

The Brown Act: Making the Process Work for You



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Description



Complying with the Brown Act does not have to cause you pain and discomfort. In fact, the Brown Act can be useful for you as you navigate your role as a senate leader. With a little planning and rule-setting, the Brown Act and parliamentary procedure can help your meetings and projects run smoothly. In this breakout, presenters will explore the twisty turns of the Brown Act and parliamentary procedure while answering questions about what you can, should, and must do to maintain transparency and legal compliance.

The Brown Act - Open and Public



Ralph M. Brown 1959

Photo courtesy The Modesto Bee

“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.”

California Government Code §54950

The Brown Act?



What's the strangest thing you've ever heard about Brown Act requirements?

The Brown Act



- Applies to meetings of all local legislative bodies (GC 54952) including
 - The Board of Trustees
 - Any subcommittee or task force created by the Board with a majority of Board members serving on the group
 - Any subcommittee or task force created by the Board which has a definite ongoing charge (either decision-making or advisory) OR has a regularly-scheduled meeting set by the Board, regardless of Board membership

What is a Meeting?



- A meeting of a local legislative body (GC 54952.2) occurs whenever a majority of members gather to discuss business within their charge. A majority can meet in the following provided they do not discuss any business within their charge among themselves.
 - Attendance at a conference
 - An open meeting of some other group to address local issues (even a Board-recognized group under the definition of “legislative bodies”)
 - Social gatherings

Does the Brown Act Apply to Local Academic Senates?



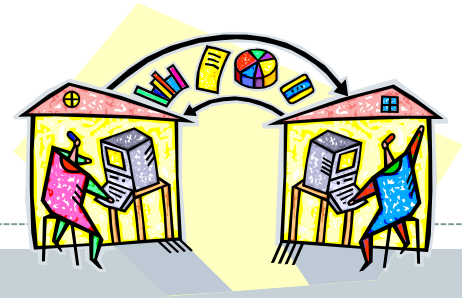
Committees and Subcommittees

The Brown Act also applies to meetings of all:

- Standing committees – a committee that has continuing jurisdiction over a particular topic §54952(b) For example: Budgets, personnel, etc.
- Advisory committees that include a majority of the body and are not standing committees
- Advisory committees that are standing committees (regardless of the size and membership)

Exception: The Brown Act does not apply to a subcommittee that is made up of less than a majority of the body, is an advisory committee AND is not a standing committee

Serial Meetings



- Serial meetings are not allowed
- Serial meetings occur when a majority of the members have communicated about an issue and have developed a collective concurrence.
- A collective concurrence is developed when:
 - Members have either directly or indirectly heard each other's opinion on a topic enough to collectively develop or begin to develop an agreement on an issue.

Types of Serial Meetings



A daisy chain meeting:

- **Example:** When Senator Bob calls Senator Bill to talk about a resolution then Bill calls Senator John to talk about it and finally John calls Senator Fred, etc., until a majority of senators has been contacted. A majority of the senators have talked about the topic and a collective concurrence has been established.

Types of Serial Meetings



Hub and spoke meeting:

- **Example:** For instance, if VPI Terri calls Senator John and discusses a senate issue to get his opinion, then she calls Senator Robert, then calls Senator Bill, and then calls Senator Tim telling each what the other has said, eventually a majority of the senate may have indirectly discussed the topic without public notice and is therefore in violation of the Brown Act.

E-mail



§5492.2(b):

Except as authorized pursuant to §54953, any use of direct communication, personal intermediaries, or **technological devices** that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited

The attorney general has issued an opinion stating that this section of the act applies to email.

The Attorney General's Opinion Regarding E-mail

- In 2001 the CA Attorney General issued an opinion regarding the use of email. (Opinion #00-906, 2001)
- The opinion concluded: A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act.
- Even if the emails are made public they would still be a violation of the Act because the board would be depriving the public of the deliberative process.
- The opinion also states, “The term ‘deliberation’ has been broadly construed to connote ‘not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.’ [Citation.]” (*Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 234; see *Roberts v. City of Palmdale*, *supra*, 5 Cal.4th at p. 376.)
- You can find the opinion at:
<http://ag.ca.gov/opinions/published/00-906.pdf>

Agendas



- **Include meeting time and location, including address**
- **Post agenda in a 24/7 publicly accessible area 72 hours before meeting (physically and virtually)**
- **Special meetings require 24 hours notice and are limited to agenda items**
- **Senates do not call emergency meetings (which do not require 24 hour notice) – public safety is not under senate jurisdiction!**
- **Allow for public comments before or during discussion of agenda items**
- **Include all action items on the agenda, with a brief description**
- **Can change order of agenda**

Action is Limited to Items on the Agenda



- Exception: Action may be taken on a non-agenda item, BUT this requires:
 - That the need for immediate action was discovered after the agenda was posted, and
 - A vote of 2/3 of members present if more than 2/3 of the total membership are present, or a unanimous vote if less than 2/3 of the total members are present.

Meetings and Votes are Open



- Meetings must be held within your senate's jurisdiction
- Closed sessions are for
 - litigation (for instance, the senate is or will be sued)
 - personnel matters (such as, the senate has responsibility for evaluating a senate employee)
 - negotiating with a bargaining agent (which the senate does not do).
- All votes are open!
 - No secret ballots...even for elections (if they are conducted during senate meetings).
 - It is now required that all ayes, nays and abstentions on motions be attributed to member casting a vote!

At Meetings...



- Members may respond to public comments but not take action
- All items distributed by the Senate before or during meetings must be available to the public at the meeting (reasonable fees may be charged for duplication).

Be Prepared!



- Bring extra copies of documents
- If other items are brought for distribution, offer to send copies later to those requesting them in writing
- Be careful what is distributed at meetings – it becomes public document
- Set time limits for discussion, particularly for public comments
- Keep discussion within the scope of the agenda item

Teleconferences



54953(b)(1) permits the use of teleconferencing.

Requirements for teleconferences include:

- Teleconferences must comply with the rest of the Act
- All votes taken during a teleconference must be taken by roll call.
- Agendas must be posted at all teleconference locations.
- Each teleconference location must be identified in the agenda.
- Each teleconference location must be accessible to the public.
- At least a quorum of the board must participate from locations within the district boundaries.
- The agenda must provide for public comment at each teleconference location.

Enforcement



- Demand to cure or correct
- Threat to sue
- Lawsuit

Bottom Line

- Commitment to
 - Openness
 - Transparency
 - Public access to information



Resources Available



- **Text of the Brown Act – click [here](#)**
- **CA Attorney General Guide (2003):**
<http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/brownAct2003.pdf?>
- **League of California Cities 2010 Brown Act Guide:**
<http://www.cacities.org/UploadedFiles/LeagueInternet/86/86f75625-b7df-4fc8-ab60-de577631ef1e.pdf>