



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 2

MEETING DATE: October 20, 2021

SUBJECT: Teleconferencing Rules Under Ralph M. Brown Act

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board make certain emergency findings that will allow the Board of Retirement and its Audit Committee to meet by teleconference during the period from October 20, 2021 to November 19, 2021, without complying with certain restrictions that would otherwise apply.

PURPOSE

This item supports the Strategic Management Plan goal to promote transparency, fairness, and compliance with laws, regulations, and policies.

DISCUSSION

The proposed Order accompanying this memo follows the recent enactment of Assembly Bill 361 (AB 361), which introduces new teleconferencing rules into the Ralph M. Brown Act.

Legal Background

The Brown Act is the open meeting law that governs local public bodies, including SCERS' Board of Retirement and Audit Committee. The Brown Act has long permitted public bodies to meet via teleconferencing, at least nominally. In practice, however, the Brown Act imposed such onerous restrictions on teleconferencing as to eliminate it as a realistic option. For example, if a Board member were to teleconference into a meeting from his or her home, that home becomes a "teleconference location" which must then "be identified in the notice and agenda of the meeting" and made "accessible to the public." See Gov. Code § 54953(b)(3).

With the emergence of COVID-19, there arose a pressing need for public bodies to be able to meet by teleconference rather than in person. To that end, in March 2020, Governor Newsom issued Executive Orders N-25-20 and N-29-20. Recognizing the dangers posed by physical gatherings, those Executive Orders suspended many of the Brown Act's restrictions on teleconferencing. (A subsequent Executive Order extended that suspension through

September 30, 2021.) Relying on those Executive Orders, SCERS' Retirement Board and Audit Committee conducted their meetings completely or partially by teleconferencing from April 2020 through September 2021.

Assembly Bill No. 361

On September 16, 2021, Governor Newsom signed AB 361 into law. Similar to Executive Orders N-25-20 and N-29-20, AB 361 gives public bodies wider latitude to meet by teleconference when meeting in person becomes unsafe. Although AB 361 does not eliminate the Section 54953(b)(3) restrictions altogether, it does create a pathway for public bodies to avoid them when emergency conditions arise. AB 361 also sets out some alternative open meeting protections that public bodies must comply with when not following Section 54953(b)(3). See Gov. Code § 54953(e)(2)(A)-(G).

To ensure that real world conditions truly warrant "unrestricted" teleconference meetings, AB 361 requires public bodies to periodically confirm and find that certain dangers to the public are present. The proposed Order is designed to comply with that aspect of AB 361.

The Proposed Order

Staff understands that one or more Board members wish to attend Board meetings by teleconference so long as pandemic conditions persist and so long as it is appropriate and lawful to do so. To facilitate that preference, Staff recommends the Retirement Board adopt the proposed Order. The proposed Order contains the findings necessary under AB 361 to authorize "unrestricted" teleconferencing at the Board's October and November meetings. In addition, the proposed Order states the Board's intent to revisit those findings periodically for subsequent meetings.

Teleconferencing at October 20, 2021 Meeting

Pursuant to Government Code section 54953(e)(1), the first time that a public body meets by teleconferencing without complying with Section 54953(b)(3), one of the following three circumstances must be present:

- (A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- (B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- (C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in

person would present imminent risks to the health or safety of attendees.

Here, the proposed Order explains that the circumstances set out in Section 54953(b)(3)(A) apply to the October 20, 2021 meeting. Specifically: (1) Governor Newsom's state of emergency proclamation remains active, and (2) an active order of the Sacramento County Health Officer contains social distancing recommendations.

Teleconferencing at November 17, 2021 Meeting

If a public body were to meet a *second* time without complying with Section 54953(b)(3), that body must have, within 30 days before that meeting, reconsidered the emergency circumstances and made findings about the risks of meeting in person. See Gov. Code § 54953(e)(3). Specifically, the public body must have made the following findings by majority vote:

- (A) The legislative body has reconsidered the circumstances of the state of emergency.
- (B) Any of the following circumstances exist:
 - (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - (ii) State or local officials continue to impose or recommend measures to promote social distancing.

The Proposed Order contains findings consistent with the above. By making these findings at the October 20, 2021 meeting, the Retirement Board and/or its Audit Committee would then be able to meet via "unrestricted" teleconferencing during the next 30 days (including on November 17, 2021).

Teleconferencing at Subsequent Meetings

Finally, if the Board wishes to hold meetings by "unrestricted" teleconferencing on an ongoing basis after November 17, 2021, it must continue to refresh its Section 54953(e)(3) findings every 30 days. As a practical matter, that means the Board must (if appropriate) make the Section 54953(e)(3) findings at (1) each monthly Board meeting, or (2) if there are 30 days or more in between Board meetings, at a special meeting.

ATTACHMENT

- Board Order

Prepared by:

/S/

Stephen Lau
General Counsel

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

**Before the Board of Retirement
October 20, 2021**

MOTION:

Teleconferencing Rules Under Ralph M. Brown Act

THE BOARD OF RETIREMENT hereby finds, declares, and orders as follows:

Teleconferencing Rules Under Ralph M. Brown Act

1. Meetings of the SCERS Board of Retirement (Retirement Board) and the Audit Committee of the Board of Retirement (Audit Committee) must comply with the Ralph M. Brown Act (Gov. Code § 54950 et seq).

2. Under the Brown Act, meetings of the Retirement Board and Audit Committee may be held by teleconferencing, subject to the conditions set forth in Government Code section 54953(b)(3). Among those conditions are that agendas must be posted at all teleconference locations, and members of the public may offer comment at each teleconference location.

3. However, under certain circumstances, the Brown Act permits the use of teleconferencing without complying with Section 54953(b)(3). Specifically, Section 54953(e)(1) states:

A local agency may use teleconferencing without complying with [Section 54953(b)(3)] . . . in any of the following circumstances: (A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

Teleconferencing at
October 20, 2021 Retirement Board Meeting

4. Pursuant to Section 54953(e)(1), the Board takes notice of the following:

a. On March 20, 2020 Governor Newsom proclaimed a state of emergency in connection with the COVID-19 pandemic. That proclamation remains in effect as of the date of this Order.

b. On July 29, 2021, the Sacramento County Health Officer issued an order (Health Order) that recommends measures to promote social distancing. Specifically, the Health Order recommends that, to reduce COVID-19 transmission, “persons should continue to follow CDC guidance for unvaccinated people . . . and for fully vaccinated people,” including by “avoiding crowds” and “avoiding poorly ventilated spaces.” The Health Order specifically hyperlinks to and incorporates by reference the CDC guidance for unvaccinated people, which recommends that unvaccinated persons “stay 6 feet away from others.” The Health Order remains in effect as of the date of this Order.

5. Because the circumstances described in Section 54953(e)(1)(A) are present, the Retirement Board is authorized to use teleconferencing at its October 20, 2021 meeting without complying with Section 54953(b)(3).

Teleconferencing at
November 17, 2021 Retirement Board Meeting

6. The Retirement Board intends to hold its meeting of November 17, 2021 by teleconference without complying with Section 54953(b)(3).

7. In order to do so, the Retirement Board must make certain findings in advance of that meeting. Government Code section 54953(e)(3) states:

If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with [Section 54953(b)(3)], the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to [Section 54953(e)(1)], and every 30 days thereafter, make the following findings by majority vote:

- (A) The legislative body has reconsidered the circumstances of the state of emergency.
- (B) Any of the following circumstances exist:
 - (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

- (ii) State or local officials continue to impose or recommend measures to promote social distancing.

8. Pursuant to Section 54953(e)(3), the Retirement Board hereby finds as follows:

a. The Retirement Board has reconsidered the circumstances of the state of emergency.

b. For all the reasons stated in Paragraph 4 above, local officials continue to recommend measures to promote social distancing, and the state of emergency continues to directly impact the ability of the members of the Retirement Board to meet safely in person.

9. The findings set forth in Paragraph 8 shall be effective from October 20, 2021 through November 19, 2021, unless the Retirement Board makes superseding findings before then. These findings shall govern any Retirement Board or Audit Committee meeting to take place in that period.

Authorizing Teleconferencing at Subsequent Meetings
(Reconsideration of Emergency Circumstances Every 30 Days)

10. It is anticipated that, if appropriate and warranted by pandemic conditions, the Retirement Board and/or the Audit Committee will seek to hold subsequent meetings by teleconference without complying with Section 54953(b)(3).

11. In order to do so, the Retirement Board will continue to rely on Government Code section 54953(e)(3).

12. For the period of time that Governor Newsom's state of emergency proclamation remains effective, at least every 30 days following today (October 20, 2021), the Retirement Board may reconsider the circumstances of emergency and make findings necessary under Section 54953(e)(3).

I HEREBY CERTIFY that the above order was passed and adopted on October 20, 2021 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Richard B. Fowler II
Board President

Eric Stern
Chief Executive Officer and
Board Secretary

Item 2