

Recent Changes to the Brown Act

Association of Chief Human Resources Officers
(ACHRO) Fall Institute | October 19, 2017

Presented By: Eileen O'Hare-Anderson



Brown Act – Background

Transparency in Government

“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

Brown Act – Background

- Gov. Code section 54950, *et seq.*
- Enacted to respond to use of secret and informal meetings
- Applies to our Boards of Trustees
- Generally requires Board meetings be open and public

Key Principles

- Transparency in government:
 - Presumption meeting in open session
 - Closed session are the exception
- Public access/participation
 - Requirements for agendas
 - Public right to participate
- Within Context of a “Business Meeting”
 - Public transparency and collegial debate
 - Running an efficient meeting
 - Approving transactions, resolutions and agreements
 - Protect confidentiality of closed session

Meetings and Agendas

What is a Meeting Covered by the Act?

- Congregation of a Majority of Board members
 - Same time, and place
 - To “hear, discuss, or deliberate”
 - On any item within its subject matter jurisdiction
- Meeting of a committee created by formal action
 - Permanent or temporary
 - Decision making or advisory

Gov. Code, § 54952.2

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

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
 - Prohibition not limited to developing a “collective concurrence”
 - Simple discussion is enough
- Gov. Code, § 54952.2 subd. (b)

Types of Meetings

- Regular meetings
- Special meetings
- Emergency meetings
- Teleconference meetings

“Post-City of Bell Provisions”

Compensation: The Basics

- No discussion or action
- On compensation
- In closed session
- Exception: reduction in compensation due to discipline (i.e., reduction of 5% for six months)
 - Not common in CCDs

Compensation: The Basics

- Can give direction to negotiators
 - Faculty or classified unions, or
 - unrepresented groups
 - Management, Confidential

True/False/Maybe

The Board is meeting in closed session to evaluate the Superintendent/President and to discuss raising her compensation.

Is this appropriate in closed session?

Maybe

How Should This Appear on the Agenda?

Pursuant to Government Code § 54957
Public Employee Performance Evaluation
Title: Superintendent/President

and

Pursuant to Government Code § 54957.6
Conference with Labor Negotiator
Agency designated representative: Trustee Molina
Unrepresented employee: Superintendent/
President

Case Study (Cont'd)

- Closed session for evaluation is fine
- Discussion of Superintendent/President's raise must be limited to giving direction to Board's negotiator

Labor Negotiations Exception

- The legislative body may meet with its designated representatives in closed session regarding compensation
 - But may not act on proposed compensation in closed session
 - Agency's representatives must be identified in an open and public session

Labor Negotiations Exception

- Purpose of closed session meeting:
 - To review position and instruct the district’s representative, or
 - To discuss any other matter within the “scope of representation”
- Closed session may also take place prior to and during consultations and discussions with employee representatives and unrepresented employees

Online Posting

The District has posted its regular meeting agenda in compliance with the Brown Act in all aspects, except that it was unable to post the agenda online. The District is having technical difficulties with its web site.

Can the District proceed with its regular meeting?

The Brown Act has Joined 21st Century!

- Agendas posted on website
 - If you have one
- Failure, through technological glitch, to post agenda
- Does not void action, or render meeting illegal
- Would penalize districts for having a website

Agendas on Website

- Beginning **January 1, 2019**
- Brown Act will require District
- To post on the “primary homepage”
- The agenda for regular and special meetings
- Of a “covered legislative body”
 - Examples?

Agenda on Website

- The link must be “direct link” to the current agenda
- Cannot be solely placed in a “contextual menu”
- Can’t make the user search
- Posted in “an open format” that meets the certain requirements

New Law – Oral Summary

- Legislative body required must **orally report**
 - in open session
 - summary of recommendations for final actions on:
- Salaries, salary schedules, or compensation paid in the form of fringe benefits

Gov. Code, § 54953 subd. (c)

New Law – Oral Summary

- Salaries, salary schedules, or compensation paid in the form of fringe benefits
 - For “local agency executives”
 - Includes executive officers, assistant officers, and deputies, and anyone on a contract

Gov. Code, § 54953 subd. (c)

Administrator's Agreements

- May not provide for automatic contract renewal
- Including an automatic compensation increase
 - Exceeding the cost of living adjustment
- Limits on severance benefits
- Applies to Local Agency Executives
 - More in a minute

Administrator's Agreements

- Must include a provision
- Requiring employee to reimburse District
- For certain expenses
- If convicted of a crime involving abuse of office or position
 - Includes admin leave with pay
 - Payout

Local Agency Executive

- Who is a Local Agency Executive?
- CEO, Deputy CEO, Assistant CEO
- Head of a department
- Employed by a contract

Local Agency Executive

- Chancellor, Superintendent/President
- Academic Administrators and Managers
 - Employed by contract
 - Under Education Code section 72411
 - Vice Chancellors, Vice Presidents, some Deans
 - Some Directors

Local Agency Executive

- Classified Administrators and Managers
 - Employed on a contract
 - Under Education Code section 72411
 - If taken out of classified service
 - Because they are employed on a contract
 - For purposes of this statute

Thank You!

Eileen O'Hare-Anderson

Partner | Fresno Office

559.256.7800 | eanderson@lcwlegal.com

www.lcwlegal.com/our-people-eileen-ohare-anderson