



# LAW UPDATE EDUCATION

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Updated December 2023

## **AB 2449: MORE TELECONFERENCING FLEXIBILITY COMES WITH MANY HURDLES**

As you know, the Brown Act rules permitting board members to remotely participate in board meetings are somewhat cumbersome and were loosened temporarily under the Governor's executive orders during the COVID-19 pandemic. Some of the flexibility was incorporated into AB 361 and later AB 557<sup>1</sup>, which comes into play during a proclaimed state of emergency when certain other factors are in place. Beginning January 1, 2023, Assembly Bill 2449 will allow limited teleconferencing outside the context of a state of emergency without the usual posting requirements, and in some cases on short notice, provided a series of other rather complex safeguards are observed. Traditional teleconferencing is still available.

Since board members may ask about remote participation under AB 2449, Jim Simson in our office created the attached checklist to help you navigate the requests as they are received. We are also attaching a request form for board members seeking to participate under this authority.

### **1. How do board members participate remotely under AB 2449?**

Board members must participate through both audio and visual technology.

### **2. How many board members can participate remotely?**

Less than a quorum (majority) can participate remotely. This means no more than one member for a three-member board, no more than two for a five-member board, and three or fewer for a seven-member board.

### **3. Must a majority participate from within district boundaries?**

Yes, just as with "traditional" teleconferencing, a quorum must participate from within district boundaries. In fact, under AB 2449 a majority must participate from a single physical location, open to the public, within the district. On a five-member board, where three members participate in the boardroom in a typical meeting, two could participate remotely from any location if the other required criteria are satisfied.

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<sup>1</sup> See the SLS bulletin titled *AB 557 Extends Authority to Meet Remotely During Proclaimed State of Emergency*.

4. **Must the public be given access to the remote participation locations?**

No. Unlike traditional teleconferencing where the public must have access to the remote location(s), AB 2449 does not require this access. However, electronic remote access must be provided as described below.

5. **When must a request to participate remotely be made?**

With traditional teleconferencing, a request to participate remotely must be made before the agenda is posted so the relevant details can be included with the posted agenda. The agenda cannot be amended during the posting period. Under AB 2449, the requests can be made “at the earliest opportunity, including at the start of a regular meeting” or “as soon as possible” depending on the circumstances (see the next item).

6. **What justifications are required for a request to participate remotely?**

There are two justifications for a request to participate remotely.

- **Just Cause.** A member can provide notification of remote participation by asserting “just cause,” providing a general description of the circumstances requiring remote participation and meeting the other required criteria. Just cause is defined as “a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner . . .” requiring remote participation, a contagious illness preventing attendance, a need relating to a physical or mental disability, as defined, or travel on official business for the district or another state or local agency.

The request must be made “at the earliest opportunity possible,” which can be as late as the start of the meeting. The justification can be used only twice in a calendar year and is subject to the further limitations discussed below.

- **Board-approved Emergency Circumstances.** A member can request participation due to emergency circumstances. An emergency circumstance is defined as a physical or family medical emergency that prevents in-person attendance.

The request must be made “as soon as possible,” which can be after agenda posting and presumably as late as the start of the meeting. The request must be approved by the board. The board must request a general description of the circumstances, which need not exceed 20 words, and cannot require the member to disclose a medical diagnosis or disability or personal medical information exempt under existing law.

The request for approval of the emergency remote appearance should be placed on the agenda whenever time permits; when time does not permit, the board can take action on the request by majority vote at the beginning of the meeting even if not agendized.

With either justification, before any action is taken, the member requesting remote participation must publicly disclose whether anyone 18 years of age or older is present with the member in the room at the remote location, and the nature of the member’s relationship with the person.

**7. Are there limits on the number of times a board member can participate remotely under AB 2449?**

Yes. As noted above, a “just cause” request can only be used twice per calendar year. Neither justification can be used to support remote participation for more than three consecutive months or 20 percent of the regular meetings within a calendar year.<sup>2</sup>

**8. Must the public be permitted to participate remotely when board members are permitted to do so?**

Yes. In addition to the opportunity to participate at the in-person location, the district must create an opportunity for the public to remotely hear and visually observe the meeting and remotely address the board by one of the following means:

- A two-way audiovisual platform (an online platform such as Zoom that allows the public to participate in a meeting via both an interactive video conference and a two-way telephonic function).
- A two-way telephone service (a telephone service that does not require internet access and is not provided as part of a two-way audiovisual platform and allows the public to dial a telephone number to listen and verbally participate) PLUS a live webcasting of the meeting (streaming video broadcast online or on television).

As with participation under AB 361, there are requirements to implement procedures for receiving and swiftly resolving requests for accommodation for individuals with disabilities and the duty to conduct meetings consistent with applicable civil rights and nondiscrimination laws.

**9. How is the public made aware of the opportunity to comment remotely?**

The board must give notice of the means by which the public can access the meeting and offer public comment “in each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda is otherwise posted.”<sup>3</sup> The agenda must identify an opportunity for people to attend and address the board directly via a call-in option, an internet-based service option, and the in-person location of the meeting.<sup>4</sup> Typically, this will mean providing a link to the two-way audiovisual platform or the telephone access number, together with a link to the webcast of the meeting.

Since the request to participate remotely could come after agenda posting, districts may want to consider promptly posting on the district website information on how to remotely access

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<sup>2</sup> If the board meets fewer than ten times per year, the justification cannot be used for more than two meetings.

<sup>3</sup> While the language of the statute is somewhat imprecise, we recommend districts include the means to access the meeting remotely (such as a Zoom link) on the agenda.

<sup>4</sup> The language from this section referring directly to agendas, from Education Code section 54953(f)(1)(C), is phrased slightly differently than the language outlining remote access options in Item 8 from Government Code section 54953(f)(1)(A). Providing access via a two-way audiovisual platform such as Zoom, or through a telephone service (not requiring internet access) plus a livestream via an online streaming video broadcast would satisfy both.

the meeting promptly after the district is notified of a “just cause” participation, or when an emergency remote participation request not on the agenda is approved by the board.

Public comment must be made available in real time; advance submission of comments cannot be required.

**10. What if electronic participation is disrupted?**

In the event of a disruption that prevents the district from broadcasting the meeting, or a disruption within the district’s control preventing the public from commenting remotely, the board can take no further action on agenda items until public access is restored.

AB 2449 modifies the Brown Act at Government Code sections 54953 and 54954.2. The provisions of AB 2449 described in this bulletin remain in effect until January 1, 2026.

Please call our office if you have questions or need further information. Again, happy teleconferencing!

- 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.<sup>[1]</sup>  The board takes action approving the request for remote participation by majority vote.<sup>[2]</sup>

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

<sup>[2]</sup> 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.



**BOARD MEMBER REQUEST FOR REMOTE PARTICIPATION IN BOARD MEETING**

*The availability to participate remotely depends on a number of factors and requires significant staff time to arrange. Please make your request at the earliest possible moment. Not every request can be accommodated depending on ability to satisfy legal criteria.*

The undersigned Board Member requests remote participation in an upcoming meeting of the Board of Trustees on \_\_\_\_\_.

**Option 1. Traditional Teleconferencing (Government Code section 54953(b))**

This option requires the remote teleconference location to be open to the public, accessible to people with disabilities, and provide a means such as speakerphone for a member of the public to hear the proceedings and comment at appropriate times. A majority of board members must participate in the meeting from locations within the district. The agenda must be posted at the remote location for the duration of the posting period.

I request to participate in this meeting under Option 1 from the following address: \_\_\_\_\_.

**Option 2. AB 2449 Teleconferencing (Government Code section 54953(f))**

This option is only available when a board majority participates from a single physical location within the district. There are limits on the number of times this option can be used. It requires the district to establish a means for the public to participate remotely.

I request to participate in this meeting remotely under Option 2.

This request is for this meeting only. <sup>(f)(2)(A)(ii)(I)</sup>

I will participate remotely using both audio and video technology. <sup>(f)(2)(C)</sup>

I have notified the board of my need to participate remotely at the earliest possible opportunity. <sup>(f)(2)(A)(i) & (f)(2)(A)(ii)(I)</sup>

I have not participated in meetings of this board solely by teleconference from a remote location for more than three consecutive months, or 20 percent of the regular meetings this calendar year, or more than two meetings if the board regularly meets fewer than 10 times per calendar year. <sup>(f)(3)</sup>

The member must specify either Just Cause or an Emergency Circumstance requiring remote participation:

**Just Cause**

Remote participation is necessary for at least one of the following reasons: <sup>(i)(2)</sup>

A child, parent, grandparent, grandchild, sibling, spouse, or domestic partner requires caregiving.

A contagious illness prevents me from attending in-person.

I have a need related to a physical or mental disability that the board cannot accommodate.

Travel on official business of the legislative body or another state or local agency.

I have not participated remotely for Just Cause on more than one prior occasion this calendar year. <sup>(f)(2)(A)(i)</sup>

**Emergency Circumstance (Requires Board Approval)**

A physical or family medical emergency prevents me from attending in person.<sup>(j)(1)</sup>

The following is a general description of the circumstances requiring me to participate remotely:

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(Description need not exceed 20 words or include medical diagnosis, disability, or other protected personal medical information.)

I understand that the law requires me to publicly disclose at the meeting whether any individual 18 or older is present with me in the room at the remote location and the general nature of my relationship with that individual.

\_\_\_\_\_  
Signature of Board Member

Date: \_\_\_\_\_

Printed Name:

*Note: AB 2449 is currently set to sunset as of December 31, 2025.*