



December 2023

AB 557 Extends Authority to Meet Remotely During Proclaimed State of Emergency

As you may recall, beginning with Executive Orders during the COVID-19 pandemic and the subsequent passage of AB 361, boards were permitted to meet remotely under certain conditions during a proclaimed state of emergency; that authority was set to expire on December 31, 2023. AB 557 revives and extends the authority to meet remotely under certain circumstances, with some changes from the requirements contained in AB 361.¹

A. When is the Brown Act Flexibility Available Under AB 557? The flexibility allowed under AB 557 takes effect for meetings held during a “proclaimed state of emergency”² in two situations:

1. When a board is meeting to determine whether, as a result of the emergency, meeting in person would present “imminent risks to the health or safety of attendees.”
2. When a board has met as authorized in Item 1 above and determines that, as a result of the emergency, meeting in person would present imminent risks to the health

¹ Also see our bulletins on teleconferencing options and AB 2449, which provides teleconferencing flexibility under limited hardship circumstances (“just cause” or board-approved “emergency circumstances”).

² The Brown Act defines “state of emergency” as one proclaimed pursuant to Government Code section 8625. This section is part of the California Emergency Services Act and allows the Governor to make a state of emergency proclamation in an area affected or likely to be affected when the Governor finds that circumstances described in subdivision (b) of section 8558 exist, and either the Governor is requested to do so by a mayor or chairman of a board of supervisors or county administrative officer, or the Governor finds that local authority is inadequate to cope with the emergency.

Section 8558(b) in turn defines “state of emergency” as the “duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.”

or safety of attendees. For example, a wildfire, flood, or earthquake situation could trigger the use of this authority.³

B. What is the Duration of the Flexibility? AB 557 extends the duration of the teleconferencing flexibility from 30 to 45 days after first used, and then it must be renewed every 45 days by majority vote of the board with findings that the board has reconsidered the circumstances of the state of emergency and the state of emergency continues to impact the ability to meet safely in person.

C. What Flexibility is Allowed Under AB 557? As under the predecessor legislation (AB 361), several elements of the usual posting requirements for a teleconference can be dispensed with:

- The board is not required to post the agenda at all locations from which board members will participate remotely.
- The board is not required to identify each location from which board members will participate remotely.
- The locations from which board members participate remotely are not required to be accessible to the public.
- A quorum of the board is not required to participate from locations within district boundaries.
- The board is not required to provide an opportunity for members of the public to address the board at the locations from which board members participate remotely.

D. What Features Does This Authority Share with “Traditional” Teleconferencing? The agenda must still be posted physically and on the district’s website in the same way as normally required, and under the same timeframes (at least 72 hours for a regular meeting and 24 hours for a special meeting). The teleconferenced meeting must be conducted in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the board. All votes during a teleconferenced meeting must be by roll call.⁴

E. How Does the Public Participate? There are a number of requirements relating to public participation:

Advance Submission of Comments Cannot be Required. Boards are specifically prohibited from requiring that comments be submitted in advance. The new law requires that boards provide an opportunity for members of the public to “offer comment in real time.”

Registering with Third-Party Websites or Platforms. While members of the public are normally not required to “register” to attend or participate in a meeting, if the district uses a third-

³ The prior version of AB 361 contained a social distancing requirement tied to the pandemic which has now been eliminated.

⁴ “Traditional teleconferencing” refers to the authority set out in the Brown Act, Government Code section 54953(b), allowing less than a quorum of the board to participate from locations outside district boundaries. This authority requires posting an agenda listing the remote participation address(es) with additional posting at the remote location(s).

party internet website or online platform not under its control to broadcast the meeting or facilitate public comment, a registration requirement to log into a teleconference imposed by the third-party site or platform is not prohibited.

It does not appear that a district-imposed requisite not required by a third-party website or online platform would be permitted.

Allowing Time for Comment and Registering. For boards that provide a “timed public comment period” for any agenda or non-agenda item, the public comment period cannot be closed until the timed public comment period (or the time to register with a third-party site) has lapsed. A timed public comment period would not appear to correspond to the per speaker and per topic limits typical in K-12 school districts.

Boards that do not provide a timed public comment period, but rather allow for comment separately on each agenda item, must allow a “reasonable amount of time” per agenda item for the public to comment, including time to register with a third-party site or platform or otherwise be recognized for the purpose of commenting. It is not clear what a “reasonable amount of time” would be, but it can definitely be argued that the per-speaker and per-topic limits typically spelled out in board policy are designed to provide a reasonable opportunity for comment and have been upheld by the courts.

Notice of Means for Remote Participation. The teleconferenced meeting agenda and any other posting of the meeting time must provide notice of the means by which members of the public can access the meeting and offer public comment. The agenda must identify a call-in option or an internet-based service option. The board is not required to provide a physical location for public attendance or comment.

F. What if the Ability to Broadcast the Meeting is Disrupted or a Disruption Within the District’s Control Prevents the Public from Offering Comments? In those situations, a board can take no “further action” on affected agenda items until public access is restored. The new law does not specifically prohibit “further discussion,” so it may be permissible to continue discussion as long as no action is taken.

Actions taken during a disruption of the broadcast of a meeting can be subject to a possible challenge under the Brown Act. The statute does not state that a disruption in the public comment function only would also trigger a possible challenge.

How this provision plays out remains to be seen (e.g., the board could be unaware of the lack of access during the meeting itself and thus be unable to forestall board action).

G. What About Emergency Meetings? Outside the teleconferencing context, the Brown Act still permits boards to hold “emergency meetings” on very little or no notice in defined circumstances (e.g., crippling disasters, disruption of public facilities, severe impact to public safety, etc.).

H. What Agenda Language Should be Included to Signal Use of this Flexibility? The following is some suggested language to signal that the meeting will be held via teleconference/ internet-based service:

Notice of Teleconferencing Pursuant to Government Code section 54953(e). The board will conduct this meeting via teleconference (via call-in or internet-based service) with one or more board members participating from remote locations. The board *will/will not* provide a physical location for public attendance or comment. This meeting will be accessible to members of the public and public comment will be allowed at appropriate times, via call-in or internet-based service by the following means *[list phone number for call-in or link/method to access internet-based service such as Zoom]*.

I. How Should Extension of the Teleconferencing Flexibility be Agendized? As an open session action item, the extension should be agendized as follows:

Extension of Teleconference Flexibility During Proclaimed State of Emergency
(Government Code section 54953(e)(3))

The board will consider extending the time period for teleconferencing without complying with the usual requirements of Government Code section 54953(b)(3) by reconsidering the circumstances of the state of emergency and making a finding that the state of emergency continues to directly impact the ability of the members to meet safely in person.

J. What are the Consequences of Failing to Comply with These New Requirements?
If a board uses the new teleconferencing flexibility without complying with the various requirements (failure to spell out the means for public access, failure to take action to renew the authority, requiring advance submission of comments, etc.), the violation of section 54963 provides a basis for a district attorney or any interested person to file an action seeking a court declaration that action taken in violation of the statute is null and void, provided a demand to “cure and correct” the violation has first been served on the district. (Brown Act, Government Code section 54960.1)

Our checklist for teleconference options has been updated to reflect these new requirements (copy attached).

Please contact our office if you need further information on this or related topics.

- Grant Herndon

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Teleconferencing Options and Requirements Checklist

January 1, 2024, to December 31, 2025

Boards wishing to implement teleconferencing between now and the end of 2023 have three options, each with its own requirements. Regardless of the option, all such meetings must adhere to a short list of universal conditions.

Universal Teleconference Requirements

- All votes must be taken by roll call.
- Must be conducted in a manner protecting the rights of those appearing.
- Must be compliant with general notice and agenda posting requirements.
- Must provide the public an opportunity to address the body, which must be outlined in the agenda.

Option #1 Traditional

- The agenda is timely posted at each teleconference location.
- Each teleconference location is:
 - Accessible to the public; and
 - Identified in the notice and agenda.
- At least a quorum of the members participate from locations within the agency's jurisdiction.

Option #2 AB 557 State of Emergency **[CAUTION: LIMITED AVAILABILITY]**

- The governor has proclaimed a state of emergency; and
- The following conditions exist:
 - The purpose of the meeting is to vote on whether the state of emergency presents an imminent health risk to attendees; OR
 - A majority vote of the board has determined that, as a result of the state of emergency, meeting in person would present an imminent risk to the health of attendees.
- Every 45 days following the first teleconference, the board issues a finding by majority vote that:
 - It has reconsidered the circumstances of the state of emergency; and
 - The state of emergency continues to directly impact the ability of the members to meet safely in person.
- The board has provided notice of the means by which members of the public may access the meeting and offer public comment (including a Zoom link or other means of access on the agenda is recommended).
- No action is taken during a disruption preventing call-in or internet-based public broadcast of the meeting or while a disruption within the agency's control prevents call-in or internet-based public comment.
- Members of the public are not required to submit comments in advance of the meeting and are given an opportunity to address the body and offer comments in real time.
- If time limits are set for public comment or public comment registration, they may not be closed early.
- If no limits are set, public comment and registration periods must remain open for a reasonable time.
- The agenda identifies an opportunity for all persons to attend via a call-in or internet-based service option.

Option #3 AB 2449 Hardship Declared by Individual Member

- A quorum of members attend in person, at a single, public location clearly identified on the agenda and within the agency's boundaries.
- The public is provided with a means to see and hear the meeting remotely and to address the legislative body using either a two-way audiovisual platform or a two-way telephonic service and live webcast.



- The agenda identifies an opportunity for all persons to attend and address the board directly pursuant to Section 54954.3 via a call-in option, internet-based service option, and at any in-person meeting location. The board has provided notice of the means by which members of the public may access the meeting and offer public comment (including a Zoom link or other means of access on the agenda is recommended).
- No action is taken during a disruption preventing call-in or internet-based public broadcast of the meeting or while a disruption within the agency’s control prevents call-in or internet-based public comment.
- Members of the public are not required to submit comments in advance of the meeting and are given an opportunity to address the body and offer comments in real time.
- All board members participating remotely do so using both audio and video technology.
- Board members participating remotely have not done so exclusively for more than three consecutive months or 20% of regular meetings that calendar year, or more than twice in that year if the body regularly meets less than 10 times a year.
- Board members seeking remote participation must notify the board at the earliest possible opportunity (but can do so as late as the start of the meeting); and
 - A separate request is made for each meeting the member wishes to participate in remotely; and
- Before any action is taken at the meeting, a board member participating remotely publicly disclose whether others 18 or older are present in the room at the remote location and their relationship to them.
- Members participating remotely demonstrate the need to do so by setting forth either “just cause” or the existence of an “emergency circumstance.”**
 - Just Cause Notification Requirements:**
 - The member has not participated remotely for just cause on more than one prior occasion that calendar year; and
 - The member provides a general description of the circumstances demonstrating that remote participation is necessary for at least one of the following reasons:
 - The member’s child, parent, grandparent, grandchild, sibling, spouse, or domestic partner requires caregiving; OR
 - A contagious illness prevents the member from attending in-person; OR
 - The member has a need related to a physical or mental disability that the board cannot accommodate; OR
 - Travel on official business of the legislative body or another state or local agency.
 - Board-Approved Emergency Circumstance Requirements:**
 - The member is prevented from attending in person due to a physical or family medical emergency.
 - A general description of the circumstances relating to the need is requested by and provided to the board. (Such descriptions need not exceed 20 words or include a medical diagnosis, disability, or other protected personal medical information.)
 - Member requests for remote participation that are made sufficiently in advance of the 24/72-hour posting period appear on the agenda.^[1] The board takes action approving the request for remote participation by majority vote.^[2]

^[1] Sample language: “Board Member Request for Remote Participation Based on Emergency Circumstance (Gov. Code § 54953(f)).”

^[2] The board may take action on requests not appearing on the agenda provided the timing of the request left insufficient time to include it. A regular meeting agenda cannot be modified within the 24/72-hour posting period.

