptions provided by AB 361. As an urgency measure, AB 361 went into effect on September 16, 2021. It remains in effect until January 1, 2024.

7) **AB 2449 of 2022.** Responding to calls from local governments to provide even further flexibility to use teleconferencing, AB 2449 (Blanca Rubio), Chapter 285, Statutes of 2022, again relieved a legislative body of a local agency from the requirements of GOV § 54953(b)(3) while teleconferencing, but this time outside of a declared state of emergency. However, in order to enjoy this flexibility, AB 2449 requires at least a quorum of the legislative body to participate in person from a singular physical location. This location must be:

- a) Clearly identified on the agenda.
- b) Open to the public.
- c) Situated within the boundaries of the local agency's jurisdiction.

The legislative body must provide one of the following so that the public can hear and visually observe the meeting, and remotely address the legislative body:

- a) A two-way audiovisual platform.
- b) A two-way telephonic service and a live webcasting of the meeting.

The legislative body must give notice of the means by which members of the public may access the meeting and offer public comment, and the agenda must allow all persons to attend and address the legislative body directly via a call-in option, an internet-based service option, and at the in-person location of the meeting. AB 2449 contained identical provisions as AB 361 concerning meeting disruptions and public comment.

AB 2449 allows members of a legislative body to use these alternative teleconferencing rules in two distinct situations: for "just cause" and for emergency circumstances.

- a) **Just Cause.** Under the "just cause" circumstance, a member must notify the legislative body as early as possible of their need to participate remotely for just cause. A just cause circumstance cannot be used by any member of the legislative body for more than two meetings per calendar year. "Just cause" means any of the following:
 - i) Childcare or a caregiving need that requires them to participate remotely.
 - ii) A contagious illness that prevents a member from attending in person.
 - iii) A need related to a physical or mental disability not otherwise accommodated.

- iv) Travel while on official business of the legislative body or another state or local agency.
- b) **Emergency Circumstances.** Under emergency circumstances, a 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. “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person. The legislative body must request a general description of the emergency circumstances, which shall not require the member to disclose any medical diagnosis or disability or any personal medical information. For the purposes of emergency circumstances, the following requirements apply:
 - i) A member shall make a request to participate remotely as soon as possible, and shall make a separate request for each meeting in which they seek to participate remotely.
 - ii) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting, in accordance with specified provisions of the Brown Act.
 - iii) The member who is participating remotely must publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member’s relationship with any such individuals.
 - iv) The member must participate through both audio and visual technology.
- 8) **Limits on AB 2449.** AB 2449 specified that its provisions shall not 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% 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.

According to the author’s office, the current language in AB 2449 does not specify whether multiple sessions of a local legislative body conducted on the same day should be classified as one meeting or two separate meetings. Legislative bodies of some local agencies, like the Pismo Beach City Council, consider open and closed sessions on the same day to be two separate meetings with two separate agendas. Other local agencies consider open and closed sessions on the same day as one meeting with one agenda.

The author also argues that the language in AB 2449 also fails to clearly state how many meetings members may attend via teleconference each calendar year. When members calculate how many meetings they may attend remotely, they are faced with confusing numbers. For instance, if a body meets once a month, twenty percent of meetings is 2.4 meetings a year. If a body meets twice a month, twenty percent of meetings is 4.8 meetings a year. If a body meets three times a month, twenty percent of meetings is 7.2 meetings a year. Members are left to wonder whether they should round down to the lower whole number or round to the closest whole number.

- 9) **Bill Summary.** This bill revises and recasts the number of meetings that a member of a legislative body may attend remotely under the provisions of AB 2449. Rather than specifying a percentage of meetings per year, this bill limits the number of meetings as follows:
- a) Two meetings per year, if the legislative body regularly meets once per month or less.
 - b) Five meetings per year, if the legislative body regularly meets twice per month.
 - c) Seven meetings per year, if the legislative body regularly meets three or more times per month.

This bill also defines a “meeting” under the provisions of AB 2449 as any number of meetings that begin on the same calendar day.

This bill is sponsored by the City of Pismo Beach.

- 10) **Related Legislation.** AB 817 (Pacheco) allows, until January 1, 2026, a subsidiary body of a local agency to use teleconferencing for its meetings without posting agendas at each teleconference location, identifying each teleconference location in the notice and agenda, making each teleconference location accessible to the public, and requiring at least a quorum of the subsidiary body to participate from within the local agency’s jurisdiction, subject to certain conditions. AB 817 is pending in the Senate.

AB 1855 (Arambula) allows, until January 1, 2026, a community college student body association to teleconference without meeting all of the teleconferencing requirements of the Brown Act. AB 1855 is pending in the Higher Education Committee.

AB 2350 (Hoover) authorizes a school board holding an emergency meeting to fulfill the pre-meeting notification requirement by email instead of by telephone. AB 2350 is pending in this committee.

AB 2715 (Boerner) authorizes a closed session to consider or evaluate matters related to cybersecurity, including vulnerabilities of, or potential ongoing threats to, an agency’s cybersecurity provided that any action taken on those matters is done in open session. AB 2715 is pending in this committee.

- 11) **Previous Legislation.** AB 557 (Hart), Chapter 534, Statutes 2023, eliminates the January 1, 2024, sunset date on AB 361 and changes the requirement for a legislative body, in order to continue using the bill’s teleconferencing provisions, to make specified findings every 30 days to every 45 days.

AB 1275 (Arambula) of 2023 would have expanded Brown Act teleconferencing flexibility for community college student organizations. AB 1275 was amended into a different subject matter.

AB 1379 (Papan) of 2023 would have eliminated the Brown Act’s teleconferencing requirements to post agendas at all teleconferencing locations, identify each teleconference location in the notice and agenda, make each teleconference location accessible to the public,

and require a quorum of the legislative body to participate from locations within the local agency's jurisdiction, allows legislative bodies to participate remotely from any location for all but two meetings per year, and makes several changes to the provisions of AB 2449. AB 1379 was held in this Committee.

SB 411 (Portantino), Chapter 605, Statutes 2023, allows appointed bodies of a local agency 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.

SB 537 (Becker) of 2023 would have allowed appointed bodies of a multijurisdictional local agency 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. SB 537 is currently on the Assembly inactive file.

AB 1944 (Lee) of 2022 would have allowed, until January 1, 2030, members of a legislative body of a local agency to use teleconferencing without identifying each teleconference location in the notice and agenda of the meeting, and without making each teleconference location accessible to the public, under specified conditions. AB 1944 was held in the Senate Governance and Finance Committee.

AB 2449 (Blanca Rubio), Chapter 285, Statutes of 2022, allows, until January 1, 2026, members of a legislative body of a local agency to use teleconferencing without identifying each teleconference location in the notice and agenda of the meeting, and without making each teleconference location accessible to the public, under specified conditions.

SB 1100 (Cortese), Chapter 171, Statutes of 2022, allows the presiding member of a local legislative body to remove an individual for disrupting a local agency's meeting, defines "disrupting" for this purpose, and outlines the procedure that must be followed before an individual may be removed.

AB 339 (Lee) of 2021 would have required, until December 31, 2023, city councils and boards of supervisors in jurisdictions over 250,000 residents provide both in-person and teleconference options for the public to attend their meetings. This bill was vetoed with the following message:

"While I appreciate the author's intent to increase transparency and public participation in certain local government meetings, this bill would set a precedent of tying public access requirements to the population of jurisdictions. This patchwork approach may lead to public confusion. Further, AB 339 limits flexibility and increases costs for the affected local jurisdictions trying to manage their meetings.

"Additionally, this bill requires in-person participation during a declared state of emergency unless there is a law prohibiting in-person meetings in those situations. This could put the health and safety of the public and employees at risk depending on the nature of the declared emergency.

“I recently signed urgency legislation that provides the authority and procedures for local entities to meet remotely during a declared state of emergency. I remain open to revisions to the Brown Act to modernize and increase public access, while protecting public health and safety. Unfortunately, the approach in this bill may have unintended consequences.”

AB 361 (Robert Rivas) Chapter 165, Statutes of 2021, allows, until January 1, 2024, local agencies to use teleconferencing without complying with specified Ralph. M Brown Act restrictions in certain state emergencies, and provides similar authorizations, until January 31, 2022, for state agencies subject to the Bagley-Keene Open Meetings Act and legislative bodies subject to the Gloria Romero Open Meetings Act of 2000.

AB 703 (Rubio) of 2021 would have allowed teleconferencing with only a quorum of the members of a local legislative body participating from a singular location that is clearly identified on an agenda, open to the public, and situated within the boundaries of the local agency. AB 703 was held in this Committee.

- 12) **Arguments in Support.** The City of Pismo Beach, sponsor of this measure, writes “Current law establishes limits on the number of meetings a member may participate in solely by teleconference from a remote location, prohibiting such participation for a period of more than 3 consecutive months or 20% of the regular meetings for the local agency within a calendar year, or more than 2 meetings if the legislative body regularly meets fewer than 10 times per calendar year. AB 2302 defines a “meeting” as any number of meetings of the legislative body of a local agency that begin on the same calendar day, so that cities and members of the legislative body are not unfairly penalized for choosing to participate remotely. Currently, in some cities, closed session and open session City Council meetings count as two meetings. AB 2302 clarifies that participating remotely in these consecutive meetings counts as “one” meeting toward their allocation for the year, consistent with the provisions in current law and the intent of AB 2449 (Rubio, 2022).

“By embracing remote meeting technologies under the Ralph M. Brown Act, California local agencies can enhance public engagement, streamline processes, and adapt to evolving circumstances while fulfilling their obligations under the Brown Act. By clarifying current remote meeting limits for local agency members, AB 2302 allows for flexibility with remote meeting limits that was given in AB 2449 (Rubio, 2022).”

- 13) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Pismo Beach [SPONSOR]
Association of California Water Agencies (ACWA)
California Municipal Utilities Association
California Special Districts Association
San Francisco Bay Area Rapid Transit District (BART)

Opposition

None on file

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