

The Governor has announced that California's current COVID-19 state of emergency will end February 28, 2023. Although Assembly Bill 361 does not sunset until January 1, 2024, agencies will no longer be able to trigger AB 361's remote meeting procedures in reliance on that emergency.

The Legislature passed a bill in 2022 that made changes to the Ralph M. Brown Act ("Brown Act") effective January 1, 2023. The Brown Act requires meetings of a local public agency's governing body to be open and public. The new change addresses board members' remote participation in meetings (Assembly Bill 2449). The upcoming change is summarized below, to help public agencies ensure they are prepared.

### **New Remote Participation Rules (Assembly Bill 2449)**

Even after the state of emergency ends, board members may continue to participate remotely by telephone and/or videoconference under the Brown Act teleconference rules that existed before the pandemic. Those teleconference rules are found in Government Code section 54953(b).

Assembly Bill 2449 (AB 2449) also allows individual board members to participate in meetings remotely during "emergency circumstances," such as physical or family medical emergencies, or for "just cause," including childcare or caregiving needs, contagious illness, a disability, or travel on official agency business. Unlike the traditional teleconference rules, AB 2449 allows a board member to remotely participate without as much pre-planning. The board member's teleconference location does not need to be posted on the meeting notice or agenda and does not have to be open to the public. However, **all** of the following requirements apply when a board member is using the new AB 2449 rules:

- At least a **quorum of the board must participate in the meeting from a single physical location** that is identified on the notice and agenda, is open to the public, and is located within the jurisdiction. This is different from the traditional teleconference rules where a quorum of the board must be within the jurisdiction but not necessarily all at one physical location.
- The agenda must **provide an option for members of the public to participate in the meeting remotely by phone and internet, e.g., a dial-in number and link**, in addition to public participation at the physical location. It is permissible for third-party website or internet platform providers to require the public to register/log-in. The public **must be able to comment in real-time**, and the board cannot require submission of comments in advance.
- The board member using AB 2449 must notify the agency at the earliest opportunity possible, even at the start of the meeting. A separate request and disclosure is required for each meeting. The **disclosure must include a general description of the need to participate remotely**, provided that they need not disclose any medical diagnosis or disability, or personal medical information. At the meeting before any action is taken, the board member must **publicly disclose whether any adults are present in the room with the board member**, and the general nature of the person's relationship.
- The board member must participate remotely by **audio and video**.
- A board member may only participate remotely based on "just cause" for **two meetings per calendar year**.
- In addition, a board member **may not participate remotely under AB 2449 for more than three consecutive months, or for 20 percent of the regular meetings within a calendar year**. If the governing body meets 10 or fewer times per year, each board member may only use AB 2449 twice per year.
- If the broadcast of the meeting or the public's ability to comment via call-in or internet-based options is **disrupted, the board cannot take further action until restored**. Any actions taken during disruption may be challenged.

Because of the many conditions for using AB 2449, we expect the traditional teleconference rules under the Brown Act may continue to be the go-to rules for board members seeking to participate remotely in meetings. AB 2449 sunsets on January 1, 2026.