

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 817 (Pacheco) – As Amended March 16, 2023

SUBJECT: Open meetings: teleconferencing: subsidiary body.

SUMMARY: Allows 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. Specifically, **this bill:**

- 1) Defines, for the purposes of this bill, “subsidiary body” to mean a legislative body that meets all of the following:
 - a) Is 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. However, 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, except that standing committees of a legislative body, irrespective of their composition, which 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.
 - b) Serves exclusively in an advisory capacity.
 - c) Is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements.
- 2) Allows a subsidiary body to use teleconferencing without complying with the following teleconference requirements of the Brown Act:
 - a) Posting agendas at each teleconference location.
 - b) Identifying each teleconference location in the notice and agenda for the meeting or proceeding.
 - c) Making each teleconference location accessible to the public.
 - d) Requiring at least a quorum of the members of the subsidiary body to participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.
- 3) Requires, in order to use teleconferencing pursuant to this bill, a subsidiary body to comply with all of the following:

- a) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the subsidiary body.
- b) Each member of the subsidiary body shall participate through both audio and visual technology.
- c) The subsidiary body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the subsidiary body:
 - i) A two-way audiovisual platform.
 - ii) A two-way telephonic service and a live webcasting of the meeting.
- d) The subsidiary body shall give notice of the meeting and post agendas as otherwise required by the Brown Act.
- e) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the subsidiary body shall also give notice of the means by which members of the public may access the meeting and offer public comment.
- f) The agenda shall identify and include an opportunity for all persons to attend and address the subsidiary body directly, pursuant to the Brown Act's provisions governing public comment, via a call-in option or via an internet-based service option.
- g) In the event of a disruption that prevents the subsidiary body 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 subsidiary body's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the subsidiary 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 subsidiary body from broadcasting the meeting may be challenged pursuant to specified provisions of the Brown Act that govern the ability of a district attorney or interested person to seek a judicial determination that an action violates specified provisions of the Brown Act and is, therefore, null and void.
- h) An individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the subsidiary 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, notwithstanding provisions of the Brown Act that prohibit a member of the public from being required to register or fulfill any condition before attending a meeting of a legislative body of a local agency.
- i) The subsidiary 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 subsidiary body and offer comment in real time.

- j) A subsidiary body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to h), above, to provide public comment until that timed public comment period has elapsed.
 - k) A subsidiary body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register, pursuant to h), above, or otherwise be recognized for the purpose of providing public comment.
 - l) A subsidiary body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to h), above, until the timed general public comment period has elapsed.
- 4) Requires, in order to use teleconferencing pursuant to this bill, the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action to make the following findings by majority vote before the subsidiary body uses teleconferencing pursuant to this bill for the first time, and every 12 months thereafter:
- a) The legislative body has considered the circumstances of the subsidiary body.
 - b) Teleconference meetings of the subsidiary body would enhance public access to meetings of the subsidiary body.
 - c) Teleconference meetings of the subsidiary body would promote the attraction, retention, and diversity of subsidiary body members.
- 5) Provides that the definitions in specified existing provisions of the Brown Act, including teleconferencing provisions, apply for the purposes of this bill.
- 6) Finds and declares that Section 1 of this bill imposes 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, 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.
- 7) 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 that Constitutional provision, the Legislature makes the following findings:

This act is necessary to provide opportunities for public participation in meetings of specified public agencies and to promote the attraction and retention of members of those agencies.

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, 2024, pursuant to provisions of law enacted via AB 361 (Robert Rivas), Chapter 165, Statutes of 2021, a local agency to use teleconferencing without complying with the requirements of 3), above, during a proclaimed state of emergency, as specified. [GOV § 54953(e)]
- 6) 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, "The Legislature has previously declared, 'A vast and largely untapped reservoir of talent exists among the citizenry of the State of California, and that rich and varied segments of this great human resource are, all too frequently, not aware of the many opportunities which exist to participate in and serve on local regulatory and advisory boards, commissions, and committees.' Under the Local Appointments List, also known as Maddy's Act, this information must be publicly noticed and published.

"However, merely informing the public of the opportunity to engage is not enough: we can and must address barriers to entry to achieve diverse participation and representation in civic leadership. Diversification in civic participation at all levels requires careful consideration of different protected characteristics as well as socio-economic status. Participation in local advisory bodies and appointed boards and commissions often serves as a pipeline to local elected office and opportunities for state and federal leadership positions.

"AB 817 promotes equity and inclusion for many protected classes in local communities statewide by removing a barrier to entry into leadership opportunities. Allowing non-decision-making legislative bodies to participate virtually as long as they do not have the ability to take final action is a step forward in seeking to remedy injustices resulting from underrepresentation in leadership positions. This approach takes into consideration the public's direct access to locally elected decision making bodies while opening the pathway to serve on advisory boards, commissions, and committees."

- 2) **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.

- 3) **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.

- 4) **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.
- 5) **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.

- 6) **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.
- 7) **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.”
- 8) **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.

- 9) **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.

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.

AB 2449 remains in effect until January 1, 2026.

10) **Bill Summary.** This bill creates a new definition – a “subsidiary body” – for the purposes of the Brown Act’s teleconferencing requirements and allows a subsidiary body to use teleconferencing without complying with the four rules of GOV § 54953(b)(3), which include the following:

- a) Posting agendas at each teleconference location.
- b) Identifying each teleconference location in the notice and agenda for the meeting or proceeding.
- c) Making each teleconference location accessible to the public.
- d) Requiring at least a quorum of the members of the subsidiary body to participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.

The bill defines “subsidiary body” to mean a legislative body that meets all of the following:

- a) Is a commission, committee, board, or other body of a local agency, whether permanent or temporary, 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. However, standing committees of a legislative body, irrespective of their composition, which 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.

- b) Serves exclusively in an advisory capacity.
- c) Is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements.

In order to use teleconferencing pursuant to this bill, a subsidiary body to must comply with a number of requirements, including:

- a) **Audio and Visual Technology.** Each member of the subsidiary body must participate through both audio and visual technology.
- b) **Public Access.** The subsidiary body must provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the subsidiary body:
 - i) A two-way audiovisual platform.
 - ii) A two-way telephonic service and a live webcasting of the meeting.
- c) **Notice and Agendas.** The subsidiary body shall give notice of the meeting and post agendas as otherwise required by the Brown Act, including information regarding 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 and address the subsidiary body directly via a call-in option or an internet-based service option.

This bill contains identical provisions as AB 361 and AB 2449 concerning meeting disruptions and additional public comment requirements.

Before a subsidiary body can use teleconferencing pursuant to this bill, and every 12 months thereafter, the legislative body that established the subsidiary body must make the following findings:

- a) The legislative body has considered the circumstances of the subsidiary body.
- b) Teleconference meetings of the subsidiary body would enhance public access to meetings of the subsidiary body.
- c) Teleconference meetings of the subsidiary body would promote the attraction, retention, and diversity of subsidiary body members.

This bill is sponsored by the California Association of Recreation and Parks Districts, the League of California Cities, Urban Counties of California, Rural County Representative of California, and California State Association of Counties.

11) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Sunset Provision.** When the Legislature approved AB 361 and AB 2449, both measures contained sunset provisions. AB 361 contains a sunset date of January 1, 2024. AB 2449 contains a sunset date of January 1, 2026. This bill contains no sunset date. The Committee may wish to consider if it wishes to ensure the automatic legislative review of the provisions of this bill that a sunset date would provide.
- b) **Protecting Public Access and Participation.** AB 2449 provided local governing board members with enhanced flexibility for teleconferencing while maintaining some of the protections for public access and participation, by requiring the following:
 - i) At least a quorum of the legislative body must participate in person.
 - ii) In-person participation must be from a singular physical location.
 - iii) The singular physical location must be:
 - (1) Clearly identified on the agenda.
 - (2) Open to the public.
 - (3) Situated within the boundaries of the local agency's jurisdiction.

The Committee may wish to consider if these protections for the public should be added to this bill.

- c) **Compensated Members.** The Committee may wish to consider if a member of a subsidiary body should enjoy the flexibility to teleconference that this bill provides if that person is receiving compensation for serving on the subsidiary body. According to the author's office, members of a subsidiary body are not compensated for their service on a subsidiary body. Nonetheless, the Committee may wish to consider if language should be added to this bill to ensure that paid members attend meetings in person.
- 12) **Committee Amendments.** To address the policy considerations above, the Committee may wish to amend this bill as follows:
- a) Add a sunset date of January 1, 2026.
 - b) Require a quorum of members of the subsidiary body to participate from a single, physical location within the jurisdiction of the subsidiary body's local agency that is accessible to the public. To meet this quorum requirement, a person with a disability that requires accommodation pursuant to the Americans with Disabilities Act may count towards the quorum, whether that person participates in-person or via teleconference.
 - c) Require any person who receives compensation for their service on the subsidiary body (other than reimbursement for actual and necessary expenses) to participate in person.
- 13) **Related Legislation.** AB 557 (Hart) 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. This bill is pending in this Committee.

AB 1275 (Arambula) authorizes the recognized statewide community college student organization and other student-run community college organizations to use teleconferencing for their meetings without having 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 student organization's members participate from a singular physical location. This bill is pending in this Committee.

AB 1379 (Papan) eliminates 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 is pending in this Committee.

SB 411 (Portantino) 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 411 is pending in the Senate Judiciary Committee.

SB 537 (Becker) allows 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 pending in the Senate Judiciary Committee.

- 14) **Previous Legislation.** AB 1944 (Lee) 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.

- 15) **Arguments in Support.** The California Association of Recreation and Parks Districts, the League of California Cities, Urban Counties of California, the Rural County Representative of California, and the California State Association of Counties, sponsors of this measure, write, “Local governments across the state have faced an ongoing challenge to recruit and retain members of the public on advisory bodies, boards, and commissions. Challenges associated with recruitment have been attributed to participation time commitments; time and location of meetings; physical limitation, conflicts with childcare, and work obligations.

“The COVID-19 global pandemic drove both hyper-awareness and concerns about the spread of infectious diseases, as well as removed barriers to local civic participation by allowing this same remote participation. This enabled 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...

“The in-person requirement to participate in local governance bodies presents a disproportionate challenge for those with physical or economic limitations, including seniors, persons with disability, single parents and/or caretakers, economically marginalized groups, and those who live in rural areas and face prohibitive driving distances. Participation in local advisory bodies and appointed boards and commissions often serves as a pipeline to local elected office and opportunities for state and federal leadership positions.

“AB 817 would help address these issues by providing a narrow exemption under the Ralph M. Brown Act for non-decision-making legislative bodies that do not take final action on any legislation, regulations, contracts, licenses, permits, or other entitlements, so that equity in opportunity to serve locally and representative diversity in leadership can be achieved. For these reasons, we are collectively pleased to support AB 817...”

- 16) **Arguments in Opposition.** A coalition of opponents, including the California News Publishers Association, ACLU California Action, Californians Aware, the California Broadcasters Association, the First Amendment Coalition, Howard Jarvis Taxpayers Association, Leadership Council for Justice and Accountability, National Press Photographers Association, NLGJA: Association of LGBTQ+ Journalists, Radio Television Digital News Association, San Diego Pro Chapter of the Society of Professional Journalists, Society of Professional Journalists, Los Angeles Chapter, Society of Professional Journalists, Northern California Chapter, and the Freedom of Information Committee, write, “Last year, lawmakers 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... 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 as well. The bill also contained many other guardrails that were important to this coalition, the sponsors of the bills and the numerous policy committees that invested time considering the bill.

“AB 2449 by Assemblymember Blanca Rubio was the result of careful negotiations by members of the undersigned coalition. 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 their own remote participation following the COVID-19 era of 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 and permanent changes to the Brown Act...”

“AB 817’s rewriting of the Brown Act would fundamentally undermine one of the law’s key protections for public access and participation — the guarantee that the press and public can be physically present in the same room as those sitting on the dais and making decisions. Such physical presence has been a constant hallmark of democratic institutions... For journalists who do the important work of informing their communities, AB 817 would make newsgathering even more challenging. A primary newsgathering tool is being able to approach officials, see how decision-makers engage with the public, and observe how officials interact with one another on the dais. By allowing bodies to meet remotely indefinitely, AB 817 would significantly hamper the ability of reporters and photographers to provide valuable information to their readers, leaving Californians less informed.

“For advocates and other concerned Californians who do community organizing for social change, AB 817 would make this work more challenging. A primary organizing tool of impacted communities is to show up to public meetings in person, face the public officials who are making decisions that affect us all, and at times raise awareness about important public policy among members of the observing press...”

“The undersigned organizations advocate for or increase awareness about ways to achieve the goal of greater diversity and equity within government bodies and among the members of the public who attend public meetings. Allowing members to participate remotely and never have to face the public in person is not an effective way to diversify bodies governed by our state’s open-meeting laws. Diversifying our state and local legislative bodies instead requires public officials to commit to robust outreach to potential members, provide stipends for unpaid positions, implement an open and transparent selection and appointment process, and exercise the political will to appoint members from diverse backgrounds and identities to public bodies, among other things.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Recreation and Parks Districts [CO-SPONSOR]
California State Association of Counties [CO-SPONSOR]
League of California Cities [CO-SPONSOR]
Rural County Representatives of California [CO-SPONSOR]
Urban Counties of California [CO-SPONSOR]
AARP
Association of California School Administrators
Association of California Healthcare Districts (ACHD)
Bay Area Air Quality Management District
Bet Tzedek
CA In-home Supportive Services Consumer Alliance
California Air Pollution Control Officers Association
California Association of Councils of Governments
California Association of Public Authorities for Ihss
California Commission on Aging
California Municipal Utilities Association (CMUA)
City and County Association of Governments of San Mateo County
City Clerks Association of California
City of Bell
City of Belmont
City of Carlsbad
City of Downey
City of Mountain View
City of Norwalk
City of Redwood City
City of San Marcos
City of Thousand Oaks
City of West Hollywood
City of Winters
City of Woodland
Civicwell (formally the Local Government Commission)
Conejo Recreation and Park District
Contra Costa County
Contra Costa County Advisory Council on Aging
County of Monterey

County of Santa Barbara
County of Santa Cruz
County of Yolo
Democracy Winters
Disability Rights California
Fair Oaks Recreation & Park District
Hand in Hand: the Domestic Employers Network
Homebridge
Justice in Aging
Lake Cuyamaca
Livermore Area Recreation and Park District
Los Angeles County Division, League of California Cities
Los Angeles County Sanitation Districts
Peninsula Traffic Congestion Relief Alliance (COMMUTE.ORG)
Placer Independent Resource Services
Regional Climate Protection Authority
Rim of The World Recreation and Park District
Sacramento Area Council of Governments
San Carlos; City of
San Diego; County of
San Mateo County Board of Supervisors
Santa Barbara County Association of Governments
Santa Cruz County Board of Supervisors
Sonoma Clean Power
Sonoma County Transportation Authority
Thousand Oaks; City of
Village Movement California
Yolo County In-home Supportive Services Advisory Committee

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
National Press Photographers Association
Nlgja: Association of Lgbtq+ Journalists
Northern California Society of Professional Journalists
Radio Television Digital News Association
San Diego Pro Chapter of The Society of Professional Journalists
Society of Professional Journalists, Greater Los Angeles Chapter
Society of Professional Journalists, Northern California Chapter

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