



**ITEM NO. 16**

**PERSONNEL COMMITTEE AGENDA**

**Wednesday, November 20, 2024  
4:00 PM**

**East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA**

**Committee Members: Azevedo (Chair), Johnson**

- P1. Call to Order**
- P2. Roll Call**
- P3. Public Forum**
- P4. Brown Act Review**  
(The Committee will discuss legal council's annual review of the Brown Act.)
- P5. Update on Procedural Requirements Related to OPEB Change**  
(The Committee will receive a report on procedural requirements to be fulfilled over the next several meetings.)
- P6. Motion to Approve Revisions to the Authority's Commissioner Compensation Policy**  
(The Committee will consider the motion.)
- P7. Adjournment**

Any member of the public may address the Commission at the commencement of the meeting on any matter within the jurisdiction of the Commission. This should not relate to any item on the agenda. It is the policy of the Authority that each person addressing the Commission limit their presentation to three minutes. Non-English speakers using a translator will have a time limit of six minutes. Any member of the public desiring to provide comments to the Commission on an agenda item should do so at the time the item is considered. It is the policy of the Authority that oral comments be limited to three minutes per individual or ten minutes for an organization. Speaker's cards will be available in the Boardroom and are to be completed prior to speaking.

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, please contact Juanita Villasenor at [juanita@ebda.org](mailto:juanita@ebda.org) or (510) 278-5910. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

In compliance with SB 343, related writings of open session items are available for public inspection at East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA 94580. For your convenience, agenda items are posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>.

**Next Scheduled Personnel Committee meeting is  
Wednesday, January 15 at 4:00 pm**

## **ITEM NO. P4 BROWN ACT REVIEW**

### **Recommendation**

Receive and review the foregoing updates to the Brown Act.

### **Strategic Plan Linkage**

4. **Sustained Organization:** Sustain a functional, productive, resilient organization to ensure EBDA can strive to achieve its Mission and Vision.
6. **Internal Collaboration:** Expand cooperation among EBDA Member Agencies to improve economies of scale, reduce duplication of effort, and enhance each Agency's capacity.
  - a. Engage in proactive communication with Commission and Managers Advisory Committee (MAC).

### **Background**

The Ralph M. Brown Act ("Brown Act" or "Act") (Gov. Code section 54950 et seq.), governs the public's rights to attend and participate in meetings of local legislative bodies, and provides procedural requirements for such meetings. The Brown Act is updated from time to time by the State legislature, or Gubernatorial Orders. The Personnel Committee annually reviews the Ralph M. Brown Act for changes that may have an effect on how EBDA conducts its Committee and Commission meetings.

### **Discussion**

There have been no major changes to the Brown Act or in its interpretation. Two bills were passed in the state legislature this session. These include Assembly Bill (AB) 2302 (Adis), which changes the requirements for remote participation at meetings by revising the limitations on the number of times per year board members may appear remotely, and AB 2715 (Boerner), which expands the public security ground for closed session meetings to include cybersecurity threats. Additionally, the California Attorney General issued an opinion clarifying ADA considerations in remote participation requirements.

### **Assembly Bill 2302**

The Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and that all persons be permitted to attend and participate. The Act also allows for meetings to occur via teleconferencing, subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction.

Beginning in 2021, the Legislature codified revised standards for remote participation to accommodate teleconferencing as a public health measure during the COVID-19 pandemic. In particular, AB 2449 (2022) allows members of Brown Act bodies to

participate remotely for (1) “just cause,” defined as the need to provide care to a child or close relation, having a contagious illness, needs related to a physical or mental disability, or being on official travel for the agency; or (2) “emergency circumstances,” which include physical or family emergencies that prevent a member from attending.

Existing law, until January 1, 2026, authorizes the legislative body of a local agency to use alternative teleconferencing in these specific circumstances if, during the meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda that is open to the public, and situated within the boundaries of the agency’s jurisdiction, among other requirements.

The right to appear remotely under these circumstances is not unlimited. Currently, members of Brown Act bodies may not appear remotely for a period of more than three consecutive months or for 20% of the year’s regular meetings. Or, if a body meets fewer than ten times a year, a member may only appear remotely twice during the year.

AB 2302 (Addis), which takes effect on January 1, 2025, replaces these limitations with an easier-to-apply formulation based upon the frequency with which the body meets rather than a specified number of meetings per year. AB 2302 limits the allowed number of remote appearances for members of Brown Act bodies to:

- Two times per year if the body regularly meets once per month or less;
- Five times per year if the body regularly meets twice per month; or
- Seven times per year if the body regularly meets three or more times per month.

For the purpose of counting meetings attended by teleconference, AB 2302 defines a “meeting” as any number of meetings of the legislative body of a local agency that begin on the same calendar day.

#### Assembly Bill 2715

As stated above, the Brown Act generally requires that all meetings of a legislative body be open and public and that all persons be permitted to attend and participate. Existing law authorizes a legislative body to hold a closed session only as specified by statute. One such ground relates to matters posing a threat to the security of public buildings, essential public services, or the public right of access to public facilities. The current focus of this statute is on physical threats to security.

AB 2715 addresses the growing concern over cyberattacks by expanding on the existing ground for closed session. AB 2715 authorizes a legislative body to hold a closed session with other law enforcement or security personnel concerning cybersecurity by expanding the existing ground for closed session. As expanded, a legislative body may meet in closed sessions to discuss cybersecurity threats related to infrastructure controls or critical infrastructure information, as defined, relating to cybersecurity.

#### Attorney General Opinion

Although Attorney General opinions do not have the same force as published court decisions, they still are considered as authoritative on the issues they address. Agencies

may—and should—rely on them for guidance.

In July 2024, the Attorney General (AG) considered the interplay of the Brown Act and the federal Americans with Disabilities (ADA). Specifically, whether the ADA allows remote meeting participation to serve as a reasonable accommodation for a member of a Brown Act body with a qualifying disability.

An earlier AG Opinion from 2001 had concluded that remote participation in meetings could not be a reasonable accommodation if the meeting was covered by the Brown Act. The 2001 opinion had argued that in-person attendance by a member of a legislative body was an “essential function” of serving as a member of the legislative body and therefore, remote participation could not be a reasonable accommodation under the ADA. However, since 2001, several amendments to the Brown Act have challenged the notion that in-person attendance is “essential,” including the 2021 amendments allowing remote participation during the COVID-19 pandemic.

The AG’s 2024 opinion concludes that in-person attendance at Brown Act meetings is no longer an essential job function as defined in the ADA. As such, the ADA requires that individuals with disabilities can participate in Brown Act meetings remotely, without the need to post the address of their remote meeting location.

It also concludes that the Legislature did not intend to limit the number of meetings in which a member could participate remotely as a reasonable accommodation under the ADA. Notwithstanding, participants must identify any adults who are also present with them in the room from which they are participating, including their relationship to the participant. Additionally, no action can be taken on agenda items if the participant’s connection is disrupted.

## ITEM NO. P5 UPDATE ON PROCEDURAL REQUIREMENTS RELATED TO OPEB CHANGE

### Recommendation

For information only; no action required.

### Strategic Plan Linkage

4. **Sustained Organization:** Sustain a functional, productive, resilient organization to ensure EBDA can strive to achieve its Mission and Vision.
  - b. Provide professional development opportunities and competitive pay and benefits to attract and retain high caliber staff.

### Background

As part of approving revisions to EBDA's Compensation Plan on June 18, 2024, the Commission approved a change in retiree medical coverage from:

*“contribut[ing] up to a maximum of \$502 per month for EBDA retirees and their eligible dependents enrolled in the employer sponsored health plan. The fixed employer contribution includes the PEMHCA [Public Employees' Medical and Hospital Care Act] minimum. The minimum qualification for retiree health benefits is five years of continual employment.”*

To:

*“... EBDA will issue a quarterly reimbursement to the retiree for eligible medical premiums less the required PEMHCA employer contribution paid directly to CalPERS.*

*Employees hired before January 1, 2013 who retire from EBDA with a minimum of five (5) years of service:*

- *Up to 100% of Kaiser one-party member rate, including PEMHCA rate*

*Employees hired on or after January 1, 2013 who retire from EBDA with a minimum of (10) years of CalPERS service and at least (5) years at EBDA:*

- *Up to 50% of Kaiser one-party member rate, increasing 5% for each additional year of CalPERS service, up to 100% at 20 years.”*

As discussed as part of the Commission's deliberation on this change, the near-term actual cost to EBDA of moving from the current PEMHCA-only system to covering the premium is \$678 per month. For FY 2024/2025, this amount was expected to be fully offset by a retiree spouse's change in Medicare eligibility.

Staff did not realize, however, that there were procedural requirements that needed to be met prior to the approval of other post-employment benefit (OPEB) changes. Specifically, under Government Code §7507(b), local legislative bodies, including the Commission, who wish to make changes to public retirement plan benefits or OPEB, must meet the

following requirements:

1. **Obtain an Actuarial Impact Report:** Secure the services of an actuary to provide a statement of the actuarial impact upon future annual costs, including normal cost and any additional accrued liability, before authorizing changes in public retirement plan benefits or OPEB.
2. **Make the Future Costs Section of the Actuary's Report Public:** The future costs of changes in retirement benefits or other postemployment benefits, as determined by the actuary, shall be made public at a public meeting at least two (2) weeks prior to the adoption of any changes in public retirement plan benefits or OPEB.
3. **Actuary's Presence During Second Public Meeting:** If the future costs of the proposed changes to the public retirement plan benefits or OPEB exceed .05% of the future annual costs of the existing benefits, an actuary must be present to provide information (as needed) at the public meeting at which the adoption of the public retirement plan benefits or OPEB is being considered.
4. **Written Acknowledgement by the person with the responsibilities of a Chief Executive Officer (CEO) at the Commission:** If there is an adoption of a benefit change related to public retirement plan benefits or OPEB, the person with the responsibilities of a CEO in the entity providing the benefit, shall acknowledge in writing that they understand the current and future cost of the benefits as determined by the actuary.

### Discussion

Staff has engaged [Foster and Foster Actuaries and Consultants](#), the consultant that has performed actuarial assessments of EBDA's pension and OPEB programs for the past several years, to do the actuarial assessment of the new OPEB benefits. Staff plans to present the results of the analysis at the Commission's December 2024 meeting. Consideration of the new benefits would then be placed on the January 2025 Commission agenda. If the costs of the proposed changes exceed .05% of the future annual cost of previous benefits, EBDA's actuary would be present for the January meeting.

No changes to OPEB payments to EBDA retirees had yet been made when this issue was discovered. Retirees will continue to receive benefits consistent with the prior language until the Commission re-approves the new benefit.

**ITEM NO. P6 MOTION TO APPROVE REVISIONS TO THE AUTHORITY'S COMMISSIONER COMPENSATION POLICY**

**Recommendation**

Approve the motion revising the policy.

**Strategic Plan Linkage**

5. **Sustained Organization:** Sustain a functional, productive, resilient organization to ensure EBDA can strive to achieve its Mission and Vision.

**Background**

Per the Sanitary District Act of 1923, Commissioners may receive compensation for each day of service in an amount adopted by the Commission. In December 2020, the Commission adopted the Authority's Commissioner Compensation Policy, which governs the daily compensation rate and the activities that are eligible for compensation. The Policy was revised in May 2023, and again in November 2023. Modifications in May addressed changes to what activities were eligible for compensation. In November, the rate of compensation was increased to \$300. Per the Sanitary District Act, Commissioners are paid per day of service to the Authority, not per meeting, and Commissioner compensation is limited to no more than six (6) days of service in a calendar month.

**Discussion**

Staff has suggested minor clarifying edits to the Policy, which were reviewed and supported at the October 2024 Commission Meeting. The Commission also discussed the compensation rate per day of service and directed staff to leave the rate at \$300. The proposed Policy is attached for the Commission's consideration.

<b>POLICY NUMBER:</b>	5
<b>NAME OF POLICY:</b>	Commissioner Compensation
<b>LAST REVISED:</b>	
<b>PREVIOUSLY REVISED:</b>	November 16, 2023
<b>PURPOSE:</b>	The purpose of this Policy is to prescribe the manner in which Authority Commissioners may be compensated and/or reimbursed for actual and necessary expenses related to official business of the Authority as well as for attendance at professional, educational, or vocational meetings.

**POLICY:** It is the policy of the Authority to provide fair and appropriate compensation for Commissioners performing their official duties.

Per the Sanitary District Act of 1923, Health and Safety Code sections 6400 et seq. Health and Safety Code section 6489(a) provides that board members may receive compensation not to exceed one hundred dollars (\$100) “for each day’s attendance at meetings of the board or for each day’s service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incident thereto.” Health and Safety Code section 6489(b) provides that the board may adopt by ordinance an increased amount of compensation received by board members above the amount of one hundred dollars (\$100) per day.

On this basis, Commissioners shall be paid per day, not per meeting. Effective January 1, 2024, the current daily compensation rate is \$300 for each day of service. This compensation rate shall be reviewed once each calendar year in October and may be adjusted by up to 5% annually effective January 1 by action of the Commission. The Authority shall compensate Commissioners for up to six (6) days of service per month.

The following activities shall be considered Commission service eligible for compensation:

- Attendance at Authority Commission Meetings, Committee Meetings, or other Commission workshops or meetings subject to the Brown Act
- Representing the Authority at meetings or events at the request of Authority staff or Commission
- Meetings with legislators while representing the Authority



- Attendance at an Authority tour or special training
- Meetings with the General Manager regarding the Commission agenda or other business within the subject matter jurisdiction of the Authority

For the events above, Commissioners shall be entitled to the daily service stipend as well as reimbursement for associated travel costs.

For other activities, including conferences, meetings, and professional development, Commissioners shall be compensated by their appointing Member agency. Commissioners may seek exceptions whereby the Authority provides compensation by requesting pre-approval by the Commission. The Commission may consider pre-approving compensation for these and any other activities on a case-by-case basis.

For additional clarity, the following activities are ineligible for compensation:

- Attendance at meeting of a Standing, Liaison, Ad Hoc, or Advisory Committee of the Board on which the Commissioner does not serve
- Attendance at any meeting solely with Authority staff other than those identified above
- Internal Authority events with non-business or community-public relations functions, including groundbreaking, ribbon cuttings, dedications, and anniversary celebrations
- Social gatherings such as retired Commissioner dinners, pre-conference activities, and nonpartisan welcoming or retirement events for the staff or fellow appointees of local agencies and organizations
- Any activity for which a Commissioner is representing their appointing Member agency and/or receives compensation from another agency

All EBDA Commissioner compensation shall comply with relevant sections of the Codes of the State of California, and this Policy is subordinate to any applicable revisions to State law. EBDA Commissioner compensation shall be subject to disclosure.

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