

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 537 (Becker) – As Amended April 24, 2023

**SENATE VOTE:** 32-8

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

**SUMMARY:** Allows multi-jurisdictional, cross-county local agencies with appointed members to teleconference without meeting all of the teleconferencing requirements of the Ralph M. Brown Act (Brown Act). Specifically, **this bill:**

- 1) Provides the following definitions:
  - a) “Eligible legislative body” means a board, commission, or advisory body of a multijurisdictional, cross-county agency, the membership of which board, commission, or advisory body is appointed and which board, commission, or advisory body is otherwise subject to the Brown Act.
  - b) “Multijurisdictional” means a legislative body that includes representatives from more than one county, city, city and county, special district, or a joint powers entity formed pursuant to the Joint Exercise of Powers Act.
- 2) Allows an eligible legislative body to use teleconferencing 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 eligible legislative body to participate from within the local agency’s jurisdiction if the legislative body complies with the requirements of this bill.
- 3) Provides that an eligible legislative body shall not use teleconferencing pursuant to this bill unless the eligible legislative body has adopted a resolution that authorizes the eligible legislative body to use teleconferencing at a regular meeting in open session.
- 4) Requires an eligible legislative body that holds a meeting pursuant to this bill to comply with all of the following:
  - a) In each notice and posting of the time or agenda of the teleconferenced meeting, the eligible legislative body shall include 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.
  - b) In the event of a disruption that prevents the eligible legislative 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 eligible legislative body’s control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the eligible legislative 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 eligible legislative body from broadcasting the meeting may be challenged pursuant to existing provisions of the Brown Act, as specified.

- c) The eligible legislative body shall not require public comments to be submitted in advance of the meeting and shall provide an opportunity for the public to address the legislative body and offer comment in real time.
- d) If an eligible legislative body provides a timed public comment period for each agenda item, the eligible legislative body shall not close the public comment period for the agenda item, or the opportunity to register pursuant to 6), below, to provide public comment until that timed public comment period has elapsed. If an eligible legislative body does not provide a timed public comment period, but takes public comment separately on each agenda item, the eligible legislative body 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 6), below. If an eligible legislative body provides a timed general public comment period that does not correspond to a specific agenda item, the eligible legislative body shall not close the public comment period or the opportunity to register, pursuant to 6), below, until the timed general public comment period has elapsed.
- e) Except as provided in existing provisions of the Brown Act, as specified, an eligible legislative body, within seven days of holding a teleconference meeting, shall provide both of the following on its internet website:
  - i) A record of attendance of both community members and members of the eligible legislative body.
  - ii) The number of public comments in the meeting.
- f) At least a quorum of the members of the eligible legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The eligible legislative body shall identify each member of the eligible legislative body who plans to participate remotely in the agenda and shall include the address of the publicly accessible building from where they will participate via teleconference. The specific room or location within the publicly accessible building from which a member participates via teleconference is not required to be publicly accessible.
- g) The eligible legislative body shall provide a physical location from which the public may attend or comment.
- h) The eligible legislative body shall comply with specified requirements of the Brown Act regarding open and public meetings, including teleconferencing requirements, except the requirements 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 eligible legislative body to participate from within the local agency's jurisdiction.

- 5) Provides that a member of the eligible legislative body shall not participate in a meeting remotely pursuant to this bill unless they meet both of the following requirements:
  - a) The location from which the member participates is more than 40 miles from the location of the in person meeting.
  - b) The member participates from their office or another location in a publicly accessible building.
- 6) Provides that an individual desiring to provide public comment through the use of a third-party internet website or other online platform during a meeting held pursuant to this bill may be required to register to log in to the teleconference if both of the following conditions are met:
  - a) The internet website or online platform requires that registration.
  - b) The decision to require registration is not under the control of the legislative body.
- 7) Provides a sunset date of January 1, 2028, for the provisions outlined above.
- 8) Adds to the “just cause” conditions under which the member of a legislative body may use the alternative teleconferencing provisions of AB 2449 (Blanca Rubio), Chapter 285, Statutes of 2022, to include an immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.
- 9) Finds and declares that 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:

Permitting remote participation for just cause due to a member’s immunocompromised family member, as well as extending the operation of teleconferencing for legislative bodies of multijurisdictional, cross-county agencies with appointed membership, will further increase public participation, increase the pool of people who are able to serve on these bodies, including those that would otherwise have to travel long distances to attend meetings in person, and protect the health and safety of the public.

- 10) Finds and declares that 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 paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Permitting remote participation for just cause due to a member’s immunocompromised family member, as well as extending the operation of teleconferencing for legislative bodies of multijurisdictional, cross-county agencies with appointed membership, will further increase public participation, increase the pool of people who are able to serve on these

bodies, including those that would otherwise have to travel long distances to attend meetings in person, and protect the health and safety of the public.

- 11) Provides that this bill is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

Virtual meetings have allowed much easier access to appointed bodies of local agencies with far more members of the public participating in each meeting. This has created greater equity in the process and fostered the health of our democracy. In-person meetings may jeopardize the health and safety of vulnerable citizens due to ongoing risks of illnesses.

**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, “With the state of health emergency expiring in February 2023, local multijurisdictional boards have begun to feel the impact of transitioning back to in person meetings. They are already having issues with membership retention, and are concerned about a drop in public attendance. Many multijurisdictional legislative bodies lack the flexibility to accommodate their members and the public with hybrid teleconferencing meetings. For multijurisdictional bodies covering large areas, it can often be difficult for board members and the public to travel great lengths to actively participate in a meeting. This distance disincentivizes participation from community members, as well as prospective legislative body members.

“SB 537 encourages participation by allowing multijurisdictional boards with appointed members to convene in hybrid settings; allowing those most impacted to join remotely while maintaining an in person quorum. SB 537 also updates health exemptions to include immunocompromisation so that immunocompromised individuals can meet remotely without risking their health or the health of a loved one. Lastly, SB 537 also collects data on attendance of remote meetings and requires the data to be posted on agencies' websites, increasing available data and evidence on the benefit of remote meetings.

“The gateways provided in this bill offer an important update to facilitate attendance and active participation in multijurisdictional agency meetings; while creating guardrails to preserve the intent of the Brown Act.”

- 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 allows multi-jurisdictional, cross-county local agencies with appointed members (eligible 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.

In order for an eligible body to use teleconferencing pursuant to this bill, a number of requirements must be met. These include:

- a) **Resolution in Open Meeting.** The eligible body must adopted a resolution that authorizes the eligible body to use teleconferencing as outlined by this bill at a regular meeting in open session.
- b) **Website Postings.** The eligible body must, within seven days of holding a teleconference meeting, provide both of the following on its internet website:
  - i) A record of attendance of both community members and members of the eligible legislative body.
  - ii) The number of public comments in the meeting.
- c) **Quorum Requirement.** At least a quorum of the members of the eligible body must participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.
- d) **Physical Location for the Public.** The eligible legislative body must provide a physical location from which the public may attend or comment.
- e) **Physical Location of Members.** A member of an eligible body is not allowed to participate in a meeting remotely pursuant to this bill unless they meet both of the following requirements:
  - i) The location from which the member participates is more than 40 miles from the location of the in person meeting.
  - ii) The member participates from their office or another location in a publicly accessible building.

This bill contains identical provisions as AB 361 and AB 2449 concerning meeting disruptions and public comment requirements, and requires an eligible body to comply with other requirements of the Brown Act regarding open and public meetings, including teleconferencing requirements. This bill contains a sunset date of January 1, 2028, for the provisions outlined above.

This bill also adds to the “just cause” conditions under which the member of a legislative body may use the alternative teleconferencing provisions of AB 2449, to include an immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.

This bill is sponsored by Peninsula Clean Energy.

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 contained a sunset date of January 1, 2024. AB 2449 contained a sunset date of January 1, 2026. Earlier this year, this Committee approved AB 1275 to expand teleconferencing flexibilities for community college organizations. AB 1275 contains a sunset date of January 1, 2026. This bill’s sunset date

is January 1, 2028. The Committee may wish to consider if this year's bills that provide additional teleconferencing flexibilities should have consistent sunsets dates.

- 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 any of these protections for the public should be added to this bill.

- c) **Compensated Members.** The Committee may wish to consider if a member of an eligible body should enjoy the flexibility to teleconference that this bill provides if that person is receiving compensation for serving on the eligible body, or if language should be added to this bill to ensure that members who are paid to attend meetings actually do so in person.

12) **Committee Amendments.** To address the policy considerations above, the Committee may wish to amend this bill as follows:

- a) Change the sunset date to January 1, 2026.
- b) Require a quorum of members of the eligible body to participate from one or more physical locations within the jurisdiction of the eligible 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 eligible body to participate in person.

13) **Related Legislation.** AB 557 (Hart) eliminates the January 1, 2024, sunset date on AB 361; 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; and, deletes a provision allowing local agencies to continue to hold meetings if a state of emergency ends, but state or local officials continue to impose or recommend measures to promote social distancing. AB 557 bill is pending on the Senate Floor.

AB 817 (Pacheco) 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. AB 817 is pending in this Committee.

AB 1275 (Arambula) expands Brown Act teleconferencing flexibility for community college student organizations. AB 1275 is pending in Senate Governance and Finance 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 a neighborhood council, as defined, to teleconference without meeting all of the teleconferencing requirements of the Brown Act. SB 411 is pending in this 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.** Peninsula Clean Energy Authority (PCE), sponsor of this bill, writes, “Regional boards and commissions address cross-boundary issues that span a myriad of activities and services including, but not limited to: procuring renewable and clean energy, maintaining transportation systems, governing the responsible use of water, developing sustainable communities strategies, and promoting wildfire abatement. These boards and commissions are often composed of city council members and county supervisors from the various communities within an established geographic boundary to provide equitable representation in these discussions. Because these bodies address issues affecting multiple cities and/or counties, board members and the public are often required to travel great lengths, sacrifice additional time with family members, or dismiss professional obligations, to attend in-person meetings.

“The Peninsula Clean Energy board consists of one representative from each of the 20 cities within San Mateo County, one representative from Los Banos, and two representatives for San Mateo County. Los Banos, which joined PCE as a member in late 2020, is 100 miles away from Peninsula Clean Energy’s office where we conduct our meetings. This is an impractical distance for monthly in-person attendance at evening Board meetings.

“Furthermore, under current law, if the representative from Los Banos is to attend remotely then he or she must do so from a public facility, such as city hall or the police station and the individual must be available to the public and their exact location included in the meeting notice. Putting such accommodations in place every month is time consuming and costly to PCE and the city and runs counter to our experience over the past three years. Furthermore, our board meetings occur late in the evening, and there is a safety factor to consider in positioning our lone Los Banos representative in a publicly noticed and available location at night, month after month.

“Peninsula Clean Energy recently adopted a Diversity, Equity, Accessibility, and Inclusion (DEAI) policy. We strive to create a diverse and inclusive Board and Community Advisory Committee, which will help push our agency forward. The policy proposed in SB 537 removes barriers to Board participation that most impacts socially and economically disadvantaged constituents. SB 537 will help advance our DEAI policy as it encourages participation by allowing applicable multijurisdictional board members to choose to meet remotely without limits on remote meetings and providing some additional safety considerations, therefore making it easier for current and potential board members to fully participate virtually.”

- 16) **Arguments in Opposition.** A coalition of opponents, including ACLU California Action, Californians Aware, the California Broadcasters Association, California Common Cause, CCNMA Latino Journalists of California, the First Amendment Coalition, the Greater Los Angeles Pro Chapter of the Society of Professional Journalists, Howard Jarvis Taxpayers Association, National Press Photographers Association, NLGJA: the Association of LGBTQ+ Journalists, Los Angeles Chapter, Orange County Press Club, Pacific Media Workers Guild, News Guild – Communications Workers of America Local 39521, Radio Television Digital News Association, San Franciscans for Sunshine, the San Diego Pro Chapter of the Society of Professional Journalists, and the Society of Professional Journalists, Northern California Chapter, Freedom of Information Committee write, “Lawmakers last year passed AB 2449, amending the Brown Act to give further flexibility to individual members of local legislative bodies to participate in public meetings remotely when certain requirements are met... Importantly, the bill required the body to maintain a quorum of members in one physical location accessible to the public inside the jurisdiction. Whenever some members might elect to use teleconferencing to participate remotely, the legislation specifies that the public must also have the ability to access and participate through remote technology.

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

“SB 537’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. Officials who are in the same room as their constituents can’t just turn off their cameras or turn down the volume on criticism. While we appreciate the amendments aimed at putting in some guardrails, there is no substitute for face-to-face accountability...

“For advocates and other concerned Californians who do community organizing for social change, SB 537 makes 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 more diverse members to public bodies, among other things...”

“To address these issues, we seek amendments to SB 537 requiring a physical quorum of members in one location open to the public, with more robust limits on the circumstances and frequency any individual member can participate remotely, along with a requirement that any body with members electing to use teleconferencing provide the public with both telephonic and video access, among other improvements to protect the public’s interests.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Peninsula Clean Energy [SPONSOR]  
Bay Area Air Quality Management District  
California Association of Councils of Governments  
City of Brisbane  
City of Burlingame  
City of Menlo Park  
City of San Bruno  
City of San Carlos  
City of San Mateo  
City of South San Francisco  
City of South San Francisco  
League of California Cities  
Los Angeles County Sanitation Districts  
Menlo Park City Councilmember Betsy Nash  
San Diego Community Power  
Sonoma Clean Power  
Streets for All  
Town of Atherton  
Town of Colma  
Transportation Agency for Monterey County (TAMC)

**Support If Amended**

California Association of Clerks & Election Officials  
Los Angeles County Division, League of California Cities

**Oppose Unless Amended**

ACLU California Action  
Cal Aware

California Broadcasters Association  
California Common CAUSE  
California News Publishers Association  
Californians Aware: the Center for Public Forum Rights  
CCNMA: Latino Journalists of California  
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  
Orange County Press Club  
Pacific Media Workers Guild, News Guild-Communications Workers of America Local 39521  
Radio Television Digital News Association  
San Diego Pro Chapter of the Society of Professional Journalists  
Society of Professional Journalists, Greater Los Angeles Chapter  
One individual

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