

Metropolitan Transportation Commission and Association of Bay Area Governments
Joint MTC ABAG Legislation Committee

February 14, 2025

Agenda Item 3c

Senate Bill (SB) 239 (Arreguín): Ralph M. Brown Act Teleconferencing Reform

Subject:

Co-sponsor SB 239 (Arreguín) to expand remote meeting options for non-decision-making local legislative bodies – including advisory boards – that do not take final action.

Background:

The Ralph M. Brown Act (Brown Act) requires, with specified exceptions, that all meetings of a local legislative body be open to the public and that all people be permitted to attend, unless a closed session is authorized. The law for decades has provided for the option of teleconferencing, so long as each teleconferenced location is posted in the meeting agenda; the agenda is posted outside the teleconference location; the teleconference location is open to the public; and at least a quorum of the legislative body participates from locations within the boundaries of its jurisdiction.

With the onset of the COVID-19 pandemic, local legislative bodies struggled to conduct their meetings in compliance with the requirements of the Brown Act while still abiding by stay-at-home orders. In response, Governor Newsom issued executive orders and Assembly Bill (AB) 361 (Rivas, 2020) was enacted providing that while a state of emergency was in place, local legislative bodies could hold meetings remotely without providing notice of, or public access to, the remote location (i.e., homes). AB 361 extended public accessibility and transparency by, among other items, requiring the opportunity for the public to join via telephone or video conference.

On February 28, 2023, the state-issued COVID-19 State of Emergency ended, which impacted legislative bodies' ability to conduct remote meetings utilizing AB 361. A 2022 bill, AB 2449 (Rubio) does allow local agencies to hold remote public meetings without identifying each teleconference location and without making each location accessible to the public, but only if a quorum of the legislative body participates from a single physical location open to the public. Notably, this alternative can only be used under limited circumstances and is challenging to utilize in conjunction with the more general teleconferencing option.

AB 817 Overview

In the 2023-24 legislative session, MTC and ABAG supported AB 817 (Pacheco), which would have provided that “subsidiary bodies” - defined as a body that serves exclusively in an advisory capacity and does not take final action on legislation, regulations, contracts, licenses, permits, grants, or any other entitlements - could use alternative teleconferencing provisions similar to the emergency provisions so long as the legislative body that established the subsidiary body made specified findings and voted every 12 months to allow for remote meetings. Specifically, AB 817 would have allowed subsidiary bodies to meet remotely without posting the location of each member and without regard to where participants are located to meet current law’s quorum requirements, so long as the bodies complied with the following:

- Subsidiary bodies meeting remotely must ensure the public may see and hear the meeting and address the subsidiary body both at a physical location and remotely, including ensuring members of the public can provide public comment in real time.
- Members of the subsidiary body must be on camera, except when that is technologically impracticable, and remote participation must be logged into the meeting minutes.
- Meetings must be noticed as otherwise required by the Brown Act, except that physical locations do not need to be posted and instead the notice must include information about how members of the public may access the meeting and offer public comment.

While some public agencies have expressed interest in restoring the broad flexibility to meet entirely remotely as was allowed during the state of emergency, there is significant resistance to this among the Legislature. AB 817 represented a compromise – expanding flexibility for subsidiary bodies to meet remotely but retaining the requirement that *decision-making bodies* (including MTC, the ABAG Executive Board, city councils and boards of supervisors) meet either in person or in compliance with current law’s teleconference requirements.

AB 817 was approved by the Assembly but did not pass out of the Senate Local Government Committee.

2025 Legislative Proposal

Senator Arreguín on January 30th introduced SB 239, a modified version of AB 817. The changes are intended to address key policy concerns raised by the Senate Local Government Committee and other members of the Senate during bill deliberations. Those include:

- Narrowing the bill to exclude advisory bodies with subject matter jurisdiction over police oversight, elections or budgets.
- Exempting elected officials from taking advantage of the enhanced teleconferencing flexibility authorized by the bill.
- Clarifying that legislative bodies that take final action on grants are not “subsidiary bodies”

The League of California Cities and California Association of Counties are co-sponsoring the bill.

Recommendation:

Co-Sponsor / ABAG Executive Board Approval

Co-Sponsor / Commission Approval

Discussion

After the onset of the COVID 19 pandemic, emergency Brown Act revisions to expand remote participation in meetings made it possible for a more diverse and representative cross section of the Bay Area public to serve on MTC and ABAG’s various advisory bodies. Since those emergency provisions sunset, members of MTC’s Policy Advisory Council have shared the significant challenges they face participating in person or under current law’s “open meeting” requirements for teleconferencing and in 2023 the Policy Advisory Council approved a motion recommending MTC support AB 817 (Pacheco) (see Attachment A). This support was rooted in the benefit remote participation would provide to the Policy Advisory Council.

Additionally, over the past several years, MTC and ABAG have supported efforts to update the Brown Act to provide long-term flexibility for regional and multi-jurisdictional agencies to conduct business remotely as a means of increasing board member, advisory council and public participation.

Although SB 239 would not modify the current requirements for MTC and ABAG board members who are elected officials to attend meetings remotely, staff's assessment is that the bill effectively threads the needle between maintaining the transparency and accountability spirit of the Brown Act – a priority for decisionmakers in Sacramento – while expanding options for remote participation where it is most critical, namely with our advisory bodies. This will benefit the Bay Area Housing Finance Authority's Advisory Committee, which provides input to BAHFA and the ABAG Executive Board. Notably, recruitment and retention of advisors serving on the proposed new unified advisory body serving both MTC and ABAG would benefit from the increased flexibility afforded by SB 239. In summary, staff finds SB 239 to be a politically viable approach that could help retain the uptick in civic engagement made possible during the COVID emergency and recommends MTC and ABAG co-sponsor the bill.

Known Positions

Support

California Association of Counties (co-sponsor)

League of California Cities (co-sponsor)

Opposition

No known opposition

Attachments:

- Attachment A: April 12, 2023 Memo from MTC's Policy Advisory Council to the Metropolitan Transportation Commission


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