



## MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Rebecca Akroyd, General Counsel

DATE: October 6, 2022

RE: Changes to the Brown Act Resulting from Enactment of AB 2449

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On September 12, 2022, Governor Newsom signed Assembly Bill 2449 (“AB 2449”<sup>1</sup>) into law, amending certain portions of the Ralph M. Brown Act (“Brown Act”) relating to teleconference participation by members of legislative bodies in public meetings. The changes are effective January 1, 2023, and facilitate teleconference participation in the absence of a state of emergency. This memorandum summarizes key provisions of changes in the law due to AB 2449.

### ANALYSIS

#### 1. Traditional Teleconference Rules

Government Code section 54953 includes various requirements for members of a legislative body participating in public meetings through teleconference. “Traditional” teleconference rules require (1) posting meeting agendas at all teleconference locations; (2) identifying all teleconference locations in the notice and agenda; and (3) making each teleconference location accessible to the public. (Gov. Code, § 54953(b).)

#### 2. Changes to the Brown Act in Response to the COVID-19 Emergency

In 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20 (clarified by Executive Order N-56-20), which suspended certain public meeting requirements of the Brown Act, and authorized local legislative bodies to hold public meetings through teleconferencing without complying with traditional notice and accessibility requirements. The orders also suspended the teleconference participation requirement that at least a quorum of the members of the legislative body must participate within the boundaries of the jurisdiction of the public agency. Executive Order N-08-21, issued June 11, 2021, extended the provisions of N-29-20 until September 30, 2021.

On September 16, 2021, Governor Newsom signed AB 361 into law, which extends the relaxed Brown Act teleconference rules for public meetings initially put into place by Executive Order through December 31, 2023. AB 361 allows public agencies to continue to hold telephonic and

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<sup>1</sup> Available at [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2449](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2449).

virtual public meetings using the COVID-19 pandemic rules so long as specific emergencies exist. If an agency does not make required ratifications and findings, it is subject to the otherwise applicable traditional teleconference rules.

The Water Authority Board of Directors last adopted a Resolution re-ratifying the Governor's proclamation of a state of emergency, proclaiming the state of emergency continues to directly impact the ability of members of the legislative bodies of the Water Authority to meet safely in person, and re-authorizing remote teleconference meetings for such legislative bodies on March 10, 2022, via Resolution No. 2022-505. Since the expiration of such authorization on April 9, 2022, members of the Water Authority's legislative bodies have been required to participate in Board and committee meetings in person, or via teleconference following compliance with traditional teleconference rules.

### 3. AB 2449 Changes

Effective January 1, 2023, AB 2449 provides a new opportunity for less than a majority of a legislative body to attend a meeting via teleconference under certain conditions when the majority (a quorum) of the legislative body participates from a single physical location open to the public.

To take advantage of this new opportunity, the legislative body must provide either a "two-way audiovisual platform" or a "two-way telephonic service and a live webcasting of the meeting"<sup>2</sup> as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body." (Gov. Code, § 54953(f)(1)(A).) Agendas must include an opportunity for all persons to attend and address the legislative body directly "via a call-in option, via an internet-based service option, and at the in-person location of the meeting." (Gov. Code, § 54953(f)(1)(C).)<sup>3</sup>

A member of the legislative body is authorized to participate remotely pursuant to Government Code section 54953(f) under two specific circumstances:

- (1) **Just Cause:** The member notifies the legislative body at the earliest possible opportunity, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely

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<sup>2</sup> While the Water Authority currently provides a two-way telephonic service, it does not provide live webcasting of meetings, and will need to obtain the necessary equipment if it wishes to allow members to participate remotely for just cause or under emergency circumstances.

<sup>3</sup> If there is a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, the legislative body cannot take any "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." (Gov. Code, § 54953(f)(1)(D).) Actions taking during a disruption are subject to challenge.

at the given meeting. A member of the legislative body may not use the provisions of this clause for more than two meetings per calendar year.

“Just Cause” is defined as any of the following circumstances:

- (a) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely;
- (b) A contagious illness that prevents a member from attending in person;
- (c) A need related to a physical or mental disability; or
- (d) Travel while on official business of the legislative body or another state or local agency.

(2) **Emergency Circumstances:** The 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 circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and does not require the member to disclose any medical diagnoses or disability, or any personal medical information that is already exempt under existing law. For the purposes of this clause, the following requirements apply:

- (a) A member must make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member must make a separate request for each meeting in which they seek to participate remotely.
- (b) 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 posted agenda for the meeting of which the request is made, the legislative body may take action by majority vote on the emergency circumstances request at the beginning of the meeting.

Any member participating remotely because of just cause or emergency circumstances 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. In addition, the member must participate through both audio and visual technology. The provisions of Government Code section 54953(f) do not permit a member to participate solely via teleconference for a period more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year.

The provisions of AB 2449 will remain in effect until January 1, 2026.