

TO: Members of District Brown Act Bodies
Academic Senates
Student Senates
College Administrators
Executive Staff Members

FROM: Jacob Knapp

DATE: February 15, 2023

RE: Brown Act Changes and Remote Meeting Requirements

The Brown Act requirements for remote meetings are changing due to new laws that took effect on January 1, 2023 and the Governor’s announcement that the COVID-19 State of Emergency will end on February 28, 2023. The purpose of this memo is to provide a summary of the legal requirements applicable to remote District Brown Act body meetings once the Governor’s declared State of Emergency expires. As you will see from the discussion below, the practical impact of recent legal changes is that most Los Rios Brown Act meetings will be held on ground and in person. Virtual meetings held entirely via Zoom, as we have conducted public meetings throughout the pandemic, will no longer be authorized under the law.

I appreciate the opportunities I’ve been given recently to meet with several of our District senates, committees, and commissions to discuss these legal changes. My office will be providing additional Brown Act training sessions over the next several weeks for interested students, faculty, and staff.

AB 361 Virtual Meeting Authority Ends on March 1, 2023

Throughout the pandemic, many of our Brown Act boards, commissions, and committees (including the Los Rios Board of Trustees and our academic and student senates) held meetings virtually under the authority granted by AB 361. AB 361 authorized local legislative bodies to hold virtual meetings under certain circumstances, including when “state or local officials have imposed or recommended measures to promote social distancing,” or when a determination was made “that meeting in person would present imminent risks to the health or safety of attendees as a result of the state of emergency.” AB 361, by its own terms, remains in effect “during a state of emergency proclaimed by the Governor.”

Many District boards, commissions, and committees subject to the Brown Act made the required findings at the beginning of each meeting related to public health and safety that allowed for virtual meetings. The findings were often made as the first agenda item at each meeting, and the

meetings were then held entirely via zoom, with all participants and members of the public participating from remote locations.

With the Governor's Emergency Order set to end on February 28, 2023, local public agency boards, commissions, and committees (including all District Brown Act bodies) will no longer have the legal authority to hold meetings virtually under AB 361.

Brown Act "Classic" Teleconference Rules Are Still Available

Even before the pandemic, the Brown Act allowed members of local legislative bodies to participate remotely in public meetings consistent with its (arguably onerous and outdated) teleconference requirements. Government Code section 54953 authorizes members to participate at remote locations during teleconferenced meetings so long as the legislative body: (1) posts meeting agendas at all teleconference locations; (2) identifies all teleconference locations in the notice and agenda; and (3) makes each teleconference location accessible to the public.

From a practical perspective, these requirements are not user-friendly. While a member is allowed to participate in a meeting remotely under the "classic" teleconference rules, the remote location must be publicized on the agenda and the remote location must be available and accessible to the public during the meeting itself. In other words, if a member wanted to participate remotely in a meeting from home, the member's home address would have to be publically noticed and the member's home would need to be open to the public on the day of the meeting for public participation from that remote location. My office regularly advises members participating from a remote location to use a location other than a personal residence (like an office or conference room at a campus), as we want to avoid the publication of home addresses and an invitation to the public at large to participate in a meeting from a personal residence.

It's important to note that the "classic" teleconference rules do not authorize the type of virtual meeting via zoom we grew accustomed to during the pandemic, unless the physical location of each remotely participating member is posted on the agenda and the public is able to participate in the meeting from each identified remote location.

AB 2449 – New Limited Remote Participation Exception For Individual Members

AB 2449 allows an individual board member, under specific limited circumstances, to participate in a Brown Act meeting remotely without identifying their remote teleconference location and without making their remote teleconference location accessible to the public. Importantly, **AB 2449 does not allow for fully virtual meetings of Brown Act bodies.** In order for an *individual member* to utilize the AB 2449 exception for remote participation at a specific meeting, at least a quorum of the Brown Act body must be participating from a singular physical location that is clearly identified on the agenda and open to the public. In other words, AB 2449 still requires Brown Act bodies to meet in person under the ordinary Brown Act rules – it just allows for the remote participation of one or more members, under certain circumstances.

Brown Act bodies may not utilize the AB 2449 exception for the virtual participation of members unless the meetings of that body are accessible to the public in a similar manner. The remotely participating member must utilize a two-way audiovisual platform (e.g. Zoom or Microsoft Teams), and the public must be provided with either a similar two-way audiovisual platform, or a phone-in option coupled with a live webcasting of the meeting.

An individual board member may not participate in meetings remotely under AB 2449 for more than three consecutive months or 20% of the Brown Act body's regular meetings within a calendar year. If the Brown Act body regularly meets fewer than 10 times a year, an individual board member may not participate remotely using the AB 2449 exception for more than two meetings. This means that Brown Act bodies that avail themselves of the AB 2449 process will need to keep track of each member's remote participation and ensure that they remain within the statutory limitations.

In order to use the AB 2449 remote participation exemption, an individual member of a Brown Act body must notify the full membership of the body that either "just cause" or "emergency circumstances" exist for their remote participation.

Just Cause

"Just cause" is defined as any one of the following:

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

In order to participate remotely for "just cause", an individual member must notify the Brown Act body at the earliest possible opportunity — including at the start of a meeting — of their need to participate remotely and provide a general description of the circumstances related to one of the four items above. A member may only use the "just cause" provision up to two meetings per calendar year.

Emergency Circumstance

An "emergency circumstance" is defined as a physical or family medical emergency that prevents a member of a Brown Act body from attending in person.

In order to participate remotely under "emergency circumstances," the individual board member must request that the full Brown Act body allow them to participate in the meeting remotely because of emergency circumstances, and the Brown Act body must take action to approve the request at the public meeting. An individual board member making a request to participate remotely due to "emergency circumstances" must provide a general description of the circumstances giving rise to the need to appear remotely. This description does not have to be more than 20 words and should not include any personal medical information. The Brown Act body would then vote, as the first order of business at the relevant meeting, to approve (or deny) the member's request to participate remotely due to "emergency circumstances."

Additional Requirements

The following general requirements apply when meeting under the AB 2449 just cause or emergency circumstances provisions:

- Members participating remotely must do so through audio and visual technology.
- The legislative body must provide a way for the public to remotely hear, visually observe, and remotely address the Brown Act body throughout the meeting in question.
- The agenda must identify and include an opportunity for the public to attend and directly address the Brown Act body both remotely and in person at the meeting.
- If there is a disruption to the meeting broadcast or in the ability to take call-in or internet-based public comment, no further action can be taken on agenda items until the issue is resolved.
- The Brown Act body must implement a procedure for receiving and resolving requests for reasonable accommodations for individuals with disabilities and must give notice of these procedures.
- Members participating remotely must publicly disclose at the meeting whether any other individuals 18 years of age or older are present in the room of the member's remote location and state the general relationship between the individual and the member.

Conclusion

Local public agencies across the state grew accustomed to meeting virtually via Zoom during the pandemic, and the legislature provided statutory authority for public meetings to be conducted virtually by Zoom during the declared state of emergency. Los Rios is no exception. Our Brown Act bodies, including the Board of Trustees, our academic senates, student senates, and various committees and commissions demonstrated that we were able to hold our public meetings virtually throughout the pandemic. With the Governor's Emergency Order set to end on February 28, 2023, we no longer have the legal authority to hold meetings virtually in the same manner we utilized throughout the pandemic.

Unfortunately, when it comes to the remote participation of members of Brown Act bodies, we are left with two choices: (1) either utilize the "classic" Brown Act teleconference rules; or (2) utilize the complicated and limited AB 2449 remote participation provisions.

For many of our Brown Act bodies (including the Los Rios Board of Trustees), the practical effect of these legal changes is that our meetings are once again held in person. From a practical perspective, AB 2449 is limited in utility, limited in scope, and a far cry from a truly virtual meeting.

My office will continue to monitor the various bills that may provide greater flexibility for virtual meetings in the future, and will notify you if and when we have new relaxed standards for Brown Act meetings.

Thanks for all you do, and please do reach out if you have any questions about Brown Act compliance. We hope to see you at a Brown Act training soon.