

ACTIONS BY THE BOARD

- I. An "action" by the Board means: (Government Code 54952.6)
 - A. A collective decision by a majority of the Board members
 - B. A collective commitment or promise by a majority of the Board members to make a positive or negative decision
 - C. A vote by a majority of the Board members when sitting as the Board upon a motion, proposal, resolution, order, or ordinance

- II. Majority Vote
 - A. The Governing Board shall act by a majority vote of all of the membership constituting the Board, unless otherwise required by law. (Education Code 35164)
 - B. A majority vote of all members of the Governing Board is necessary for an item to carry, even in those cases where some members are absent.
 - C. For districts with a five-member board, an item will pass with three votes, even if only three members are present or there is a vacancy.

- III. Secret Ballots: The Board shall not take action by secret ballot, whether preliminary or final. (Government Code 54953)

- IV. Record of Board Actions: Actions taken by the Board in open session shall be recorded in the Board minutes. (Education Code 35145)

- V. Abstentions: The Board believes that when no conflict of interest requires abstention, its members have a duty to vote on issues before them. When a member abstains, his/her abstention shall not be counted for purposes of determining whether a majority of the membership of the Board has taken action. (Board Bylaw 9323)

- VI. Action on Non-Agenda Items

After publicly identifying the item, the Board may take action on a subject not appearing on the posted meeting agenda under any of the following conditions: (Government Code 54954.2)

 - A. When a majority of the Board determines that an emergency situation exists, as defined for emergency meetings pursuant to Government Code 54956.5
 - B. When two-thirds of the members present, or if less than two-thirds of the members are present then by a unanimous vote of all members present, determine that the need to take immediate action came to the district's attention after the agenda was posted
 - C. When an item appeared on the agenda of, and was continued from, a meeting that occurred not more than five days earlier

- VII. Challenging Board Actions

The district attorney's office or any interested person may file an action in court for the purpose of: (Government Code 54960, 54960.2)

- A. Stopping or preventing the Board's violation or threats of violations of the Brown Act
- B. Determining the applicability of the Brown Act to ongoing or future threatened Board actions
- C. Determining the applicability of the Brown Act to a past action of the Board that is not specified in Government Code 54960.1, provided that:
 - 1. Within nine months of the alleged violation, a cease and desist letter is submitted to the Board, clearly describing the past Board action and the nature of the alleged violation.
 - 2. The time for the Board to respond has expired and the Board has not provided an unconditional commitment to cease and desist from and not repeat the past action alleged to have violated the Brown Act.
 - 3. The action is brought within the time required by Government Code 54960.2.
- D. Determining the validity, under state or federal law, of any Board rule or action which penalizes any of its members or otherwise discourage the member's expression
- E. Compelling the Board to audio record its closed sessions because of a court's finding of the Board's violation of any applicable Government Code provision.
- F. The district attorney or any interested person may file an action in court to nullify a Board action which is alleged to be in violation of law regarding any of the following: (Government Code 54960.1)
 - 1. Open meeting and teleconferencing (Government Code 54953)
 - 2. Agenda posting (Government Code 54954.2)
 - 3. Closed session item descriptions (Government Code 54954.5)
 - 4. New or increased tax assessments (Government Code 54954.6)
 - 5. Special meetings (Government Code 54956)
 - 6. Emergency meetings (Government Code 54956.5)
- G. Prior to bringing any action to nullify a Board action, the district attorney or other interested person shall present a demand to "cure and correct" the alleged violation. The demand shall clearly describe the challenged action and the nature of the alleged violation and shall be presented to the Board in writing within 90 days of the date when the action was taken. If the alleged violation concerns action taken in an open session but in violation of Government Code 54954.2 (agenda posting), the written demand must be made within 30 days of the date when the alleged action took place. (Government Code 54960.1)
- H. Within 30 days of receiving the demand, the Board shall do one of the following: (Government Code 54960.1)
 - 1. Cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct.
 - 2. Determine not to cure or correct the alleged violation and inform the demanding party in writing of its decision to not cure or correct.
 - 3. Take no action. If the Board takes no action within the 30-day review period, its inaction shall be considered a decision not to cure or correct the action.

VIII. Some Governing Board actions require more than a simple majority vote.

- A. Actions requiring a Two-Thirds vote of the Board:
 - 1. Resolution declaring the Governing Board's intention to sell or lease real property (Education Code 17466)

2. Resolution declaring the Governing Board's intent to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556 (Education Code 17557)
 3. Resolution authorizing and directing the Board president, or any other presiding officer, secretary, or member, to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)
 4. Lease, for up to three months, of school property which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)
 5. Request for temporary borrowing of funds needed for immediate requirements of the District to pay district obligations incurred before the receipt of district income for the fiscal year sufficient to meet the payment(s) (Government Code 53821)
 6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, action to render city or county zoning ordinances inapplicable to a proposed use of the property by the District (Government Code 53094)
 7. Resolution of intent to issue general obligation bonds with the approval of 55 percent of the voters of the district (Education Code 15266)
 8. Resolution of intent to issue bonds within a school facilities improvement district with the approval of 55 percent of the voters of the school facilities improvement district (Education Code 15266)
 9. Resolution to place a parcel tax on the ballot (Government Code 53724)
 10. Resolution of necessity to proceed with an eminent domain action and, if the Board subsequently desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use (Code of Civil Procedure 1245.240, 1245.245)
- B. Actions requiring a Two-Thirds vote of the Board members present at the meeting:
1. Determination that there is a need to take immediate action and that the need for action came to the district's attention after the posting of the agenda. If less than two-thirds of the Board members are present at the meeting, a unanimous vote of all members present is required. (Government Code 54954.2)
 2. Determination that a closed session is necessary during an emergency meeting. If less than two-thirds of the Board members are present, a unanimous vote of all members present is required. (Government Code 54956.5)
- C. Actions requiring a Four-Fifths vote of the Board:
1. Expenditure and transfer of necessary funds and use of district property or personnel to meet a national or local emergency created by war, military, naval, or air attack, or sabotage, or to provide for adequate national or local defense (Government Code 53790-53792)
 2. Resolution for district borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the district's estimated income and revenue for the fiscal year or the portion not yet collected at the time of the borrowing (Government Code 53822, 53824)
 3. Resolution for district borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the district during that fiscal year from apportionments based on ADA for the preceding school year (Government Code 53823-53824)

4. Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification (Public Contract Code 3400)
5. When the District has a five-member or seven -member Board, action to respond to an emergency facilities condition without giving notice for bids to let contracts, including the repair or replacement of District facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and the determination during a regular Board meeting of the need to continue the action (public Contract Code 22035, 22050)
6. Resolution to award a contract for public works project at \$212,500 or less to the lowest responsible bidder, when the District is using the informal process authorized under Uniform Public Construction Cost Accounting Act for projects of \$200,000 or less, all bids received are in excess of \$200,000, and the Board determines that the District's cost estimate was reasonable (public Contract Code 22034)

D. Actions requiring a Unanimous vote of the Board:

1. Resolution authorizing and prescribing the terms of a lease of District property for extraction and taking of gas not associated with oil (Education Code 17510-17511)
2. Authorization of the use of day labor or force account, or waiver of the competitive bid process pursuant to Public Contract Code 20111 when the Board determines that an emergency exists requiring the repair, alteration, work, or improvement to any facility to permit the continuance of existing classes or to avoid danger to life or property and upon approval of the County Superintendent of Schools (Public Contract Code 20113)

E. Action Requiring a Unanimous vote of the Board members present at the meeting:

Private sale of surplus property without advertisement in order to establish that such property is not worth more than \$2,500. Disposal of surplus property in the local dump or donation to a charitable organization requires the unanimous vote of the Board members present to establish that the value of such property would not defray the cost of arranging its sale. (Education Code 17546)

Legal Reference:

EDUCATION CODE

- 15266 School construction bonds
- 17466 Declaration of intent to sell or lease real property
- 17481 Lease of property with residence for nondistrict purposes
- 17510-17511 Resolution requiring unanimous vote of all members constituting board
- 17546 Private sale of personal property
- 17556-17561 Dedication of real property
- 35140-35149 Meetings
- 35160-35178.4 Powers and duties
- 48660-48661 Community day schools, establishment and restrictions

CODE OF CIVIL PROCEDURE

- 425.16 Special motion to strike in connection with a public issue
- 1245.240 Eminent domain vote requirements
- 1245.245 Eminent domain, resolution adopting different use

GOVERNMENT CODE

53090-53097.5 Regulation of local agencies by counties and cities
53724 Parcel tax resolution requirements
53790-53792 Exceeding the budget
53820-53833 Temporary borrowing
53850-53858 Temporary borrowing
54950-54963 The Ralph M. Brown Act, especially:
54952.6 Action taken, definition
54953 Meetings to be open and public; attendance; secret ballots
54960-54960.5 Actions to prevent violations
65352.2 Coordination with planning agency

PUBLIC CONTRACT CODE

3400 Bid specifications
20111 Contracts over \$50,000; contracts for construction; award to lowest responsible bidder
20113 Emergencies, award of contracts without bids

COURT DECISIONS

Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313
McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310
Bell v. Vista Unified School District (2002) 82 Cal.App.4th 672
Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, 2009

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Local Legislative Bodies, 2003

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

Open and Public IV: A Guide to the Ralph M. Brown Act, 2007

WEB SITES

CSBA: <http://www.csba.org>

California Attorney General's Office: <http://www.oag.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

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