

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
AB 2449 (Blanca Rubio) – As Introduced February 17, 2022

**SUBJECT:** Open meetings: local agencies: teleconferences.

**SUMMARY:** Allows 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, if at least a quorum of the members of the body participates in person. Specifically, **this bill:**

- 1) Allows a local agency to use teleconferencing without identifying each teleconference location in the notice and agenda of the meeting or proceeding and making each teleconference location accessible to the public if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:
  - a) The legislative body shall give notice of the meeting and post agendas as otherwise required by the Ralph M. Brown Act (Brown Act).
  - b) All members of the legislative body attending the meeting by teleconference shall participate only through both audio and visual technology.
  - c) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to existing provisions of the Brown Act, as specified. 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 means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option, and an opportunity for members of the public to attend and address the legislative body at the in-person location of the meeting.
  - d) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.
  - e) In the event of a disruption that prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, 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 option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the public

agency from broadcasting the meeting may be challenged pursuant to existing provisions of the Brown Act, as specified.

- f) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.
  - g) Provides that, notwithstanding provisions of the Brown Act that prohibit a person from being required to register or provide other information as a condition of attending a meeting of a legislative body, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.
  - h) The legislative body shall 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, as specified, 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.
- 2) Finds and declares that Sections 1 and 2 of this bill, which amend Section 54953 of the Government Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hospital room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

- 3) Finds and declares that Sections 1 and 2 of this bill, which amend Section 54953 of the Government Code, further, 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 paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Background.** 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 “local agency” to mean 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 other local public agency.

The Brown Act defines “legislative body” to mean:

- a) The governing body of a local agency or any other local body created by state or federal statute.
- b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. Advisory committees composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies. Standing committees of a legislative body, irrespective of their composition, that have a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies.
- c) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
  - i) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.
  - ii) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

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.”

The Brown Act specifies that a member of the public shall not be required, as a condition of attending a meeting, to register a name, provide other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance. If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated during the meeting, it must state clearly that signing, registering, or completing the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

The Brown Act allows a district attorney or any interested person to seek a judicial determination that an action taken by a local agency’s legislative body violates specified provisions of the Brown Act – including the provisions governing open meeting requirements, teleconferencing, and agendas – and is therefore null and void.

- 2) **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.
- 3) **Teleconferencing Rules Prior to the COVID Pandemic and 2021 Legislation.** 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. All votes taken during a teleconferenced meeting must be taken by roll call.

If a legislative body of a local agency 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 the public appearing before the legislative body of a local agency. Each teleconference location must be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public.

During the teleconference, at least a quorum of the members of the legislative body must participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, with specified exceptions. The agenda must provide an opportunity for members of the public at each teleconference location to address the legislative body directly pursuant to the Brown Act’s provisions governing public comment.

“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) **Agendas.** The Brown Act requires local agencies to post, at least 72 hours before a regular meeting, an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. The agenda must specify the time and location of the regular meeting and must be posted in a location that is freely accessible to members of the public and on the local agency website, if the local agency has one. No action or discussion may be undertaken on any item not appearing on the posted agenda, with specified exceptions.

If requested, the agenda must be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (ADA), and the federal rules and regulations adopted to implement the ADA. The agenda must include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

- 5) **Comment Periods.** The Brown Act generally requires every agenda for regular meetings to provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body. The legislative body of a local agency may adopt reasonable regulations to ensure that this intent is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.
- 6) **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.”

- 7) **AB 361.** Despite the executive order, both local and state governing bodies were concerned about their ongoing ability to teleconference without having to disclose the location of teleconferencing members or make that location 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 state or local emergency.

Specifically, 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:

- 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.
- 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.

A local agency availing itself of the provisions of AB 361 is subject to the following requirements:

- 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).

If a state of emergency remains active, or state or local officials have imposed measures to promote social distancing, the legislative body must make findings in order to continue using the exemptions provided by AB 361. The following findings must be made no later than 30 days after a legislative body begins using the exemption, and every 30 days thereafter, by majority vote:

- a) The legislative body has reconsidered the circumstances of the state of emergency.
- b) The state of emergency continues to directly impact the ability of the governing body members to meet safely in person, or state or local officials continue to impose or recommend measures to promote social distancing.

As an urgency measure, AB 361 went into effect on September 16, 2021. It remains in effect until January 1, 2024.

- 8) **Bill Summary.** This bill allows 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 or proceeding, and without making each teleconference location accessible to the public, provided at least a quorum of the members of the body participates in person. The location of the in-person meeting must be clearly identified on the agenda, open to the public, and situated within the boundaries of the local agency's jurisdiction.

A legislative body wishing to exercise the flexibility authorized by this bill must also do the following:

- a) Give notice and post agendas as otherwise required by Brown Act.
- b) Require all members of the legislative body attending the meeting by teleconference to participate only through both audio and visual technology.
- c) Allow members of the public to access the meeting and address the legislative body directly. When notice of the meeting is given or the agenda is posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option, and an

opportunity for members of the public to attend and address the legislative body at the in-person location of the meeting.

This bill provides a process if a disruption prevents the agency from broadcasting the meeting or prevents members of the public from offering public comments remotely, which requires the body to take no further action until remote access for the public is restored. Actions taken during a disruption that prevents the public agency from broadcasting the meeting may be challenged pursuant to existing provisions of the Brown Act, as specified.

This bill prohibits a legislative body from requiring public comments to be submitted in advance of the meeting and requires the body to provide an opportunity for the public to address the body and offer comment in real time, with an exception for online platforms that require registration. The legislative body must also implement a procedure for receiving and swiftly resolving requests for reasonable accommodation, consistent with the federal Americans with Disabilities Act.

This bill is sponsored by Three Valleys Municipal Water District.

- 9) **Author’s Statement.** According to the author, “While remote participation in meetings was necessitated by the pandemic, we have simultaneously demonstrated the value of remote participation options when individuals are unable to attend a physical gathering. The Brown Act ensures that officials and their constituents can have open and transparent meetings, which we now know can occur using modern technology. Considering the experiences of the past two years, AB 2449 would provide an avenue for constituents to interact with their representatives in situations where they might have not previously been able to.”
- 10) **Related Legislation.** AB 1944 (Lee) allows 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 or proceeding, and without making each teleconference location accessible to the public. AB 1944 is pending in this Committee.

SB 1100 (Cortese) authorizes the presiding member of a legislative body conducting a meeting to remove an individual for disrupting the meeting, and defines “disrupting” for these purposes. SB 1100 is pending on the Senate Floor.

- 11) **Previous Legislation.** 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 required only a quorum of the members of a local legislative body to participate from a singular location 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.** Three Valleys Municipal Water District, sponsor of this measure, writes, “As part of his response to the COVID-19 pandemic, Governor Newsom originally issued a series of Executive Orders to expand public access to meetings of local agencies by suspending some of the restrictions on teleconferencing. The effect was an expanded use of teleconferencing for meetings of the legislative body, resulting in enhanced public access and increased participation by the public.

“The expiration of the Executive Orders immediately gave way to the new AB 361, essentially allowing for the teleconference provisions detailed in the Executive Orders to continue during a period of emergency declaration. However, once an emergency declaration has ended, local agencies will again be required to comply with antiquated provisions of existing law, making it potentially more difficult to hold meetings of the legislative body by teleconference. While current law does allow for “teleconference locations” under normal circumstances, it requires various actions to be taken at the teleconference locations and fails to recognize in the digital age that a teleconference location is wherever there is a person with a computer, a tablet, or even a mobile phone.

“AB 2449 will eliminate the previously existing concept of teleconference locations and will revise notice requirements to allow for greater public participation in teleconference meetings of local agencies. The bill does not require teleconferencing, rather it modernizes existing law to ensure greater public participation in meetings of the legislative bodies of local agencies who choose to utilize teleconferencing. Similarly, in acknowledgement of the critical importance of maintaining transparency and accountability, the bill requires that a quorum of the governing body be physically present at a clearly identified meeting location for all public meetings.”

- 13) **Arguments in Opposition.** A coalition including the California News Publisher’s Association, the ACLU California Action, the First Amendment Coalition, the Howard Jarvis Taxpayers Association, Californians Aware, the Leadership Counsel for Justice and Accountability, and the Society for Professional Journalists Los Angeles, in opposition,

writes, “If enacted, AB 2449 would fundamentally alter the Brown Act by providing express authorization to members of legislative bodies to teleconference into public meetings from private locations not identified or accessible to the public at any time, without a compelling reason. While temporary accommodations may be necessary, such as during the COVID-19 public health emergency, this bill would excise the longstanding democratic protection afforded by requiring the entire legislative body to directly face the public. We must be mindful before making substantial changes to the laws that have ensured democracy at the local government level for generations. There are many examples of remote meetings increasing public participation in many respects, but there are still many lessons to learn as we continue to move out of the COVID-19 pandemic...

“To be clear, we support increased public access, such as the provisions of this bill that increase remote participation for the public; however, AB 2449, as written, ties that expanded access to removal of existing requirements for those who have sought and agreed to public service in local government. We greatly appreciate that the bill has incorporated many of the provisions that were the result of discussion on AB 339 (Lee) & AB 361 (R. Rivas) last year, including requiring members to be on camera, providing telephonic access for those who do not have stable internet, addressing technological disruptions, and others. However, those bills differed in that AB 339 sought to only expand access for the public, and AB 361’s allowances for legislative bodies are confined to states of emergency and required a vote every 30 days to continue.

“We are also very glad to see that a quorum must be in the same physical location with the public in this bill, but it is essential to narrow the circumstances in which members outside of the quorum can participate remotely, so that the same members cannot avoid physically appearing without circumstances that justifies limiting the public’s access to the member who is supposed to be serving their interests.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Three Valleys Municipal Water District [SPONSOR]  
Association of California Healthcare Districts  
Association of California Water Agencies  
California Municipal Utilities Association  
California State Association of Counties  
Calleguas Municipal Water District  
Central Basin Municipal Water District  
Central Contra Costa Sanitary District  
City of Cupertino  
City of Rancho Palos Verdes  
County of Monterey (if amended)  
Cucamonga Valley Water District  
Eastern Municipal Water District  
Foothill Municipal Water District  
Inland Empire Utilities Agency  
League of California Cities  
Local Agency Formation Commission for the County of Los Angeles

Los Angeles Unified School District  
Mesa Water District  
Metropolitan Water District of Southern California  
Municipal Water District Orange County  
Public Risk Innovation, Solutions, and Management  
Regional Chamber of Commerce, San Gabriel Valley  
Rowland Water District  
Rural County Representatives of California  
San Bernardino Municipal Water Department  
San Bernardino Valley Municipal Water District  
San Diego County Water Authority  
San Gabriel Basin Water Quality Authority  
San Gabriel Valley Council of Governments (if amended)  
San Gabriel Valley Economic Partnership  
San Gabriel Valley Municipal Water District  
San Gabriel Valley Water Association  
Santa Margarita Water District  
Solano County Board of Supervisors  
Southern California Water Coalition  
Suburban Water Systems  
Upper San Gabriel Valley Municipal Water District  
Urban Counties of California  
Walnut Valley Water District  
Western Municipal Water District

**Opposition**

ACLU California Action  
California News Publishers Association  
Californians Aware  
First Amendment Coalition  
Howard Jarvis Taxpayers Association  
Leadership Counsel for Justice & Accountability  
Society of Professional Journalists, Greater Los Angeles Chapter

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958