

I. Purpose

To provide guidance to the Board of Retirement (Board) and Staff when Trustees wish to appear at Board and Standing Committee meetings from a remote location.

II. Assumptions

- A. The Board is subject to California's open meeting law that applies to local agencies, the Brown Act, Gov't Code §54950 et seq.
- B. Gov't Code §54953(b) permits the Board to hold a teleconference meeting if the Board follows certain requirements
- C. The Board finds that providing teleconference meetings can benefit the public, the Board and its Standing Committees and therefore teleconferencing should be available to facilitate Trustees' participation in Board and Standing Committee meetings.
- D. This Policy does not limit the Board's authority under applicable law. The Board may apply all legal authority that relates to the requirements for a teleconference meeting that are operative at the time of the meeting without amending this Policy.

III. Policy Guidelines

- A. Unless the exception described in Section III(E) below applies, at least a quorum of the Board or Standing Committee must be within Alameda County during a teleconference meeting.
- B. Unless one of the exceptions described in Sections III(E) or III(F) below applies, each Trustee appearing from a remote location is responsible for ensuring that:
 - 1. The agenda is properly posted at the site at least 72 hours before the meeting in a location that is accessible to the public. Weekend hours may be included to satisfy this requirement, but the agenda must be accessible to the public for the entire 72-hour period. Thus, the agenda may need be posted both outside a main entrance (visible outside an office building) and outside the room in which the Trustee will teleconference. Such agendas must remain visible until the meeting is completed.

2. Members of the public can access the site during the meeting (even if the location is a hotel room, cruise ship cabin or a residence) and the site is ADA compliant.
 3. Teleconference equipment is working, with a speaker reasonably loud enough for attendees to hear.
 4. Members of the public who wish to make a public comment may do so.
- C. Unless one of the exceptions described in Sections III(E) or III(F) below applies, each remote location must be identified in the notice and agenda of the meeting including:
1. The identity of the Trustee appearing at that location.
 2. The street address and any room, apartment, suite or office number.
 3. The agenda must provide the opportunity for the public to address the Board or Standing Committee at each location.
- D. All votes during a teleconference meeting must be taken by roll call, even if only one Trustee is participating video/telephone.
- E. Gov't Code §54953(e) eliminates the requirements stated in Sections III(A-C) above during a proclaimed state of emergency if the Board makes certain findings relating to the protection of the health and safety of meeting attendees (roll call votes are still required). As of April 20, 2023, Section 54953(e) is set to be repealed on January 1, 2024. When the Board holds a teleconference meeting pursuant to Section 54953(e), the notice and agenda will prominently state as on the first page of the agenda: "THIS MEETING WILL BE CONDUCTED VIA TELECONFERENCE [GOV'T CODE § 54953(e)]."
- F. Gov't Code §54953(f) eliminates the requirements stated in Sections III(B-C) above when one or more Trustees appear remotely under "emergency circumstances" or for "just cause" (as defined in the statute), if at least a quorum the Board participates in person in the Boardroom or other appropriate physical location open to the public. As of April 20, 2023, these exceptions are set to be repealed on January 1, 2026. ACERA will provide the means by which the public can remotely hear, watch and participate in the meeting and the agenda will explain how to do so. When a Trustee attends remotely, the Trustee must;
1. Publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

2. Participate through both audio and visual technology.
3. Contact the ACERA Chief Executive Officer or Chief Counsel as soon as the desire to utilize these exceptions arises. The Chief Counsel will ensure compliance with the limitations on the use of these exceptions. A memorandum that explains the how those limitations operate for ACERA is attached hereto as Exhibit A.

IV. Policy Review

The Governance Committee shall review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

V. Policy History

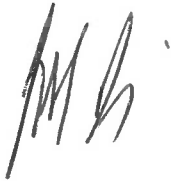
- A. The Board adopted this policy on November 21, 2019.
- B. The Board revised this Policy on August 18, 2022.
- C. The Board added Section III(F) and made other minor technical amendments to this Policy on April 20, 2023.

Exhibit A



Office of the Chief Counsel

To: Board of Retirement
From: Jeff Rieger, Chief Counsel
Meeting: February 16, 2023
Subject: **New Rules For Trustees' Remote Participation In Public Meetings**



Effective January 1, 2023, new legislation relaxed some of the rules regarding Trustees' remote participation in Board and Committee Meetings. At the January 19, 2023 Board meeting, the Board discussed the new rules that relieve the Trustees and ACERA staff from some of the normal requirements for Trustees to attend a meeting remotely. A copy of the memorandum presented at the January 19, 2023 meeting is attached hereto.

Under the new rules, a Trustee can invoke the "just cause" exception twice for a "legislative body" in a calendar year. There is no specific limit to how many times a Trustee can invoke the "emergency circumstances" exception, but a Trustee may not use the new exceptions ("just cause" or "emergency circumstances") for more than three consecutive months for meetings of a "legislative body" or more than 20% of the meetings of a "local agency." Also, the exceptions cannot be used more than twice in a calendar year for a "legislative body" that meets less than 10 times per year.

At the January 19, 2023 meeting, Trustees asked questions about how those limitations will be administered with respect to ACERA's Board Committees, particularly given that most Committee meetings become Board meetings because a quorum of the Board attends. This memorandum provides my analysis.

Two "Just Cause" Limit

The Brown Act's remote attendance provisions in Government Code Section 54953 describe what is required with respect to meetings of "legislative body." The Board is a "legislative body." Further, Government Code Section 54952(b) defines "legislative body" to include "standing committees of a legislative body." That is why ACERA's standing Committees are subject to the Brown Act.

The "just cause" limit states: "The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year." As already noted, the Board is a "legislative body" and each Committee is a "legislative body." Thus, for the purpose of the "just cause" limit, ACERA should determine each Trustee's rights separately for each "legislative body." This means that each Trustee can attend remotely

for “just cause” (1) two Board meetings each calendar year, and (2) two meetings of a Committee each calendar year, *if the Trustee is a member of that Committee*.¹

Three-Consecutive-Month Limit And 20% Total Limit

The new rules also include the following limits:

The provisions of this subdivision shall not serve as a means for any member of a **legislative body** to participate in meetings of the **legislative body** solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the **local agency** within a calendar year, or more than two meetings if the **legislative body** regularly meets fewer than 10 times per calendar year.

The Legislature tied most of the limits to a “legislative body” but tied the 20% limit to a “local agency.” Government Code Section 54951 defines “local agency” as “a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.” In the context of ACERA’s operations, I conclude that this definition refers to ACERA (“local public agency”), and that definition is distinct from the definition of “legislative body” under Section 54952, which refers to the ACERA Board and Committees. Thus, the apparent intent of the Legislature was to apply the 20% limit to all ACERA meetings, rather than each of its “legislative bodies” separately.²

The three-month limit, however, applies separately to each “legislative body” (the Board and each Committee). Similarly, the final clause in the excerpt quoted above (“or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year”) also applies separately to each “legislative body.” That final clause applies to all ACERA Committees except the Investment Committee because those other Committees meet fewer than 10 times per calendar year.

¹ Under ACERA’s Board and Committee Operations Policy, a Trustee may participate in a Committee meeting even though the Trustee is not a member of that Committee if a quorum of the Board attends a Committee meeting (and therefore the meeting becomes a Board meeting). I conclude that a Trustee does not have two “just cause” remote attendance opportunities for a Committee meeting if the Trustee is not a member of the Committee. Such a Trustee will be able to fully participate in such a meeting only if the meeting becomes a Board meeting. The Board is a different “legislative body” that is subject to a separate “just cause” attendance limit.

² There is logic to this nuanced distinction. For the Board and each Committee (and presumably almost every other California “legislative body”), three consecutive months of meetings would always be more than 20% of meetings for the calendar year. Thus, applying the 20% limitation to each “legislative body” would render the three-consecutive-month limit meaningless. We must avoid statutory constructions that render provisions in a statute meaningless. See *Woosley v. State of California* (1992) 3 Cal.4th 758, 775-76. Both limits have meaning if the 20% limit refers to ACERA generally, because then a Trustee can potentially invoke an exception for three or more meetings of the Board (or three or more meetings of the Investment Committee) and the three-consecutive-meeting limit prevents those three meetings from being consecutive. Also, the use of the phrases “*of* the legislative body” and “*for* the local agency” indicates an intentional use of the term “local agency.” A meeting “*of*” the Board or a Committee can refer only to that particular “legislative body,” whereas all Board and Committee meetings are “*for*” ACERA generally.

What This All Means For ACERA

Board Meetings: All Trustees can use the “just cause” provision twice for Board meetings and there is no limit to how many times a Trustee can use the “emergency circumstances” provision for Board meetings, so long as the Trustee does not exceed the “Total Limit” discussed below. No Trustee can use any of these provisions for more than three consecutive months.

Investment Committee Meetings: All Trustees can use the “just cause” provision twice for Investment Committee meetings and there is no limit to how many times a Trustee can use the “emergency circumstances” provision for Investment Committee Meetings, so long as the Trustee does not exceed the “Total Limit” discussed below. No Trustee can use any of these provisions for more than three consecutive months.

Other Committee Meetings: Members of the Committee can use the “just cause” and/or the “emergency circumstances” provision twice for that Committee. The other Trustees can use either provision, but only if there is a quorum of the Board such that the meeting becomes a Board meeting, in which case the above for rules for Board meetings apply.³

Total Limit: No Trustee can use the new exceptions for more than 20% of all the total ACERA meetings (all Board meetings and Committee meetings) in the calendar year. Based on current expectations, the total limit will be 10 meetings in 2023.

Normal Rules: If a Trustee reaches any of the above limits, the Trustee can still attend a meeting remotely by following the normal rules:

- Post agendas at all teleconference locations.
- Each teleconference location shall be identified in the notice and agenda.
- Each teleconference location shall be accessible to the public.
- During the teleconference, at least a quorum of the members of the Board shall participate from locations within Alameda County.

All Trustees Really Need To Know

If a Trustee wants to participate remotely in a meeting, that Trustee should contact the CEO or Chief Counsel as soon as the desire to participate remotely arises. The Chief Counsel will ensure compliance with the rules discussed in this memorandum.

³ The three-consecutive-month limitation is irrelevant to these Committees, because Trustees cannot use the new rules more than twice for each Committee (also, these Committees do not meet every month).