

Metropolitan Transportation Commission
Policy Advisory Council

May 12, 2023

Agenda Item 3c

Assembly Bill 817 (Pacheco): Brown Act Teleconferencing Reform

Subject:

Expands 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 requires, with specified exceptions, that all meetings of a local legislative body be open to the public and that all persons 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

AB 817 (Pacheco) would provide that “subsidiary bodies” – which the bill defines as a body that serves exclusively in an advisory capacity and does not take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements – may *indefinitely* use alternative teleconferencing provisions similar to the emergency provisions, so long as the legislative body that established the subsidiary body makes specified findings and votes every 12 months to allow for remote meetings. Specifically, subsidiary bodies may 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 comply with the following:

- Subsidiary bodies meeting remotely must ensure the public may hear and visually observe the meeting and address the subsidiary body, including through providing public comment in real time.
- Members of the subsidiary body must participate through both audio and visual technology.
- 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 been interested 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. This “compromise” bill – which is co-sponsored by the League of California Cities, California Association of Recreation and Parks Districts, California Association of Counties, Urban Counties of California and Rural Counties of California – would retain 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.

For MTC and ABAG, committees that would likely be eligible under AB 817 to take advantage of this flexible remote meeting option include:

- Policy Advisory Council (and subsidiary committees)
- Partnership Board
- ABAG Housing Committee
- ABAG Regional Planning Committee
- Advancing California Finance Authority Credit Committee
- Bay Area Housing Finance Authority Advisory Committee

Some standing committees are not listed above, such as the Joint MTC/ABAG Legislation Committee and the Clipper Executive Board (CEB), as there is some ambiguity as to whether they qualify as a subsidiary body. Further evaluation is needed before staff can make a final determination.

Recommendation:

Support / ABAG Executive Board Approval

Support / MTC Commission Approval

Discussion

MTC/ABAG's 2023 Advocacy Program supports Brown Act reform 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.

While AB 817 does not extend remote meeting options to all regional and multi-jurisdictional agency meetings, staff's assessment is that it 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 advisory bodies. This is a politically viable approach that could help retain the uptick in civic engagement made possible during the COVID emergency. Additionally, remote meetings make it possible for a more diverse and representative cross sector of the Bay Area public to serve on our various advisory bodies. 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. Last month, the Policy Advisory Council approved a motion recommending MTC support the bill (see Attachment A).

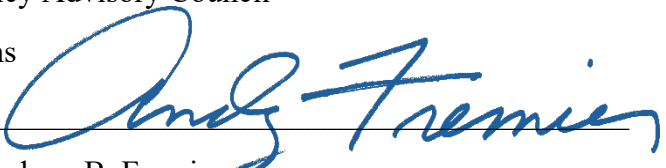
For these reasons, staff recommends a “support” position on AB 817.

Known Positions

See Attachment B

Attachments:

- Attachment A: Memo from MTC’s Policy Advisory Council
- Attachment B: AB 817 Known Positions



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