

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: April 19, 2024

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso
Chief Legislative Analyst

Council File No: 24-0002-S1
Assignment No: 24-04-0265

SUBJECT: AB 817 (Pacheco) – Brown Act; Teleconferencing for Subsidiary and Advisory Bodies

CLA RECOMMENDATION: Adopt the CLA's Revised Resolution (Blumenfield – Hernandez – Krekorian) to include in the City's 2023-24 State Legislative Program SUPPORT for AB 817 (Pacheco), which would amend the Ralph M. Brown Act to authorize the Los Angeles City Council and other legal legislative bodies to permit subsidiary, purely advisory bodies to meet by teleconference, subject to provisions for public participation.

SUMMARY: On February 13, 2024, Resolution (Blumenfield – Hernandez – Krekorian) was introduced in support of AB 817 (Pacheco), which would amend the Ralph M. Brown Act (Brown Act) to authorize the Los Angeles City Council and other legal legislative bodies to permit the use of teleconferencing for subsidiary, purely advisory bodies, subject to provisions for public participation. The Resolution states that prior to the COVID pandemic, the Ralph M. Brown Act included restrictions on the use of teleconferencing or virtual meetings that made these tools ineffective at expanding opportunities for public participation at meetings. Following the onset of the pandemic, the State expanded the use of teleconferencing for Brown Act meetings by Executive Order and legislation. The Resolution notes that legislation expanding the use of teleconferencing did not take into account the extent to which virtual meetings make it easier for people to participate in local government. According to the Resolution, the Brown Act's similar applications on advisory bodies limits the pool of people who are able to participate and serve on these bodies as these individuals may have family care obligations, less-flexible work schedules, or physical limitations.

Therefore, the Resolution seeks an official position of the City of Los Angeles to support AB 817 (Pacheco), which would amend the Ralph M. Brown Act to authorize the Los Angeles City Council and other legal legislative bodies to permit subsidiary, purely advisory bodies to meet by teleconference, subject to provisions for public participation.

BACKGROUND: The Brown Act was enacted in 1953 and has been amended numerous times since its enactment. The legislative intent of the Brown Act is to ensure that the actions and deliberations of public commissions, boards, councils, and other public agencies in the State be conducted openly. The Brown Act generally requires meetings to be noticed in advance, including the posting of an agenda, and generally requires meetings to be open and accessible to the public. The Brown Act also requires members of the public to have an opportunity to comment on agenda items and prohibits deliberation or action on items not listed on the agenda.

During and after the COVID emergency, the State expanded the use of teleconferencing for Brown Act meetings by Executive Order and legislation. In March 2020, the Governor issued Executive Order

N-29-20 in response to the COVID pandemic, which authorized local legislative bodies and State bodies to hold public meetings via teleconferencing and accessible telephonically and electronically. Subsequently, AB 361 (Rivas; 2021) and AB 2449 (Rubio; 2022) provided flexibility to use teleconferencing both during and after a declared state of emergency, subject to certain provisions related to accessibility of the meeting to members of the public.

According to the author of AB 817, the intent of the bill is to address barriers to entry to achieve diverse participation and representation in civic leadership. The author states that this bill helps to promote equity and inclusion for many protected classes in local communities by increasing accessibility and removing barriers to entry into leadership opportunities in local advisory and appointed boards and commissions.

Supporters of the bill note that the exemption to the Brown Act proposed by AB 817 would provide greater equity in opportunity to serve on local advisory bodies and increase diversity in leadership, as it removes challenges related to time commitments, time and location of meetings, physical limitations, conflicts with childcare, and work obligations. Opponents of the bill have indicated that this bill would hamper public access and participation at the meetings for the press, as well as members of the public who interact with public officials when decisions are being made.

Support for AB 817 (Pacheco) would be consistent with past and current City support for State legislation associated with amendments to the Ralph M. Brown Act that would make public meetings accessible telephonically or electronically.

DEPARTMENTS NOTIFIED

None.

BILL STATUS

01/25/24	Passed in the Assembly and ordered to the Senate.
01/16/24	Amended and passed in the Assembly Committee on Local Government.
02/13/23	Read first time. To print.



Steve Luu
Analyst

SMT:sl

Attachments: 1. Revised Resolution
2. Resolution (Blumenfield – Hernandez – Krekorian)
3. AB 817 (Pacheco)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council; and

WHEREAS, prior to the outset of the COVID pandemic, the Ralph M. Brown Act included restrictions on the use of teleconferencing or virtual meetings that made this tool relatively ineffective at expanding opportunities for participation in public meetings; in particular, the Brown Act required that all teleconferencing locations be open to the public; and

WHEREAS, during and after the COVID emergency, the State expanded the use of teleconferencing for Brown Act meetings by executive order and legislation, including AB 361 and AB 2449; and

WHEREAS, although AB 361 and AB 2449 expand the use of teleconferencing, they do not fully take into account the extent to which virtual meetings make it easier for people to participate in local government as members of the public, and because the Brown Act also applies to advisory bodies created by a local legislative body, the extent to which strict limits on virtual meetings reduce the pool of people who are able to serve on these bodies; and

WHEREAS, these restrictions on virtual meetings especially burden people with family care obligations, less-flexible work schedules, physical limitations and/or who do not have access to a car, which is a particular problem in jurisdictions like the City of Los Angeles whose residents are spread across 469 square miles; and

WHEREAS, AB 817 (Pacheco) would authorize the use of teleconferencing for subsidiary, purely advisory bodies upon a finding by the legislative body that teleconference meetings would enhance public access and promote the attraction, retention, and diversity of subsidiary body members; and would require that teleconference meetings be conducted in a manner that protects the statutory and constitutional rights of members of the public, including allowing the public to hear, observe and address the subsidiary body;

NOW, THEREFORE, BE IT RESOLVED, that by adoption of this Resolution, the City of Los Angeles hereby includes in its 2023-2024 State Legislative Program SUPPORT for AB 817 (Pacheco) that would amend the Ralph M. Brown Act to authorize the Los Angeles City Council and other legislative bodies to permit subsidiary, purely advisory bodies to meet by teleconference, subject to provisions for public participation.

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, prior to the outset of the COVID pandemic, the Ralph M. Brown Act included restrictions on the use of teleconferencing or virtual meetings that made this tool relatively ineffective at expanding opportunities for participation in public meetings; in particular, the Brown Act required that all teleconferencing locations be open to the public; and

WHEREAS, during and after the COVID emergency, the State expanded the use of teleconferencing for Brown Act meetings by executive order and legislation, including AB 361 and AB 2449; and

WHEREAS, although AB 361 and AB 2449 expand the use of teleconferencing, they do not fully take into the account the extent to which virtual meetings make it easier for people to participate in local government as members of the public, and because the Brown Act also applies to advisory bodies created by a local legislative body, the extent to which strict limits on virtual meetings reduce the pool of people who are able to serve on these bodies; and

WHEREAS, these restrictions on virtual meetings especially burden people with family care obligations, less-flexible work schedules, physical limitations and/or who do not have access to a car, which is a particular problem in jurisdictions like the City of Los Angeles whose residents are spread across 469 square miles; and

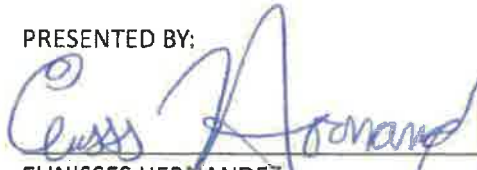
WHEREAS, AB 817 (Pacheco) would authorize the use of teleconferencing for subsidiary, purely advisory bodies upon a finding by the legislative body that teleconference meetings would enhance public access and promote the attraction, retention, and diversity of subsidiary body members; and would require that teleconference meetings be conducted in a manner that protects the statutory and constitutional rights of members of the public, including allowing the public to hear, observe and address the subsidiary body;

NOW, THEREFORE, BE IT RESOLVED, with concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles hereby includes in its 2024-2025 State Legislative Program SUPPORT for AB 817 (Pacheco) that would amend the Ralph M. Brown Act to authorize the Los Angeles City Council and other legal legislative bodies to permit subsidiary, purely advisory bodies to meet by teleconference, subject to provisions for public participation.

PRESENTED BY:


BOB BLUMENFELD
Councilmember, 3rd District

PRESENTED BY:


EUNISSES HERNANDEZ
Councilmember, 1st District

SECONDED BY:



ORIGINAL

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AMENDED IN ASSEMBLY JANUARY 17, 2024

AMENDED IN ASSEMBLY MARCH 16, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 817

**Introduced by Assembly Member Pacheco
(Coauthor: Assembly Member Wilson)**

February 13, 2023

An act to add *and repeal* Section 54953.05 ~~to~~ of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 817, as amended, Pacheco. Open meetings: teleconferencing: subsidiary body.

Existing law, the Ralph M. Brown Act, requires, with specified exceptions, each legislative body of a local agency to provide notice of the time and place for its regular meetings and an agenda containing a brief general description of each item of business to be transacted. The act also requires that all meetings of a legislative body be open and public, and that all persons be permitted to attend unless a closed session is authorized. The act generally requires for teleconferencing that the legislative body of a local agency that elects to use teleconferencing post agendas at all teleconference locations, identify each teleconference location in the notice and agenda of the meeting or proceeding, and have each teleconference location be accessible to the public. Existing law also requires that, during the teleconference, at least a quorum of the members of the legislative body participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.

~~Existing law, until January 1, 2024, law authorizes the legislative body of a local agency to use alternate teleconferencing provisions during a proclaimed state of emergency or in other situations related to public health that exempt a legislative body from the general requirements (emergency provisions) and impose and, until January 1, 2026, in certain circumstances related to the particular member if at least a quorum of its members participate from a singular physical location that is open to the public and situated within the agency's jurisdiction and other requirements are met (nonemergency provisions). Existing law imposes different requirements for notice, agenda, and public participation, as prescribed. The emergency provisions specify that they do not require a legislative body to provide a physical location from which the public may attend or comment. prescribed, when a legislative body is using alternate teleconferencing provisions. The nonemergency provisions impose restrictions on remote participation by a member of the legislative body and require the legislative body to specific means by which the public may remotely hear and visually observe the meeting.~~

~~Existing law, until January 1, 2026, authorizes the legislative body of a local agency to use alternative teleconferencing in certain circumstances related to the particular member if at least a quorum of its members participate from a singular physical location that is open to the public and situated within the agency's jurisdiction and other requirements are met, including restrictions on remote participation by a member of the legislative body.~~

~~This bill, until January 1, 2026, would authorize a subsidiary body, as defined, to use similar alternative teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency and would impose requirements for notice, agenda, and public participation, as prescribed. In order to use teleconferencing pursuant to this act, the bill would require the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action to make specified findings by majority vote, before the subsidiary body uses teleconferencing for the first time and every 12 months thereafter.~~

~~Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.~~

This bill would make legislative findings to that effect.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 54953.05 is added to the Government
2 Code, to read:
3 54953.05. (a) (1) The definitions in Section 54953, as that
4 section may be amended from time to time, apply for purposes of
5 this section.
6 (2) For purposes of this section, “subsidiary body” means a
7 legislative body that meets all of the following:
8 (A) Is described in subdivision (b) of Section 54952.
9 (B) Serves exclusively in an advisory capacity.
10 (C) Is not authorized to take final action on legislation,
11 regulations, contracts, licenses, permits, or any other entitlements.
12 (b) A subsidiary body may use teleconferencing without
13 complying with paragraph (3) of subdivision (b) of Section 54953,
14 if the subsidiary body complies with all of the following:
15 (1) The teleconferenced meetings shall be conducted in a manner
16 that protects the statutory and constitutional rights of the parties
17 or the public appearing before the subsidiary body.
18 (2) Each member of the subsidiary body shall participate through
19 both audio and visual technology.
20 (3) The subsidiary body shall provide at least one of the
21 following as a means by which the public may remotely hear and
22 visually observe the meeting, and remotely address the subsidiary
23 body:
24 (A) A two-way audiovisual platform.
25 (B) A two-way telephonic service and a live webcasting of the
26 meeting.

1 (4) The subsidiary body shall give notice of the meeting and
2 post agendas as otherwise required by this chapter.

3 (5) In each instance in which notice of the time of the
4 teleconferenced meeting is otherwise given or the agenda for the
5 meeting is otherwise posted, the subsidiary body shall also give
6 notice of the means by which members of the public may access
7 the meeting and offer public comment.

8 (6) The agenda shall identify and include an opportunity for all
9 persons to attend and address the subsidiary body directly pursuant
10 to Section 54954.3 via a call-in option or via an internet-based
11 service option.

12 (7) In the event of a disruption that prevents the subsidiary body
13 from broadcasting the meeting to members of the public using the
14 call-in option or internet-based service option, or in the event of
15 a disruption within the subsidiary body's control that prevents
16 members of the public from offering public comments using the
17 call-in option or internet-based service option, the subsidiary body
18 shall take no further action on items appearing on the meeting
19 agenda until public access to the meeting via the call-in option or
20 internet-based service option is restored. Actions taken on agenda
21 items during a disruption that prevents the subsidiary body from
22 broadcasting the meeting may be challenged pursuant to Section
23 54960.1.

24 (8) Notwithstanding Section 54953.3, an individual desiring to
25 provide public comment through the use of an internet website, or
26 other online platform, not under the control of the subsidiary body,
27 that requires registration to log in to a teleconference may be
28 required to register as required by the third-party internet website
29 or online platform to participate.

30 (9) The subsidiary body shall not require public comments to
31 be submitted in advance of the meeting and must provide an
32 opportunity for the public to address the subsidiary body and offer
33 comment in real time.

34 (A) A subsidiary body that provides a timed public comment
35 period for each agenda item shall not close the public comment
36 period for the agenda item, or the opportunity to register, pursuant
37 to paragraph (8), to provide public comment until that timed public
38 comment period has elapsed.

39 (B) A subsidiary body that does not provide a timed public
40 comment period, but takes public comment separately on each

1 agenda item, shall allow a reasonable amount of time per agenda
2 item to allow public members the opportunity to provide public
3 comment, including time for members of the public to register
4 pursuant to paragraph (8), or otherwise be recognized for the
5 purpose of providing public comment.

6 (C) A subsidiary body that provides a timed general public
7 comment period that does not correspond to a specific agenda item
8 shall not close the public comment period or the opportunity to
9 register, pursuant to paragraph (8), until the timed general public
10 comment period has elapsed.

11 (c) In order to use teleconferencing pursuant to this section, the
12 legislative body that established the subsidiary body by charter,
13 ordinance, resolution, or other formal action shall make the
14 following findings by majority vote before the subsidiary body
15 uses teleconferencing pursuant to this section for the first time,
16 and every 12 months thereafter:

17 (1) The legislative body has considered the circumstances of
18 the subsidiary body.

19 (2) Teleconference meetings of the subsidiary body would
20 enhance public access to meetings of the subsidiary body.

21 (3) Teleconference meetings of the subsidiary body would
22 promote the attraction, retention, and diversity of subsidiary body
23 members.

24 (d) *This section shall remain in effect only until January 1, 2026,*
25 *and as of that date is repealed.*

26 SEC. 2. The Legislature finds and declares that Section 1 of
27 this act, which adds *and repeals* Section 54953.05 ~~to~~ of the
28 Government Code, imposes a limitation on the public's right of
29 access to the meetings of public bodies or the writings of public
30 officials and agencies within the meaning of Section 3 of Article
31 I of the California Constitution. Pursuant to that constitutional
32 provision, the Legislature makes the following findings to
33 demonstrate the interest protected by this limitation and the need
34 for protecting that interest:

35 By removing the requirement for agendas to be placed at the
36 location of each public official participating in a public meeting
37 remotely, this act protects the personal, private information of
38 public officials and their families while preserving the public's
39 right to access information concerning the conduct of the people's
40 business.

1 SEC. 3. The Legislature finds and declares that Section 1 of
2 this act, which adds Section 54953.05 to the Government Code,
3 furthers, within the meaning of paragraph (7) of subdivision (b)
4 of Section 3 of Article I of the California Constitution, the purposes
5 of that constitutional section as it relates to the right of public
6 access to the meetings of local public bodies or the writings of
7 local public officials and local agencies. Pursuant to paragraph (7)
8 of subdivision (b) of Section 3 of Article I of the California
9 Constitution, the Legislature makes the following findings:
10 This act is necessary to provide opportunities for public
11 participation in meetings of specified public agencies and to
12 promote the attraction and retention of members of those agencies.