

Memo

To: San Francisco Peninsula Rail Program Executive Steering Committee
From: TJPA staff
Date: January 20, 2023
Re: Findings Under Assembly Bill (AB) 361 Regarding the Continued Use of Teleconferencing Technologies for Meetings of the ESC; Election Not to Rely on Teleconferencing Provisions under AB 2449

AB 361 Findings

The San Francisco Peninsula Rail Program Executive Steering Committee (“ESC”) is an advisory body established pursuant to the San Francisco Peninsula Rail Program Memorandum of Understanding, effective June 5, 2020, between the Transbay Joint Powers Authority; the Metropolitan Transportation Commission; the San Francisco County Transportation Authority; the Peninsula Corridor Joint Powers Board; the California High Speed Rail Authority; and the City and County of San Francisco. Meetings of the ESC are held in conformance with the Brown Act (Govt Code Sections 54950 *et seq.*).

On March 4, 2020, the Governor of the State of California proclaimed a state of emergency under the State Emergency Services Act in connection with the Coronavirus Disease 2019 (“COVID-19”) pandemic, and that state of emergency remains in effect.

On February 25, 2020, the Mayor of the City and County of San Francisco declared a local emergency (as subsequently amended and supplemented), and on March 6, 2020, the City and County of San Francisco’s Health Officer declared a local health emergency, and both those declarations remain in effect. The City and County of San Francisco Health Officer has issued at least one order (Health Office Order No. C-19-07y) (updated) that recommends measures to encourage vaccination, masking, personnel health screening, signage, and ventilation, and that order remains in effect.

The California Department of Industrial Relocations Division of Occupational Safety and Health (“Cal/OSHA”) has promulgated Section 3205 of Title 8 of the California Code of Regulations, which requires most employers in California, including the TJPA, to train and instruct employees about measures that can decrease the spread of COVID-19, including physical distancing and other social distancing measures, and those regulations remain in effect.

On September 16, 2021, the Governor signed AB 361 (Rivas, Chapter 165, Statutes of 2021), a bill that amends the Brown Act to allow local public agencies to continue to meet by teleconferencing technology during a state of emergency without complying with restrictions in the Brown Act that would otherwise apply, subject to certain conditions, which must be reconsidered every 30 days. The ESC last considered and adopted a motion on the continuation of remote public meetings under AB 361 on December 16, 2022.



The ESC has met remotely during the COVID-19 pandemic and, so long as the state of emergency continues, can continue to do so in a manner that allows public participation and transparency while minimizing health risks to members, staff, and the public that would be present with in-person meetings.

Election Not to Rely on Teleconferencing Under AB 2449

On September 13, 2022, the Governor signed AB 2449, a bill that amends and supplements the Brown Act to provide two additional short-term and limited options for members of a legislative body to participate in meetings of a legislative body via teleconference. The first option would allow a member to appear via teleconference for qualifying “just cause.” The second option would allow a member to appear via teleconference for a qualifying “personal emergency.” The options are scheduled to sunset in 2025.

After careful consideration, and consistent with the TJPA Board’s approach, it is recommended that the ESC elect not to rely on teleconferencing under AB 2449. Some of the concerns that support this recommendation are:

- For members of a body to rely on an AB 2449 exception, at least a quorum of the body must be present in person at a single location open to the public. If more than a quorum of the members desire to rely on the AB 2449 options, the law does not provide guidance on how to resolve the competing requests.
- There are limits on the number of times a body’s member may rely on the clauses. This limitation presumably would present some additional burden on the body’s administrative support to track.
- Under the “personal emergency” option, the body must formally approve a colleague’s claim of personal emergency. The law explains that a personal emergency must be medical in nature, but does not provide guidance on how the legislative body should assess the adequacy of the member’s claim of emergency. Providing adequate evidence of personal emergency may be perceived as an invasion of privacy. Considering the claim presumably would present some additional burden to the work of the legislative body and administrative support.
- The claim of just cause or personal emergency must be made “at the earliest opportunity possible” and “as soon as possible,” respectively. Nonetheless, the law acknowledges that the claim could be made at the start of a body’s meeting. Accordingly, the body and supporting administrative staff may need to consider and accommodate claims with little advanced notice, which may be distracting to and burdensome on the regular business of the body.

Although it is recommended against relying on AB 2449, ESC members would still be permitted to participate in ESC meetings via teleconference either (1) under AB 361, as discussed above, or (2) following the provisions in the Brown Act that pre-date COVID-19 and permit teleconferencing if the ESC member posts notice of the meeting at their remote meeting location and allows members of the public to attend the meeting at that remote location and follows certain other requirements under the Brown Act.

Recommendation

Accordingly, TJPA staff recommends that the ESC move to approve the following findings:

1. As described above, as of the date of this meeting, the Governor's proclaimed state of emergency remains in effect;
2. As described above, as of the date of this meeting, State and local officials recommend measures to promote physical distancing and other social distancing measures;
3. For the reasons described above, for at least the next 30 days, it is necessary for the ESC to continue meeting exclusively by teleconferencing technology to promote public health and safety;
4. ESC meetings held exclusively by teleconferencing technology will provide an opportunity for members of the public to address the body and will otherwise occur in a manner that protects the statutory and constitutional rights of parties and members of the public to attend such meetings via teleconferencing;
5. The ESC will review and reconsider the findings made herein at a meeting of the ESC within the next 30 days, or if the committee does not meet within the next 30 days, at the next earliest meeting of the ESC; and
6. Notwithstanding Assembly Bill 2449 and its additional bases to permit teleconferencing under the Brown Act, for transparency and efficiency, and because of limited administrative resources, the ESC has elected not to rely on the teleconferencing provisions under the bill for any meetings of the ESC.