



Strategic Planning Committee

Meeting Date: December 11, 2023

Agenda Item No. 2

Policy for Remote Meeting Attendance

Information

Prepared by: Michael Maurer, General Counsel

Attachments: No

Approved by: James Corless

Referring Committee: Not Applicable

1. Issue:

AB 361, the COVID-era remote meeting rule, will sunset on December 31, 2023. The Board and Committees will need to return to mostly in-person meetings, with limited exceptions.

2. Recommendation:

AB 361, the COVID-era remote meeting rule, will sunset on December 31, 2023. The Board and Committees will need to return to mostly in-person meetings, with limited exceptions.

3. Background/Analysis:

The Brown Act has long allowed for Board members to “teleconference” to meetings, provided that the Board member’s location is noticed on the agenda and is publicly accessible. When COVID first hit in spring of 2020, the Governor suspended portions of the Brown Act to enable meetings that could be held wholly on Zoom or other virtual platforms. In 2021, the Legislature enacted AB 361, which largely codified the Governor’s prior order. To use AB 361 for meetings, public agencies were required to continue to make findings that state or local officials recommended measures to promote social distancing. Among other recommendations, Cal-OSHA regulations continue to promote social distance as one measure to continue mitigating the spread of COVID. AB 361 allowed public agencies to continue to use virtual meetings even after the Governor’s declaration of emergency was terminated, until its sunset date of December 31, 2023.

In 2022, the Legislature enacted AB 2449, which allows a minority of Board members to participate virtually without posting their location, but only in limited circumstances and with a number of restrictions. AB 2449 is only available for “just cause” or in the case of emergency, with both situations strictly defined by statute. To use AB 2449, there will have to be a publicly accessible electronic meeting location noticed on the agenda, and Board members will remain on video and announce whether anyone is in the room with them.

This year, the Legislature enacted AB 557, which essentially continues AB 361 past its upcoming, sunset date. However, under AB 557, virtual meetings are only allowed during a Governor-declared emergency – not after. It is not limited to COVID, and could be an option if there is a storm, fire, earthquake or other situations that make it unsafe to meet in public. But SACOG’s committees will no longer be allowed to make findings and meet virtually.

Each of these rules only apply to Board members. SACOG may continue to allow for staff, consultants, and

guests to participate online during meetings without restrictions.

4. Discussion/Analysis:

Any approach to remote participation should take into account the benefits of meeting in-person versus the occasional need for Board members to meet remotely due to schedule and travel constraints. In order to enable any remote participation, there are a number of logistics that must be arranged prior to the posting of the agenda. Under any of the current options, Board members will need to notify staff in advance and have the physical or virtual location posted on the agenda for the public. AB 2449 in particular will create logistical challenges, as it can only be used a limited number of times by each Board member, and the justification may need to be announced and approved by the Board. It also creates additional risk of a Brown Act challenge, since there are strict requirements to follow and since virtual public participation would have to be enabled. And given that a majority of the Board would have to be present in-person, AB 2449 potentially places staff in a difficult position of having more requests for virtual participation than opportunities available.

The proposed approach would utilize the traditional teleconference rule to allow Board members who have to travel 40 miles or more to SACOG's headquarters to participate remotely from a physical location within SACOG's jurisdiction. The location must be open and accessible to the public, and the Board member will need to provide sufficient advance notice to SACOG staff to identify the location on the agenda and arrange for access through Zoom or a teleconference line. The Board member would need to be at the location at the start of the meeting and stay through the end in case any members of the public show up there. (There would not need to be a publicly accessible Zoom location.) Multiple Board members could of course utilize the same location. Participating from home would be discouraged since a Board member's residence is not as accessible to the public as a government facility, and SACOG staff could coordinate with municipal or county staff to ensure the location meets Brown Act requirements.

The 40-mile threshold is not a legal requirement, but it is derived from SB 537, a bill that was considered by the Legislature this session that, if passed, would have allowed a multi-county agency to use virtual participation for members who were more than 40 miles from the primary meeting location. The jurisdictions that would qualify for 40 miles are: Colfax, Live Oak, Marysville, Placerville, Yuba City, El Dorado County, Yuba County, and Sutter County.

Staff does not recommend adopting a formal policy for remote meetings at this time because the state of the law and the nature of remote participation continue to evolve. A flexible approach rather than a strict set of rules may be needed. The Chair has the authority under the Board Rules to determine questions of procedure and can provide guidance and structure for remote meeting requirements. Instead, the proposed policy would be presented to the Board and then subject to the Chair's discretion.

5. Fiscal Impact/Grant Information:

There is no direct fiscal impact. Under the proposed approach, the board member participating remotely would be responsible for providing any technology used to connect. This approach would limit the need for additional staff time to manage a larger number of remote participants under the more strict rules effective January 1, 2024.