

FACULTY LEADERSHIP INSTITUTE

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HYBRID EVENT
WESTIN SAN FRANCISCO
AIRPORT

ACADEMIC SENATE
FOR CALIFORNIA
COMMUNITY COLLEGES

The Brown Act in a Post State-of-Emergency World

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LEGISLATIVE BODIES

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

-GC Section 54953(a)



Is Your Senate a Legislative Body?

- The Brown Act applies to all “Legislative Bodies”
- “Legislative Bodies” include:
 - 1) “Governing Bodies”
 - 2) “Appointed Bodies”
 - 3) Certain private entities



What is a Governing Body?

- A group of people that has the authority to exercise governance over an organization.
- **Examples:** Community College District Board of Trustees, City Council, School Board.
 - *Education Code 70902:* “Every community college district shall be under the control of a board of trustees...”
 - *Education Code 72674:* Community College Foundation Boards are subject to the Brown Act
- **Bottom Line:** If created by state or federal statute, the governing body of a local agency is covered by the Brown Act.



What are Appointed Bodies?

- **General Rule:** A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.
- **Example - Academic Senates:** Are the District Academic Senate (if any) and College Academic Senates advisory bodies created by formal action of the board of trustees? Are the meetings of our Senates subject to the Brown Act?



Appointed Bodies - The Waterfall Effect

- **Subcommittees:** What about subcommittees created by the District Academic Senate (if any), Student Senates, Foundation Board, or College Academic Senates?
- **Bottom Line:** Committees created by formal action of a legislative body are subject to the Brown Act.



What About Our Academic Senates? (1)

- **Board Policy 3412, Section 2.3:** The Board of Trustees recognizes the District Academic Senate...for the purpose of making recommendations on developing district-wide educational policies and procedures in accordance with this Policy. The primary responsibility of the District Academic Senate is to make recommendations to the Board of Trustees, or designee, with respect to academic and professional matters.
- **P-3412, Section 2.2:** College Academic Senates.
- By definition the District Academic Senate (if any) and College Academic Senates are advisory bodies to the Board of Trustees.



What About Our Academic Senates? (2)

- *Title 5, section 53202* establishes the procedures for the formation of an academic senate.
- The steps include a vote of the faculty, plus certain actions by the district board after the faculty vote (recognition of the senate, authorization for faculty to establish structures and procedures, etc.).
- “The legally mandated joint action to be taken by the faculty of a community college and a district board in establishing an academic senate constitutes the requisite “formal action” contemplated by [the Brown Act].”

- Attorney General Opinion No. 83-304 (1983)



Appointed Bodies – Standing Committees

- Standing Committees of a legislative body are **ALWAYS** subject to the Brown Act.
 - Standing committees, irrespective of composition, which have either: (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by resolution or formal action of the legislative body.
- **Examples:** long-term committees on budgets, transportation, professional development, or curriculum.



Appointed Bodies – Temporary Advisory Committee Exception

- **Ad Hoc:** “Made or happening only for a particular purpose or need.”
- A temporary advisory committee **composed solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.



Case Scenario: Student Senate Logo Committee

- The local college's Student Senate establishes a two member advisory committee to make a recommendation on a new logo for the Senate.
- The logo committee's two members are both members of the Student Senate.
- Are the meetings of this logo committee subject to the Brown Act?

NO!

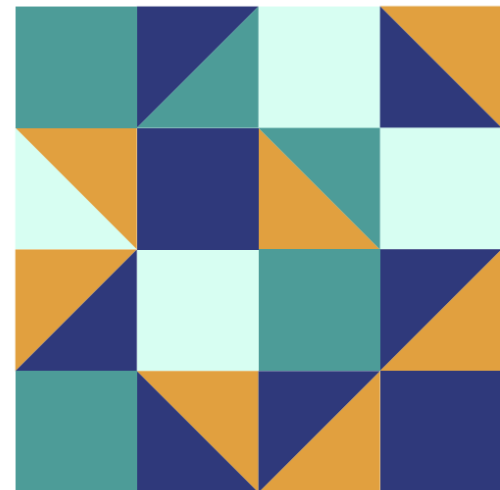


WHAT ABOUT THE SSCCC?

- SSCCC was created by Title 5 §50002

"The Board of Governors recognizes the Student Senate for the California Community Colleges as the representative of community college-associated student organizations before the Board of Governors and the Chancellor's Office." Cal. Code Regs. tit. 5 § 50002

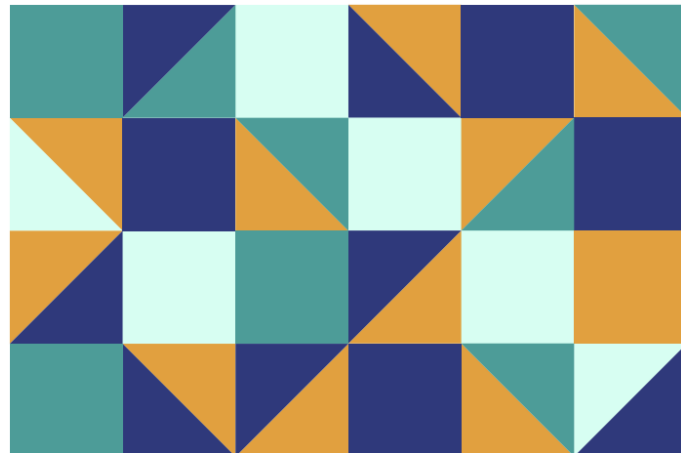
- All standing committees of the SSCCC are therefore legislative bodies including regions and their committees
- Ad hocs/task forces/work groups are not legislative bodies and do not apply



WHAT ABOUT STUDENT BODY ASSOCIATIONS?

- Action by the district board is required to establish a student body association
- This constitutes a formal action

"The governing board of a community college district may authorize the students of a college to organize a student body association."
California Ed Code 76060



MEETINGS

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

-GC Section 54953(a)



What is a “Meeting?”

- “Any congregation of a majority of the members of a legislative body at the same time and location to hear, discuss, deliberate, or take action upon any item that is within the subject matter jurisdiction of the legislative body.”

- GC Section 54952.2(a)

- The Brown Act is not limited to “meetings” where a final decision is made!
 - “HEAR”
 - “DISCUSS”
 - “DELIBERATE”





Serial Meetings



- “A majority of the members of a legislative body shall not...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”
 - GC Section 54952.2(b)(1)
- Common Types of Serial Meetings:
 - Daisy Chain
 - Hub and Spoke
 - Email



Meetings – Exceptions to the Rule

- **Individual Contacts**

- But beware of the serial meeting!

- **Social or Ceremonial Occasions**

- So long as business of the state body is not discussed

- **Conferences**

- So long as they are open to the public and involve subject matter of general interest to the public

- **Meetings of Another Legislative Body**

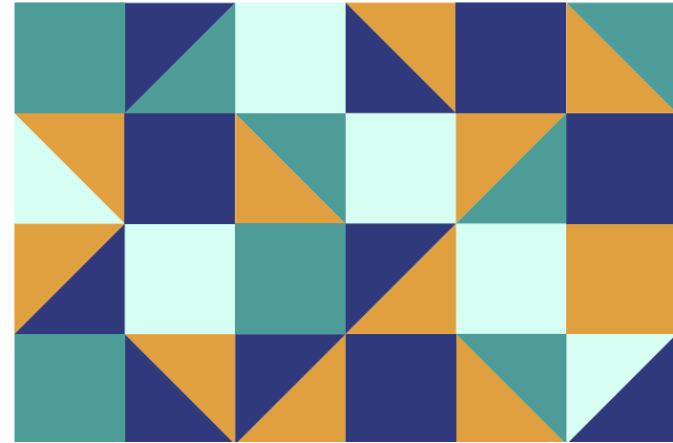
- The meeting must be open to the public and properly noticed



BROWN ACT "ERAS"

- Jan 1, 2023 – Dec 31, 2023
 - Traditional Brown Act, AB 361, and AB 2449
- Jan 1, 2024 – Dec 31, 2025
 - Traditional Brown Act and AB 2449
- Jan 1, 2026 – ?
 - Traditional Brown Act
- Unless more legislation comes

Governor will end state of emergency on Feb 28, 2023.



New Rules on Remote Meetings

TO: Members of District Brown Act Bodies
Academic Senates
Student Senates
College Administrators
Executive Staff Members

FROM: Jacob Knapp

DATE: February 15, 2023

RE: Brown Act Changes and Remote Meeting Requirements

The Brown Act requirements for remote meetings are changing due to new laws that took effect on January 1, 2023 and the Governor's announcement that the COVID-19 State of Emergency will end on February 28, 2023. The purpose of this memo is to provide a summary of the legal requirements applicable to remote District Brown Act body meetings once the Governor's declared State of Emergency expires. As you will see from the discussion below, the practical impact of recent legal changes is that most Los Rios Brown Act meetings will be held on ground and in person. Virtual meetings held entirely via Zoom, as we have conducted public meetings throughout the pandemic, will no longer be authorized under the law.



Teleconference Meetings (Brown Act Classic Rules)

- Agendas must identify each teleconference location and be posted at each location.
- Each location must be open and accessible to the public and allow for public participation.
 - Example: Hospital bed
 - Example: No participation by cell phone in car
- Agenda must provide an opportunity for public comment from each teleconference location.
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction.
- All votes must be audible and taken by roll call.



AB 2449 – Limited Remote Participation for Members

- AB 2449 **does not** allow for fully virtual Brown Act meetings.
- At least a quorum must be participating from a singular physical location identified on the agenda and open to public.
- No need to post remote locations and open them to the public (“classic” Brown Act teleconference rules).
- Remote member must use a two-way audiovisual platform, or phone-in plus webcast (public must have same ability to access the meeting virtually).



AB 2449 – Limited Remote Participation for Members (1)

- An individual member must notify the full membership of the body that either “just cause” or “emergency circumstances” exit for their remote participation.
 - ***Just Cause*** includes caring for a family member, contagious illness, a need related to a physical or mental disability, or travel while on business of the legislative body.
 - ***Emergency Circumstances*** require the member to provide a description of the circumstances, and the body must take action to approve (a vote of the membership).



AB 2449 – Limited Remote Participation for Members (2)

- **Limitations:**

- An individual member may only utilize the just cause exception up to two meetings per calendar year.
- An individual member may not participate in meetings remotely under AB 2449 for more than three consecutive months, or 20% of the body's regular meetings in a calendar year.
- If there is an internet disruption to an AB 2449 meeting, no further action may be taken on an agenda item until the issue is resolved.



AB 2449 – Limited Remote Participation for Members (3)

AB 2449 Takeaways:

- Complicated rules, and not very helpful
- Does not allow for fully remote meetings
- Still requires a quorum of members to meet in person
- Requires additional tracking of member participation to ensure members don't go over the established limit

Big Picture - Three options:

- Fully in-person meetings
- Classic Brown Act teleconference posting
- Complicated AB 2449 structure



Basics for Regular Meetings

Notice and Agendas

- The agenda must be posted at least 72 hours in advance of the meeting in a location “freely accessible to members of the public.”
- The legislative body must mail a copy of the agenda to any person who has filed a written request for such materials. The copies may be mailed at the time the agenda is posted.
- The notice, agenda and supporting documents are public records and must be made available to public
 - Writings, when distributed to a majority of the body by any person in connection with a matter subject to consideration at a public meeting, are public records that must be made available to the public “upon request without delay.”

-GC Section 54957.5



Agendas

- Agenda must contain a brief description of the items of business to be transacted or discussed in either open or closed session.
 - In general, agenda descriptions need not exceed 20 words per item.
 - Agenda descriptions should provide sufficient information to allow members of the public to decide whether or not to attend the meeting or participate in the agenda item.
 - Closed session items must include reference to specific statutory authority for the closed session.



Agenda Descriptions - Example

Is this agenda item descriptive enough?

Item No. 1.3: Consideration of contract 

Item No. 1.3: Consideration of contract with JK Consulting 

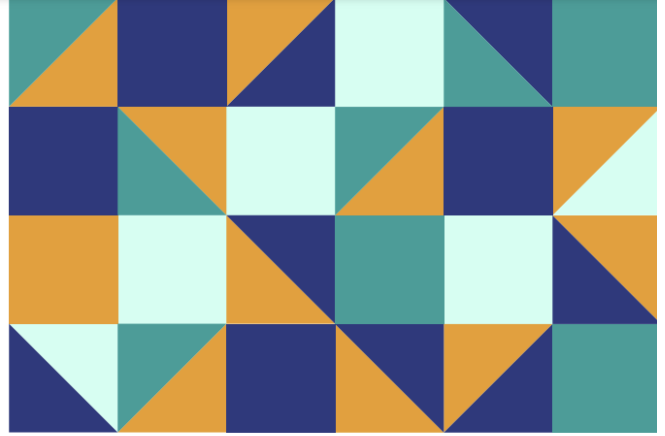
Item No. 1.3: Consideration of contract with JK Consulting in the amount of \$50,000 

Item No. 1.3: Consideration of contract with JK Consulting in the amount of \$50,000 for design services related to the new DAS logo 



PUBLIC DELIBERATIONS

- Business of the legislative body must be performed in public
- Careful:
 - A series of contacts that lead to a discussion with a majority of members or revealing positions of other members of the body
 - Watch out for non-quorum meeting discussions
- Members may congregate
 - Simply do not discuss items within the bodies subject matter



The Public's Place at the Table (1)

- The legislative body must provide an opportunity for members of the public to directly address the body on each agenda item before or during the legislative body's discussion or consideration of the item.
- Every agenda for a regular meeting must also allow members of the public to speak on any other item of interest within the subject matter jurisdiction of the legislative body (even if not on the agenda).



The Public's Place at the Table (2)

- The legislative body may not prohibit criticism of policies, procedures, programs or services of the legislative body/agency.
- Reasonable regulations on public comment may be adopted (example: time limits for individual speakers).
- The legislative body may remove individuals from a meeting who willfully interrupt proceedings.

-GC Section 54957.9



The Public's Right to Attend

- All meetings must comply with the ADA (Americans with Disabilities Act).
- Any person may record the proceedings via audio recorder, video recorder or still motion camera.
- No conditions may be set for attendance at or participation in a public meeting:
 - Sign-in not required
 - Self-identification not required as a prerequisite to speak
 - No fees may be charged for providing notice



Don't Forget

- We are public servants who represent our colleges, and our communities.
- We are conducting the public's business and expending public funds.
- The open meeting laws were adopted with full knowledge that many efficiencies would be lost.
- The court of public opinion – this is about the public's perception of how its business is conducted.



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Thank you!

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