



## **MEMORANDUM**

**Date:** February 12, 2023  
**To:** Dr. Stephanie Droker, Interim Deputy Chancellor  
**From:** Nitasha K. Sawhney, Garcia Hernández Sawhney, LLP  
**Re:** Executive Summary of Brown Act Application to District and College Committees and Current Teleconference/Remote Participation Options

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This memorandum provides a brief summary of the Ralph M. Brown Act's ("Brown Act") application to district and college committees with a primary focus on the current teleconference/remote participation options under the Brown Act.

### **Basic Rule:**

***"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body."***  
(Gov't Code § 54953(a))

A "legislative body" is defined in California Government Code as: "(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. In Peralta Community College District, the Board of Trustees is the primary legislative body of the District and any other body/board/committee or commission created by the Board will constitute a legislative body itself.

Auxiliary organizations (i.e. college foundations) of a community college district are required to comply with the Brown Act pursuant to California Education Code section 72670. In 1983, the Attorney General's office formally opined that an academic senate of a California community college is an advisory body within the meaning of section 54952.3 of the Government Code, and its meetings fall within the open meeting requirements of the Brown Act.

The Brown Act also applies to meetings of all:

Standing committees – a committee that has continuing jurisdiction over a particular topic §54952(b).

Advisory committees that include a majority of the body and are not standing committees

The Brown Act does *not* apply to a subcommittee that is made up of less than a majority of the body, is an advisory committee and is not a standing committee. The Brown Act also does not apply to an ad hoc committee. An ad hoc committee is made up of less than a quorum of the body that do not have continuing jurisdiction on a topic or a regular meeting schedule, such as temporary task force.

## **The Brown Act And Teleconferencing/Remote Participation**

### *1. Original Brown Act Teleconferencing Rules Remain Available*

The Brown Act provided an option for teleconferencing prior to any changes made in response to the COVID-19 State of Emergency. Under the Brown Act rules, a legislative body may use the teleconferencing rules that applied pre-COVID.

For any agendaized meeting where a quorum of the Board meets in-person within the jurisdiction and otherwise complies with all Brown Act requirements, a member may participate remotely under the following conditions:

- Each teleconference location is identified in the agenda of the meeting (for a regular meeting the agenda is posted 72 hours before the meeting for a special meeting it is posted 24 hours before the meeting)
- Each teleconference location is accessible to the public (this would apply to a private residence, hotel room, place of business, etc);
- A copy of the agenda is posted at the location where the teleconferencing member is participating in the meeting;
- Members of the public are provided an opportunity to speak at the teleconference location; and
- All votes are taken by roll call.<sup>1</sup>

### *2. AB 2449 – Newly Added Teleconference Rules Available Jan. 1, 2023 Limited Teleconferencing in Specified Scenarios*

One part of AB 2449 provides for new teleconferencing rules when a member of the legislative body needs to attend remotely for an emergency, or other reasons supported by “just cause.”

Under the new teleconference rules, a legislative body may hold a “hybrid” (partial teleconference, partial in-person) meeting without having to post agendas at teleconference locations, identify teleconference locations in the agenda, and make all

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<sup>1</sup> Cal. Gov’t Code § 54953(b)

teleconference locations open to the public. Instead, a member may participate remotely when:

- a quorum of the body meets in-person within the jurisdiction and otherwise complies with certain remote access Brown Act requirements,<sup>2</sup>
- the member may attend via teleconference under the “for cause” exception.
  - “Just cause” is defined as a caregiving / childcare need, contagious illness, physical or mental disability, or travel while on official district business.<sup>3</sup> Any member whose circumstances fulfill “just cause” may use this option, up to twice per calendar year without committee approval, so long as they notify the committee “at the earliest opportunity possible” of the need to participate remotely and provide a general description of the circumstances.
  - The option is also available to members experiencing an emergency circumstance (a physical or family medical emergency that prevents in-person attendance).
- Members participating remotely under AB 2449 are not required to make their remote location open and accessible to the public, and their location does not have to appear in the agenda.
- Once a member uses the “for cause” option twice in a year, additional remote appearances require committee approval.<sup>4</sup>
- No member can use “just cause” for over 20% of the regular meetings in any given year.
- One or more members of the legislative body (but less than a quorum) have “**just cause**” for not attending the meeting in person (childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on official public business); or

Further, a quorum of the body must still be meeting in-person, and the body must meet the following relaxed remote access rules:

- Provide either a two-way audio visual system or a two-way phone service in addition to live webcasting;

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<sup>2</sup> The Board must:

Cal. Gov. Code § 54953(f)(1).

<sup>3</sup> Cal. Gov. Code § 54953(f).

<sup>4</sup> The member must “make a request” and the legislative body must “take action to approve the request.” The member must couple any such request with a public disclosure as to “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.”

- Identify a call-in or internet-based access option on the agenda, in addition to the in-person meeting location;
- Ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored; and
- Avoid requiring public comments to be submitted in advance, and provide a real-time option for the public to address the body at the meeting.

This section of AB 2449 sunsets on January 1, 2026.

### *3. AB 361 Rules In Effect Today & Re-Codified in AB 2449*

AB 2449 also recodified AB 361 which allowed legislative bodies to hold fully remote meetings connected to a state of emergency. When a state of emergency is involved, a legislative body may hold teleconference/remote meetings in the following circumstances:

- The meeting is held during a proclaimed state of emergency and state/local officials have imposed or recommended measures to promote social distancing (including, for example severe local fire);
- The meeting is held during a proclaimed state of emergency for the purpose of determining whether meeting in person during the emergency would present imminent risks to the health or safety of attendees; and/or
- The meeting is held during a proclaimed state of emergency and the body has already determined that meeting in person during the emergency would present imminent risks to the health or safety of attendees.

If the body is relying on the above findings to justify a remote meeting by teleconference, it must:

- Give the public notice of how to access the meeting and offer public comment;
- Ensure that if a disruption to the online meeting occurs, the body takes no further action on agenda items until public access is restored;
- Avoid requiring public comments to be submitted in advance, and provide a real-time option for the public to address the body at the meeting; and
- If the state of emergency remains active or social distancing measures continue to be imposed/recommended by state or local officials, continue to make findings supporting the teleconference meetings at least every 30 days.

This section sunsets on January 1, 2024.

**Prospective Changes to the Brown Act.** As a final note, last legislative session, a different state bill pertaining to teleconferencing under the Brown Act, Assembly Bill 1944 or “AB 1944,” failed to attract support sufficient to proceed to a full vote of the State Senate; but the bill would



have further expanded the opportunity for remote participation without any limit or definition of “just cause.”

DRAFT