

Executive Team:

Dominic D. Brown, CPA, CFE
Chief Executive Officer

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
Chief Legal Officer

Matthew Henry, CFE
Chief Operations Officer



Board of Retirement:

Phil Franey, Chair
David Couch, Vice-Chair
Jordan Kaufman
Juan Gonzalez
Joseph D. Hughes
John Sanders
Rick Kratt
Tyler Whitezell
Dustin Contreras, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate
3rd Member (Vacant)

February 22, 2024

Members, Board of Retirement
Employee Bargaining Units
Requesting News Media
Other Interested Parties

Subject: Special Meeting of the Kern County Employees' Retirement Association
Board of Retirement

Ladies and Gentlemen:

A Special Meeting of the Kern County Employees' Retirement Association Board of Retirement will be held on Thursday, February 29, 2024 at 10:00 a.m. in the KCERA Boardroom, 11125 River Run Boulevard, Bakersfield, California, 93311.

How to Participate: Listen to or View the Board Meeting

To listen to the live audio of the Board meeting, please dial one of the following numbers (*landline recommended for best audio*) and enter ID# 892 6716 3002:

- (669) 900-9128; U.S. Toll-free: (888) 788-0099 or (877) 853-5247

To access live audio and video of the Board meeting, please use the following:

- <https://us02web.zoom.us/j/89267163002?pwd=R3BMY0RSSU9WUG01ZkpZeWRZWUdZQT09>
- Passcode: 648909

Items of business will be limited to the matters shown on the attached agenda. If you have any questions or require additional service, please contact KCERA at (661) 381-7700 or send an email to administration@kcera.org.

Sincerely,

Dominic D. Brown
Chief Executive Officer

Attachments

AGENDA:

All agenda item supporting documentation is available for public review on KCERA's website at www.kcera.org following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

**AMERICANS WITH DISABILITIES ACT
(Government Code §54953.2)**

Disabled individuals who need special assistance to listen to and/or participate in the meeting of the Board of Retirement may request assistance by calling (661) 381-7700 or sending an email to administration@kcera.org. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting materials and access available in alternative formats. Requests for assistance should be made at least two (2) days in advance of a meeting whenever possible.

CALL TO ORDER

ROLL CALL (IN PERSON)

SALUTE TO FLAG

MOMENT OF SILENCE

AB 2449 REMOTE APPEARANCE(S)

Items 1 and/or 2 withdrawn from agenda if no trustees will have a need to appear via teleconference:

The first two items on the agenda are reserved for trustees who have a need to appear via teleconference due to a "just cause" need or an "emergency circumstance." Trustees who have notified this Board before agenda-posting will be called upon and will provide a general description of their need to attend via teleconference as allowed by law. Trustees who were not able to notify the Board in advance of posting and have a need to attend via teleconference will state their notification or request when called upon to do so. All trustees appearing via teleconference will need to disclose any adult person(s) present in the room of their remote location and their relationship to such person(s). Trustees appearing remotely are reminded to keep their cameras on throughout the meeting.

1. JUST CAUSE CIRCUMSTANCE(S):

- a) The following Trustee(s) have notified the Board of a "Just Cause" to attend this meeting via teleconference. (See Government Code § 54953).
 - NONE
- b) Call for Trustee(s) who wish to notify the Board of a "Just Cause" to attend this meeting via teleconference. (See Government Code § 54953).

2. EMERGENCY CIRCUMSTANCE(S):

a) The following Trustee(s) have requested the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance.” (See Government Code § 54953).

- NONE

b) Call for Trustee(s) requesting the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance”. (See Government Code § 54953).

TAKE ACTION ON REQUEST(S) FOR REMOTE APPEARANCE

CONSENT MATTERS

All items listed with an asterisk (*) are considered to be routine and non-controversial by staff and will be approved by one motion if no member of the Board or public wishes to comment or ask questions. If comment or discussion is desired by anyone, the item will be removed from the consent agenda and will be considered in the listed sequence with an opportunity for any member of the public to address the Board concerning the item before action is taken. Staff recommendations are shown in caps after each item.

- *3. [Service provider evaluation period initiated pursuant to Evaluation Period Policy – RATIFY](#)

PUBLIC COMMENTS

4. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Board. This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation.

INVESTMENT MATTERS

5. [Discussion and appropriate action on private market fund recommendation](#) presented by Keirsten Lawton, Managing Director, Cambridge Associates¹, and Senior Retirement Investment Officer Geoff Nolan – RECOMMEND THE BOARD OF RETIREMENT APPROVE UP TO \$25MM COMMITMENT TO HPS SPECIAL SITUATIONS OPPORTUNITY FUND II; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN, SUBJECT TO LEGAL ADVICE AND REVIEW

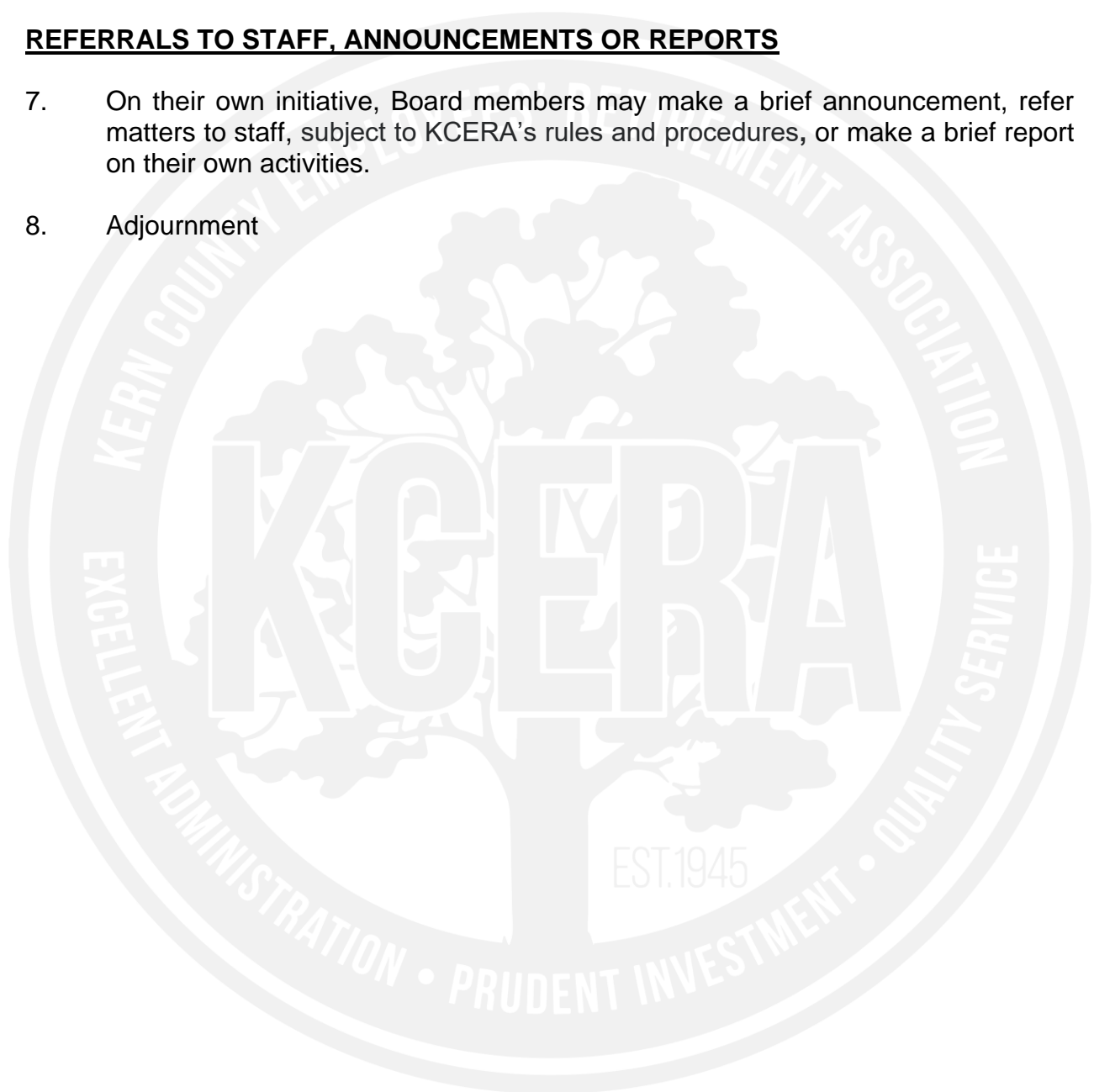
¹ Written materials and investment recommendations from the consultants, fund managers and KCERA investment staff relating to alternative investments are exempt from public disclosure pursuant to California Government Code § 7928.710, § 7922.000, and §54957.5.

ADMINISTRATIVE MATTERS


6. [Trustee education regarding Brown Act Compliance in 2024 presented by KCERA](#)
Fiduciary Counsel Ashley K. Dunning and Alex Westerfield, Nossaman LLP –
RECEIVE EDUCATIONAL TRAINING (30 MINUTES TRUSTEE EDUCATION
CREDIT)

REFERRALS TO STAFF, ANNOUNCEMENTS OR REPORTS

7. On their own initiative, Board members may make a brief announcement, refer matters to staff, subject to KCERA's rules and procedures, or make a brief report on their own activities.
8. Adjournment





Date: February 29, 2024
To: Trustees, Board of Retirement
From: Dominic D. Brown, Chief Executive Officer 
Subject: **Initiation of Service Provider Evaluation Period**

The Board of Retirement's Evaluation Period Policy was established to help ensure that decisions involving the selection, retention, or termination of KCERA service providers are consistent with fiduciary standards of conduct, and that service providers being considered by KCERA are treated fairly.

An "evaluation period" may be initiated by the Chief Executive Officer ("CEO") in the following situations:

- a) when a request for proposals (RFP) has been issued by KCERA or a short list of candidate firms has been identified for consideration by KCERA, or
- b) the Board otherwise deems it to be in the best interest of KCERA and its members and beneficiaries to do so.

The CEO has exercised his discretion and initiated the evaluation period for the following providers:

- 1) HPS Investment Partners

Trustees are required to comply with the evaluation period restrictions upon receipt of this notification. (See Board Communications Policy).

During evaluation periods, trustees shall not communicate with the specified service providers, except during board meetings, committee meetings, or KCERA-authorized due diligence visits; nor shall they accept meals, travel, hotel, or other types of gifts from the specified service providers. Notwithstanding the above, Trustees who need to communicate with such service providers for reasons unrelated to KCERA business agree to disclose such need to the Board beforehand. If circumstances do not permit timely disclosure to the Board, the trustee shall provide disclosure of the intended communication to the CEO and to the Chair or Vice-Chair.

Service providers that breach this policy may be terminated by KCERA or disqualified from consideration in a search process. Board members who breach this policy may be sanctioned in accordance with the KCERA Code of Conduct.

(See Evaluation Period Policy).

Pursuant to the aforementioned policies, your Board is asked to ratify the above evaluation period I recently initiated.

ALTERNATIVE INVESTMENTS RECORDS

EXEMPT FROM PUBLIC DISCLOSURE

(CA Gov. Code §7928.710)

(CA Gov. Code §7922.000)

(CA Gov. Code §54957.5)

DO NOT REPRODUCE

DO NOT DISTRIBUTE



Brown Act Compliance in 2024

**Presentation to the Board of Retirement of the
Kern County Employees' Retirement Association
February 29, 2024**

Your presenters



**Ashley Dunning,
KCERA Fiduciary Counsel**

Partner, Nossaman LLP
Co-Chair, Pensions, Benefits & Investments Group
adunning@nossaman.com



Alex Westerfield

Partner, Nossaman LLP
Pensions, Benefits & Investments Group
awesterfield@nossaman.com

The Ralph M. Brown Act (Brown Act)

- The Brown Act is the open meeting law that is applicable to local public agencies such as KCERA
- Open meeting law balances public access and need for candor in deliberations
- It applies to elected bodies, agencies, and boards, such as the KCERA Board of Retirement and its standing committees
- Compliance with the Brown Act is thus a matter of *prudent governance* for KCERA, and thus, *fiduciary responsibility*





The Brown Act -- Overview

- Public Access to Meetings:
 - Posting agenda for regular meeting – 72 hours
 - Time, location, description of items
 - NO action if item not on agenda unless finding that there is an emergency or a need to take “immediate action,” and appropriate Board findings are made on that topic
 - Information to board members and public
 - Public comment

Definition of “Meeting” under the Brown Act

- A majority of members of the body in the same time and place, to hear, discuss or deliberate on any item within their jurisdiction
 - Informal sessions or conference attendance
 - Telephone conferences
 - E-mails



Brown Act Meetings Defined (cont.)

- **Majority of members at a(n):**
 - Conference open to the public and of general interest to persons in a given field
 - Local public meeting
 - Open meeting of another body
 - Social gatherings or ceremonial event
- **BUT no shop talk!**
 - Cannot discuss Board or standing committee matters at these events

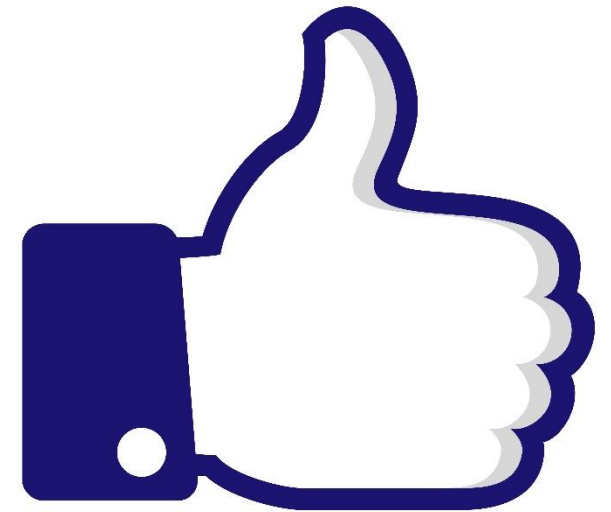


Social Media Use by Public Officials

- “A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.”

(Gov. Code sec. 54952.2.(b)(3)(A).)

- Includes use of emojis, the “like” button on Facebook or Instagram, and/or retweeting on Twitter
- Provision sunsets on January 1, 2026



Agenda

- Brief general description (less than 20 words) of each item to be discussed or transacted.
- Includes both open and closed session items (discussed below).
- Must provide enough information so that public can decide whether to participate.
- Board may not discuss or act on matters not included in the agenda.
- New issues (raised by board, staff or public during the meeting) may be included in next agenda.
- Good of the Order (aka, “Board member comments”) is not an opportunity to get into substantive discussion on topics not on the agenda.

Additions to the Agenda

- After agenda is posted, new items may be added to the agenda only where:
 - Board concludes the topic qualifies for an emergency meeting, as statutorily defined, or
 - There is a need for immediate action and the need for action came to the attention of the agency after the agenda was mailed
- At the meeting, Board must make this finding before taking action on the item
- Action on the item requires a two-thirds vote of the Board, or unanimous vote if fewer than two-thirds of the members are present

Special Meetings

- **Can Be Called With 24-Hour Notice by the Chair or by a Majority of the Members:**

- Notice of Special Meeting must be posted at least 24 hours prior thereto and in a location freely accessible to the public and shall state time, place, and business to be transacted at meeting
- No other business may be considered at the Special Meeting.
- Notice is required even if meeting is conducted in closed session.
- Public comment period must be provided and identified on the agenda.



Staff Reports & Background Materials (for Agenda Items)

- Must be made available to the public upon request (no delay) unless exempt from disclosure under the Public Records Act. Note certain documents pertaining to alternative investments are exempt from disclosure.
- Must be available for public inspection at the meeting
- Documents submitted by public must be available for public inspection after the meeting
- Reasonable copying charge



Public Comment

- **The Board must take public comments on agenda items:**
 - Before or during board discussion of each agenda item. Must be before a vote.
 - Must allow critical comments
 - Time allowed
 - Reasonable regulations may be adopted
 - Per speaker
 - Overall time allowed
- **Must also accept general public comment on issues under Board's jurisdiction**
 - Usually at beginning or end of meeting



Public Comment (cont.)

- **Response to Public Comment on Items Not on Agenda:**
 - May, but are not required, to provide a brief response to statements or questions, but no back and forth discussion or action
 - May ask questions for clarification
 - May refer the matter to staff:
 - For information
 - With a request to report back
 - With direction to place matter on a future agenda
- **May briefly announce or report on member's own activities**

Closed Session Exceptions

- Must be specifically permitted by statute, such as:
 - Personnel evaluations, hiring decisions (not compensation)
 - Pending litigation or significant exposure to litigation
 - Real property negotiations
 - Purchase or sale of a particular, specific pension fund investment
 - Labor negotiations (with negotiators for board, not those with whom negotiation occurs, and no final decision)
- **Each of these provisions has specific rules regarding when it may be invoked and what may, and may not, be discussed.**

Closed Session Exceptions (cont.)

- Notice in regular agenda required
- No one permitted in closed session unless has an “official” role
- Disclosure of closed session discussion is prohibited; reportable action must be reported by roll call vote
- May not take action in closed session on topics that require open session deliberation (*Mary’s Kitchen v. City of Orange* (4th DCA, 10.25.23))



**DO NOT
DISTURB**

How have Boards and others gotten into trouble under the Brown Act?

1. Having a staff presentation and Board discussion on a substantive topic as the result of a general “CEO report” that did not identify that topic with particularity
2. Having a closed session with legal counsel on a policy issue rather than on the topics for which the closed session was properly agendaized
3. Taking action in closed session on a topic that was not agendaized for action

Closed Session Cautionary Note: *Mary's Kitchen v. City of Orange* (4th DCA, 10.25.23)

- Minutes re closed session item agenda'd as “anticipated litigation” recited City Council “action” that “unanimously confirmed” City manager termination of licensing contract
- Court of Appeal deemed allegations regarding that closed session to constitute a potential Brown Act violation

Further observations re Brown Act compliance

- The Brown Act's rules apply only to communications among, and/or with, members of the legislative/quasi-legislative body, i.e, for KCERA, the members of the KCERA Board and its standing committees.
- Meetings of KCERA staff members and/or external consultants, without Board/Committee members present, therefore, are not subject to the open meeting rules.
- Thus, when such a Board/Committee delegates certain responsibilities to staff/consultants that otherwise would be subject to open meeting laws, those responsibilities may be carried out without regard to the Brown Act.
 - *Fiduciary oversight by the Board may, or may not, be subject to such open meeting and Public Records Act rules, depending on the topic of the communication and any applicable privileges.*

*What has changed over the
last 5 years under the
Brown Act?*



Board and Standing Committee Member (collectively “Board Member”) Remote Attendance Rules Under the Brown Act in 2019

- Allowed as long as each site accessible to the public, ADA-compliant, and public can hear.
- All sites must be noticed and at least Board Member must be at each location.
- Agenda must be provided and public allowed to speak from each location.
- At least a quorum of Board Members must participate from locations that are within the boundaries over which the body exercises jurisdiction.
- Votes by roll call.

Board Member Remote Attendance at Meetings during Covid-19 State of Emergency

- First by Executive Order, and then Government Code §54953(e) (**AB 361**), local agency boards could conduct remote access meetings during the Covid-19 State of Emergency such that:
 - Agendas did not need to be posted at all teleconference locations;
 - Each teleconference location did not need to be identified in the notice and agenda of the meeting;
 - Each teleconference location did not need to be accessible to the public; and
 - A quorum of the Board members did not need to participate in the meeting from locations within the boundaries of the territory over which the public agency exercised jurisdiction.

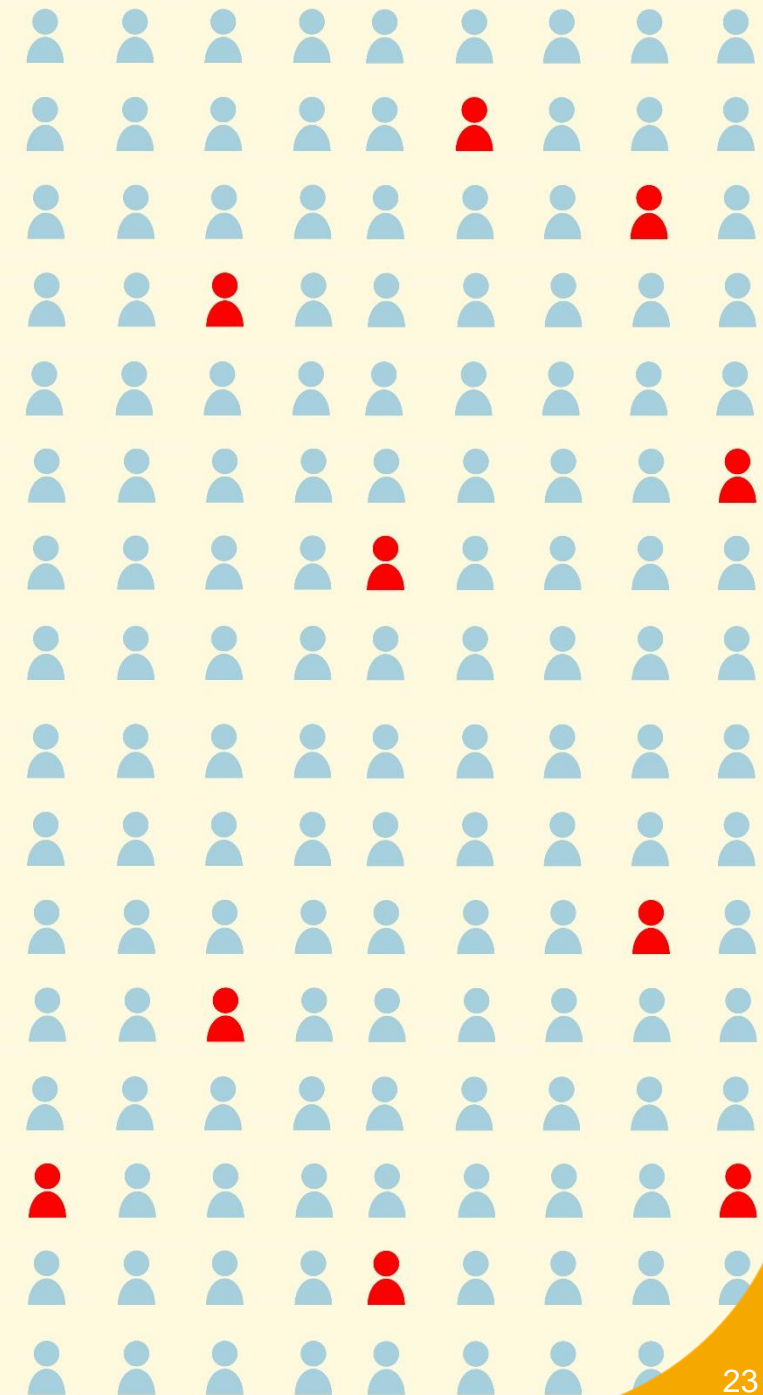


Board Member Remote Attendance at Meetings during Covid-19 State of Emergency (cont.)

- Permitted if the board made findings that:
 - 1) a State of Emergency under Government Code section 8625 remains in effect; and
 - 2) (i) State or local officials have put in place social distancing measures to protect health, or, (ii) the local agency board determines that meeting in person would present imminent risks to the health and safety of attendees.

Board Member Remote Attendance at Meetings **after** Covid-19 State of Emergency

- Governor Newsom announced that the State of Emergency would be lifted as of February 28, 2023.
- Therefore, boards of local agencies returned to operating under then existing Brown Act provisions, as modified by Assembly Bill 2449, effective January 1, 2023.



Board Member Remote Attendance at Meetings **after** Covid-19 State of Emergency

- In 2024, AB 361 (i.e., Brown Act rules in place during the pandemic) may only be invoked if:
 - A state of emergency exists that the Legislative Body has determined, by majority vote, that meeting in person would present imminent risks to the health or safety of attendees; and
 - The Legislative Body has continuously made 45-day renewal findings and continues to do so going forward.



Board Member Remote Attendance at Meetings from January 1, 2023-December 31, 2025

- AB 2449 was effective from January 1, 2023 through the end of 2025. As of that date, its special teleconferencing rules are also repealed.
- AB 2449 authorizes local public agencies to use teleconferencing under more rigorous requirements than under AB 361, but the rules are still more relaxed than prior to the COVID-19 pandemic.

Board Member Remote Attendance at Meetings After Pandemic through December 31, 2025

- Under AB 2449, members of a public agency board may continue to use teleconferencing by certain of its Board Members without complying with the requirements that:
 1. the agency notice each teleconference location of each member who will be participating in the meeting;
 2. each teleconference location be accessible to the public; and
 3. members of the public be allowed to address the board at each teleconference location.

Board Member Remote Attendance at Meetings After Pandemic through December 31, 2025

- To use the AB 2449 teleconferencing rules:
 - (1) at least a quorum of the Board Members must be present together physically within the jurisdiction of the board;
 - (2) a Board Member may teleconference only if there is “just cause” or an “emergency circumstance,” both of which are defined by law; and
 - (3) unlike with “just cause,” the board must by majority vote affirm that an “emergency circumstance” situation does exist.

Board Member Remote Attendance at Meetings After Pandemic through December 31, 2025 – “just cause”

- AB 2449 defines “just cause” as restricted to the following:
 1. A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse or domestic partner that requires them to participate remotely;
 2. A contagious illness that prevents a member from attending in person;
 3. A need related to a physical or mental disability, as defined; or
 4. Travel while on official business of the board’s agency or another state or local agency.

Board Member Remote Attendance at Meetings After Pandemic through December 31, 2025 – “just cause

- A board member who intends to participate via teleconference must also notify the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of the need to participate remotely for just cause and provide a general description of the circumstances relating to their need to appear remotely at the given meeting.
- AB 2449 prohibits a Board Member from participating via teleconference for “just cause” for more than two meetings in a calendar year.

Board Member Remote Attendance at Meetings After Pandemic through December 31, 2025 – ““emergency””

- AB 2449 defines an “emergency circumstance” as “a physical or family medical emergency that prevents a member from attending in person,” which requires the following as well:
 1. The Board Member must provide a general description of the emergency, generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability or any personal medical information
 2. The Board Member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible.
 3. The Board must take action on a request to participate remotely at the earliest opportunity.

Key points re Board Member teleconferencing to meetings

- To permit a Board Member to invoke the “just cause” or “emergency” provisions of the Brown Act, the retirement system must be capable of permitting virtual attendance **by the public** too.
- The law restricts how often Board Members may invoke such rules, by person.
- The law requires strict adherence to transparency predicates to invoke such rules, e.g.:
 - two-way audio-visual compliance; and
 - identification of anyone 18 years old or older who is present with in room with teleconferencing Board Member



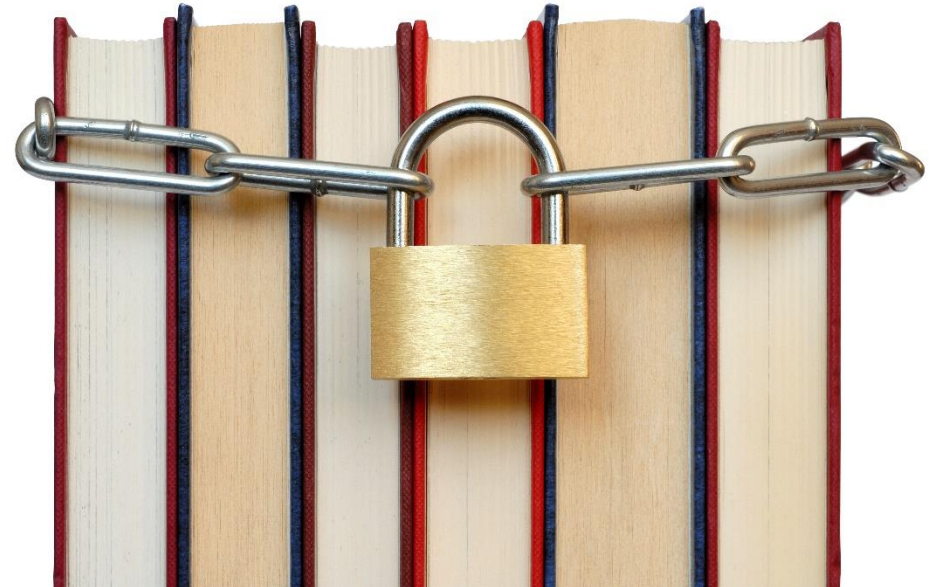


Pending two-year Brown Act bills

1. AB 1379 (Papan) – Relaxes rules for posting agendas to use teleconferencing
2. SB 537 (Becker) – Expands “just cause” and relaxes teleconference for cross-county agency

Brown Act Violations

- Possible Consequences of Violation:
 - Nullification of decision
 - Criminal penalties (misdemeanor) if an action is taken
 - Civil remedies—injunction or voiding of acts (court can order taping of closed sessions in future)
 - Attorneys' fees to plaintiff



Thank you for your time



Ashley Dunning,
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