By Vanessa Gonzales posted 08-29-2022 02:15

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In response to challenges experienced and lessons learned throughout the COVID-19 pandemic, three bills amending the Brown Act and supported by CSDA have passed the State Legislature. Governor Gavin Newsom signed Senate Bill 1100 (Cortese) last week and Assembly Bill 2647 (Levine) and Assembly Bill 2449 (Rubio) now await his consideration. AB 2449 (Rubio), related to remote meetings, is arguably the most significant Brown Act legislation to clear the Legislature since CSDA-sponsored Assembly Bill 361 (R. Rivas) was signed into law last year.

Assembly Bill 2449 (Rubio) establishes a new avenue for a minority of a local agency's board to meet remotely without noticing or providing public access to their remote meeting location under modified Brown Act requirements provided that the agency abides by the strict substantive and procedural requirements within the legislation. Local agencies may avail themselves of the alternative agenda posting and teleconference requirements, potentially making it easier for local agency board members to participate in a meeting remotely under certain circumstances that would've otherwise precluded that participation.

AB 2449 passed the State Senate last week on a 36-3-1 vote, proceeding next to the Assembly floor, whereupon the measure passed with a 67-2-11 vote. Having reached the engrossing and enrolling stage, the bill now awaits action by Governor Newsom. If signed,

the bill would take effect at the start of 2023. The bill contains multiple sunset dates, though perhaps the most relevant is the January 1, 2026 sunset, after which time all the provisions added by AB 2449 lapse and become unavailable to local agencies.

The freedoms granted by AB 2449 may be familiar to those accustomed to holding meetings under the framework established by Assembly Bill 361 (R. Rivas, 2021). AB 361 remains in effect through 2023 and can still be used by local agencies during any state-declared emergency. If signed into law, the provisions of AB 2449 would provide an entirely separate and distinct method of conducting remote meetings from that provided by AB 361. Therefore, local agencies would have the option to conduct remote meetings under the provisions of AB 2449, AB 361, or traditional Brown Act teleconference requirements. Local agencies may also choose to conduct public meetings entirely in-person under the Brown Act.

What is different about AB 2449 remote meetings?

Under the provisions of AB 2449, agencies would not be obligated to post agendas at all teleconference locations, would not be obligated to identify all teleconference locations in the meeting agendas, and would not be obligated to make each teleconference location open to the public.

However, for an agency to proceed under the procedures established by AB 2449, it must observe the requirement that *at least* a quorum of the members of the legislative body participates in-person from a singular, physical location clearly identified on the agenda, open to the public, and situated within the boundaries of the territory over which the local agency exercises jurisdiction. This stands in notable contrast to the provisions of AB 361, which contains no such requirement. Under AB 2449, it *would not be permissible* to have the *entirety* of the board participate remotely pursuant to the bill's provisions. Another departure from the AB 361 rules includes the fact that remote participation under AB 2449 must be done for specified reasons — either because of a "just cause" or as a result of "emergency circumstances." The two cases have different requirements that must be observed and have their own unique restrictions.

The agency must also be prepared to host a robust remote meeting — under the terms of AB 2449, an agency must provide *at least* one of the following so that the public may remotely observe the meeting and provide comments:

- A two-way audiovisual platform (defined to mean an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function); and/or

- A two-way telephonic service *and* a live webcasting of the meeting (defined to mean a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate)

Under what conditions may board members use AB 2449?

Board agency members are also *individually* tasked with observing certain requirements before they can make use of AB 2449's terms. It is incumbent upon the individual board members themselves to follow certain requirements laid out in the bill; save for some overlapping obligations, the requirements differ based on whether the member's remote participation is arising out of a "just cause" or "emergency circumstances," as shown below:

"Just Cause"	**"Emergency Circumstances"**

✓ The member notifies the legislative body at the earliest opportunity possible (including at the start of a regular meeting) of their need to participate remotely for "**just cause**," including a general description (typically not exceeding 20 words) of the circumstances relating to their need to appear remotely at the given meeting.

Remote participation for "just cause" reasons shall not be utilized by any member of the legislative body for more than two meetings per calendar year.

"**Just cause**" means any of the following:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely
- A contagious illness that prevents a member from attending in person
- A need related to a physical or mental disability (as defined [1][2]) not otherwise accommodated
- Travel while on official business of the legislative body or another state or local agency

✓ 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. The member shall make this request to participate remotely at a meeting as soon as possible. The legislative body shall request a general description (typically not exceeding 20 words) of the circumstances relating to their need to appear remotely at the given meeting.

✓ The member shall make a separate request for each meeting in which they seek to participate remotely.

The general description of the circumstances does not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act.

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 for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with existing law.

"**Emergency circumstances**" means a physical or family medical emergency that prevents a member from attending in person.

✓ The member shall 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 individual(s).

✓ The member shall participate through *both* audio and visual technology.

Under neither case ("just cause"/"emergency circumstances") do AB 2449's provisions permit 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 percent 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*

Based on the requirements that both the agency and agency board member must observe, it would be imperative that there is ample coordination taking place in advance of a meeting in order to abide by the terms of AB 2449. While some of the provisions are related to circumstances that are, by nature, difficult or impossible to anticipate, agencies can still prepare in advance for the requirements by ensuring that they operate a remote meeting system that meets all the procedural and substantive requirements of AB 2449, while also developing a means for agency board members to submit their remote meeting requests and preparing the associated recordkeeping related to tracking board member reliance on AB 2449's provisions. Agencies would also be well-served to ensure board members are familiar with the requirements within AB 2449, particularly the requirement that the board member must participate through both audio and visual technology.