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What is the Brown Act? Public Meeting Law for Community College Districts

Presented By:

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Agenda

- Brown Act – Public Meeting Law
 - Open Meeting Requirements
 - Agendas and Public Participation Requirements
 - Trustee Remote Participation
 - Closed Sessions
 - Remedies



Brown Act

- Guarantees the public's right to attend and participate in meetings of legislative bodies
- Requires public's business conducted in public
 - Narrow exceptions apply
- Overarching principles
 - Transparency in government
 - Public access/participation
 - Within Context of a "Business Meeting"

Public Access & Participation

TWO SOURCES OF LAW:

- Brown Act
- Education Code

Transparency in Government

Presumption: Government business is conducted in the open, subject to limited exceptions.

“The people in delegating authority do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”

Ralph M. Brown Act, 1953

Open Meeting Requirements



What is a Meeting?

- Congregation of a majority of board members of a legislative body
 - Same time and place
 - To “hear, discuss, or deliberate”
 - On any item within its subject matter jurisdiction
 - Regardless of reaching collective concurrence

Gov. Code, § 54952.2



Meeting at Ribbon Cutting Ceremony?

A community college held a ribbon cutting ceremony for the newly constructed campus student center. Three of the five board members attended. The members did not discuss any particular issues related to the center's approval, but one of the members commented that he was elated by the fact that the new center will be located near the major street in town.

Was there a “meeting” under the Brown Act at the ribbon cutting ceremony?

What is a “Meeting?”

A meeting may occur during:

- Informal sessions
- Conferences for discussion of public business
 - Including retreats
- Telephone conversations (i.e., group telephone conference)
- Email
- Video/virtual conference

Types of Meetings

- Regular meetings
- Special meetings
- Emergency meetings
- Teleconference meetings
 - Not really a separate kind of meeting – but special rules
 - Any meeting can be teleconferences if you do it properly

Agencies and Legislative Bodies Subject to the Act

Legislative bodies covered by the Act:

- Governing body of local agency School districts
- Community college districts
- Counties, cities, towns
- Other local body created by law
 - Academic Senates
 - ASG/ASB/ASO
 - Classified Senates
 - Some Foundations

Case Study – Brown Act

Grace, Matthew, and Alexander, three of the five members of the district board, are participating in a video conference with other executive district staff regarding return-to-work protocols. Matthew listens, but does not say anything. At one point, the participants break into two breakout rooms to discuss different issues. Two board members go to one room and the other board member the other. The Chancellor serves as a liaison between the two meetings and shares ideas.

Is this a serial meeting?



Be Careful – Serial Meetings Prohibited!

- No communication between board members that
 - Includes a majority through email, telephone, intermediaries, etc.
 - To hear, discuss, or deliberate on any item within the subject matter jurisdiction of the district
- Cannot use individual contacts to bypass Brown Act

Government Code, § 54952.2 subd. (b)

Social Media and the Brown Act

- The Brown Act permits Trustees to discussing matters within the agency's jurisdiction on social media with the public
 - But not to discuss an issue with other Trustees on social media
 - What about the "like" button?

Gov. Code, § 54952.2



Rules & Limits re: Special Meetings

Limit on Special Meetings

- Governing boards may not approve “local agency executive” compensation at a special meeting
- Must set compensation during a regular meeting

Rules & Limits re: Special Meetings

Executive Compensation

- Legislative body required to provide an oral summary
 - In open session
 - Of recommendations for final actions on:
- Salaries, salary schedules, or compensation paid in the form of fringe benefits
 - For “local agency executives”
 - Includes CEO, assistant CEO, and administrators on employment contracts

Gov. Code, §§ 3511.1; 54953 subd. (c)



Agendas and Public Participation



Agendas: Tools for a Well-Run Meeting

- Agenda items contain brief description
 - Enough to inform the public
 - “20-word” rule of thumb
- Provide focus to the Board & the public
- Help legislative bodies plan & prioritize
- Improve communication
- Build institutional memory

Agendas

- Contains items proposed for action by the Board
 - May include a “consent agenda”: routine items which can be combined for action on a single vote
 - Trustees may request that items be pulled off consent agenda

Items NOT on Agenda

- General rule – no action or discussion on an item that is not on the posted agenda
- BUT there are exceptions...
 - Emergency
 - Need for immediate action
 - Item from agenda of prior meeting
 - If within 5 days

Items NOT on Agenda

- Board member or staff may:
 - Make a brief response to statements made or questions asked
 - Ask a question for clarification
 - Make a brief announcement
- Board may ask staff to look into something

Public Access

Public Has the Right to:

- Timely posting of agenda
- Attend meeting
- Record and broadcast
- Inspect documents and recordings
- Address board on agenda items

Public Access

- Address board on matters within its jurisdiction
- Place items on the agenda
 - Within the District's jurisdiction
- Registries or attendance lists may *not* be required
 - Voluntary lists are okay

Public Participation

- Must permit the public to address items on the agenda *before* they are voted on
 - Tip: If agency begins with closed session must first have public comment
- But it's not a town hall!
- Must permit public to place matters on agenda directly related to district business

Limits on Public Comment

- May adopt reasonable regulations for public comment
 - Time limit for each speaker and total time per topic
 - May not prohibit public criticism of the staff, policies, procedures, programs, services, or acts of the legislative body
 - May prohibit making comments outside of the body's jurisdiction

Managing Public Participation

Disorderly or Disruptive Conduct During Meetings

- Remind disruptive individuals of rules
 - Regarding interruption, proper decorum
- If disruption continues, may clear the room
- Media remains if did not participate in disruption
- Apply procedure for re-admittance of non-disruptive individuals
- “Disruptive behavior”
- “True threat of force”

Government Code, §§ 54957.9, 54957.95



Trustee Remote Participation and the 2022 Teleconference Amendments



Teleconferencing

- Goal: must conduct teleconference meetings in a matter that protects the statutory and constitutional rights of the public

“Traditional” Teleconference Rules

- Agenda must be posted at all teleconference locations
- T/C location must be in notice and agenda
- T/C location must be open to the public
- Quorum within boundaries of district
- Must permit public comment at all T/C locations
- Votes by roll call

Still available!

Declared States of Emergency

- Based on circumstances of the public
- Examples
 - Wild fires
 - Flooding
 - Other public health states of emergency
- Board must pass a resolution before invoking
- Can meet remotely to decide if need to invoke

2022 Teleconference Amendments

- Based on circumstances of trustee
- “Just cause”
 - Family childcare or caregiving need, contagious illness, disability, travel on district business
- “Emergency circumstances”
 - Physical or family emergency
- Quorum of board in person in single location

2022 Amendment to Teleconferencing Requirements

- Trustee must give general description of circumstances
 - Not required to disclose medical diagnoses or confidential info
 - Must disclose if someone over age 18 with them
- Can give notice as late as the beginning of the meeting

2022 Teleconference Amendments

- Must have two-way audio-visual or telephone platform
- Trustee must use audio *and visual*
- Trustee cannot exceed
 - Three consecutive months
 - OR
 - 20% of regular meetings
- Sunsets January 1, 2026

Gov. Code, §§ 54953, 54954.2



What About Disability Accommodations?

- Trustees are not employees under Title II of the Americans with Disabilities Act (ADA)
- Even if ADA applied, trustee remote attendance considered unreasonable as a matter of law unless:
 - Utilize “traditional” standards
 - Declared State of Emergency
 - Comply with 2022 amendments

Remote Public Participation

- Not required unless trustee participating remotely
- Practical reason to continue to permit remote participation
 - Trustee can provide notice under 2022 amendments as late as start of meeting
 - Burden on district staff if they do not know ahead of meeting of need for remote public participation

Closed Sessions



Closed Sessions

- General Rule: Closed Session is prohibited unless specifically permitted
- Most common closed sessions:
 - Pending litigation
 - Personnel matters
 - Labor negotiations/relations
 - Real property transactions

Confidentiality of Closed Session

- A person may not disclose confidential information that was acquired by being present in a closed session
- “Confidential Information” is a communication related to the basis for the legislative body to meet lawfully in closed session

Confidentiality of Closed Session

- No disclosure of personal recollection of closed session discussions
- No disclosure of confidential information acquired by being present in closed session
- Sanctions for violations
 - Discipline, referral to grand jury
- Exceptions
 - Informing DA/grand jury re violation
 - Questioning propriety/legality of actions

Pending Litigation Exception

- Legislative body confers with legal counsel
 - This means you must have counsel present – remote OK
- “Pending litigation” includes:
 - Ongoing litigation
 - Decisions to initiate litigation
 - Settlement discussions
 - Significant exposure to litigation

Personnel Matters Exceptions

- Closed session permitted for:
 - Public Employee Appointment
 - Public Employment
 - Public Employee Performance Evaluation
 - Public Employee Discipline/dismissal/release
 - Includes release of probationary & high-level employees
- NOT Compensation
 - Except a reduction due to discipline

Personnel Matters Exceptions

- When Board is considering complaints/charges against employee
 - 24 hours' written notice of right to have heard in open
 - If employee doesn't request open session – in closed session
 - Board still deliberates and decides in closed
 - No notice = voids action taken
 - Notice delivered 24 hours before session

Labor Negotiations Exception

- Purpose of closed session meeting:
 - To review position and instruct the district's representative,
 - To discuss any other matter within the “scope of representation”
- Closed session may also take place prior to and during negotiations – to update the Board and receive direction

Reporting After Closed Session

- Generally after closed session, board must report in open session
 - Action taken in closed session
 - Vote or abstention of every member
- The nature of the report depends on the type of action taken

Open or Closed Session?

- CEO wants to update Board on a contract grievance arbitration
- Board wants to discuss budget with labor negotiator
- Board wants to meet with legal counsel to understand options for hiring procedures
- Board wants to discuss a board member conflict of interest issue

Confidentiality of Closed Session

Trustee Tom attends closed session to discuss labor negotiations with the District's representative. A majority of the Board provides direction to the District's representative to submit certain proposals to the local employee association. Tom is not part of the majority, and he does not agree with this direction. He decides to disclose what was discussed during closed session to the public to try to influence the negotiations process. Tom reasons that since he is part of the Board, he can decide independently whether or not to disclose such information.

Is Tom correct?



Remedies for Violations of the Brown Act



Remedies for Violations of the Act

- District attorney or other interested person may
 - Bring an action to prevent violations or threatened violations
 - Determine the applicability of the Act to actions or future actions

Remedies for Violations of the Act

- Attorney fees and costs
 - Court may award
 - Court costs and
 - Reasonable attorneys fees to plaintiff
 - Costs and fees paid by the district and is not a personal liability of any public officer or district employee
 - District may be awarded fees and costs for frivolous actions

Thank You!

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