

BOARD MEETING DATE: December 2, 2022

AGENDA NO. 18

PROPOSAL: Address AB 2449 Requirements to Allow Members of South Coast AQMD Governing Board and South Coast AQMD Brown Act Committees and Groups to Meet Remotely in Cases of Emergency or for Just Cause

SYNOPSIS: On September 13, 2022, Governor Newsom signed Assembly Bill 2449 (AB 2449), amending certain portions of the Ralph M. Brown Act relating to teleconference participation by members of legislative bodies during public meetings. AB 2449 amends Section 54953 of the California Government Code to permit remote participation in public meetings in the absence of a state of emergency in specified instances where a member of the legislative body has just cause or is experiencing a specified personal emergency.

COMMITTEE: Administrative, November 10, 2022, Reviewed

RECOMMENDED ACTION:
Receive and file.

Wayne Nastri
Executive Officer

BTG:lal

Background

On September 13, 2022, Governor Newsom signed Assembly Bill 2449 (Rubio) (AB 2449) into law, amending certain provisions of the Ralph M. Brown Act (Brown Act) relating to teleconference participation by members of legislative bodies for and during public meetings. The new law amends existing requirements set forth in Government Code Section 54953 to facilitate virtual meetings in the absence of a declared state of emergency from January 1, 2023 until January 1, 2026.

Even before AB 2449 and the COVID-19 pandemic, the Brown Act allowed members of a legislative body to participate remotely in public meetings through teleconferencing

provided certain requirements were met. Traditional Brown Act teleconference requirements include: (1) posting meeting agendas at all teleconference locations 72 hours in advance of regular meetings; (2) identifying all teleconference locations in the posted agendas; and (3) ensuring each posted teleconference location is open to the public and ADA accessible. This still remains an option for Board Members or members of Brown Act Committees.

Recently, the Board has been adopting resolutions incorporating the requirements of AB 361, which allows Board Members and members of Brown Act Committees to conduct meetings via teleconference without adhering to the traditional Brown Act requirements because of the COVID-19 pandemic. AB 361 applies only during a state of emergency declared by the Governor, such as the COVID-19 pandemic and is in effect until January 1, 2024. But the ability to use those provisions may end sooner. The Governor's office has signaled that its current plan is to end the state of emergency by the end of February 2023. If that occurs, then March 2023 and subsequent meetings likely could not be held remotely under AB 361.

Under AB 2449 less than a majority of the Governing Board or other South Coast AQMD Brown Act Committees (e.g., up to 6 members of a 13-member board) may attend a public meeting remotely via teleconference under certain conditions so long as a *quorum* of the Board (7 members) or Committee (3 members) participates from a *single physical location* open to the public. When a quorum of the legislative body participates in a single physical location open to the public, AB 2449 authorizes the remaining board members to participate remotely under the following two specific circumstances.

1. **Just cause:** the member notifies the Governing Board or Brown Act Committee at the earliest possible opportunity, including at the start of a regular meeting, of their need to participate remotely for "just cause," by giving a general description of the circumstances relating to their need to appear remotely at the given meeting. A member may not use the provisions of this clause for more than two meetings per calendar year.

"*Just cause*" is defined as any one of the following circumstances: (1) childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (2) a contagious illness that prevents a member from attending in person; (3) a need related to a physical or mental disability; or (4) travel while on business of the legislative body or another state or local agency. *See* Government Code Section 54953(j)(2).

2. **Emergency Circumstances:** the member requests that the Governing Board or Brown Act Committee 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. *See* Government Code Section 54953(j)(1). The Governing Board or Brown Act Committee shall request a general description of the circumstances relating to the member’s need to appear remotely at the given meeting. This description need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law. The following requirements also apply:

- (a) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible.
- (b) the Governing Board or Brown Act Committee 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 for which the request is made, the Governing Board or Brown Act Committee may take action *by majority vote* on the emergency circumstances request at the beginning of the meeting.

See Government Code Section 54953(f)(2)(A)(ii).

AB 2449 imposes additional teleconferencing requirements, similar to the requirements imposed under AB 361, when less than a majority attends remotely for “just cause” or “emergency circumstances,” as described above. The following are additional requirements per AB 2449:

- The legislative body must provide a way for the public to remotely hear, visually observe, and remotely address the legislative body, either by a two-way audiovisual platform or a two-way telephonic service and a live webcasting of the meeting.
- Whenever providing notice of the time and agenda of a teleconferenced meeting, the legislative body must also provide notice of how the public can access the meeting and offer comments.
- The agenda must identify and include an opportunity for the public to attend and directly address the legislative body through a call-in option, an internet-based service option, and in-person.
- In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in or internet-based options, the

legislative body shall take no further action on items appearing on the agenda until public access is restored.

- Individuals desiring to provide public comment through use of a site or online platform requiring registration that is not under the control of the legislative body, may be required to register as required by that third-party internet website or online platform in order to participate.
- The legislative body also may not require public comments to be submitted prior to the meeting, but must provide an opportunity for the public to address the body in real time.
- The legislative body must implement a procedure for receiving and resolving requests for reasonable accommodations for individuals with disabilities and must give notice of such procedure in each instance notice of the meeting time is given or an agenda is posted.
- Members participating through remote teleconferencing must participate through both audio and visual technology and members 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 the individual.

See Government Code Section 54953(f)(1).

AB 2449 provides limits on how often a year a member may participate in meetings solely by teleconference due to "just cause" or "emergency circumstances." Relevant here is that a member may not do so for more *20 percent of the regular meetings* for the local agency within a calendar year. Because our regular Governing Board and Committee meetings occur, at most, 11 times a year, the 20 percent clause means that a Governing Board or Committee Member *may participate remotely using the AB 2449 provisions for only two meetings per year.*

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

Proposal

This action is to address the requirements of AB 2449, applicable where a South Coast AQMD Governing Board Member or Committee Member seeks to participate in a public meeting subject to the Brown Act, such as Governing Board Meetings and Brown Act Committee Meetings, remotely under circumstances involving an emergency or for just cause.

Resource Impacts

No fiscal impact.