

The Brown Act, Public Records Act, Conflicts of Interest, Voting & Ethics

A Primer for School and Community College Board Members

Presented by:

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[Link to Presentation](#)

Agenda:

- Welcome and Introduction
- The Public's Right to Know
 - The Brown Act
 - The Public Records Act
- Conflicts of Interest
 - Government Code sections 1090-1099
 - The Political Reform Act of 1974
 - The Common Law
 - Incompatibility of Office
- Voting
 - Policy on Tie Votes
- Ethics

The Brown Act

Government Code section 54950-54963 - [Codes: 54950 - 54963](#)

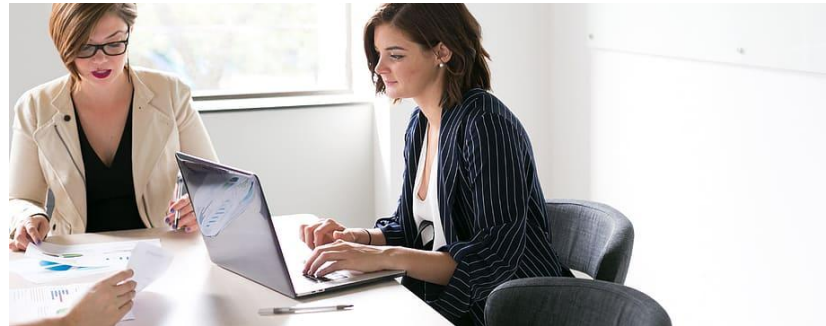
1. Overview [GC 54950](#)
2. Recent Amendments regarding Social Media (AB 992) [GC 54952.2](#)
3. Ten Common Errors
4. Enforcement [GC 54960](#), [54960.1](#), [54960.2](#), and [54960.5](#) and the 2
5. Application of Other Statutes:
 - Government Code section 3549.1
 - Education Code sections 35146 and 72122

The Brown Act: Recent Amendments

Using Social Media - [AB 992](#)

54952.2. (a) As used in this chapter, “meeting” means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

[54952.2](#)



The Brown Act: *Ten Common Errors*

1. Committee Meetings - Gov Code 54952 (b)
2. Private Communications among Board Members-GC 54952.2
3. Teleconferencing--GC 54953(b)(3)
4. Agenda Requirements-GC 54954.2 and 54956
5. Newly Elected Members Subject to Brown Act-GC 54952.1--

[Link to PDF](#)

The Brown Act: *Ten Common Errors*

Committee Meetings - [Gov Code 54952 \(b\)](#)

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

The Brown Act: *Ten Common Errors*

Private Communications among Board Members-[GC 54952.2](#)

[54954.2](#). (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

The Brown Act: *Ten Common Errors*

Teleconferencing-[GC 54953\(b\)\(3\)](#)

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

The Brown Act: *Ten Common Errors*

Agenda Requirements-[GC 54954.2](#) and [54956](#)

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

54956. (a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

The Brown Act: *Ten Common Errors*

Newly Elected Members Subject to Brown Act-[GC 54952.1](#)

[54952.1](#). Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

(Amended by Stats. 1994, Ch. 32, Sec. 2. Effective March 30, 1994. Operative April 1, 1994, by Sec. 23 of Ch. 32.)

The Brown Act: *Ten Common Errors*

6. Hearing Charges or Complaints [GC 54957\(b\)\(2\)](#)

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.



The Brown Act: *Ten Common Errors*

7. Announcement Prior to Closed Session [GC 54957.7\(a\)](#)

54957.7. (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

The Brown Act: *Ten Common Errors*

8. Writings distributed prior to or at a Board Meeting must be available to the Public [GC 54957.5](#)

54957.5. (a) Notwithstanding Section 6255 or any other law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

(b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

The Brown Act: *Ten Common Errors*

9. Public reporting on personnel actions taken in closed session

[GC 54957.1](#)

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

The Brown Act: *Ten Common Errors*

10. Confidentiality of Closed Session-[GC 54963](#)



The Brown Act: *Enforcement*

Terminating a Board Officer



The Brown Act: - *Application of Other Statutes*

- Government Code section 3549.1
- Education Code sections 35146 and 72122



The Brown Act: - *Application of Other Statutes*

Government Code section [3549.1](#)

3549.1. All the proceedings set forth in subdivisions (a) to (d), inclusive, are exempt from the provisions of Sections 35144 and 35145 of the Education Code, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise:

- (a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.
- (b) Any meeting of a mediator with either party or both parties to the meeting and negotiating process.
- (c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.
- (d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

The Brown Act: - *Application of Other Statutes*

Education Code section [35146](#)

35146. Notwithstanding the provisions of Section 35145 of this code and Section 54950 of the Government Code, the governing body of a school district shall, unless a request by the parent has been made pursuant to this section, hold closed sessions if the board is considering the suspension of, or disciplinary action or any other action except expulsion in connection with any pupil of the school district, if a public hearing upon such question would lead to the giving out of information concerning school pupils which would be in violation of Article 5 (commencing with Section 49073) of Chapter 6.5 of Part 27 of this code.

Before calling such closed session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his or her parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such closed session. Unless the pupil, or his or her parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters shall be conducted by the governing board in closed session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at such meeting that might be in conflict with the right to privacy of any pupil other than the pupil requesting the public meeting or on behalf of whom such meeting is requested, shall be in closed session. Whether the matter is considered at a closed session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

The Brown Act: - *Application of Other Statutes*

- Education Code section [72122](#)

72122. The governing board of a community college district shall, unless a request by the student has been made pursuant to this section, hold closed sessions if the board is considering the suspension of, or disciplinary action or any other action in connection with any student of the community college district, if a public hearing upon the question would lead to the giving out of information concerning students which would be in violation of state or federal law regarding the privacy of student records.

Before calling a closed session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the student is a minor, notify the student and his or her parent or guardian, or the student if the student is an adult, of the intent of the governing board of the district to call and hold the closed session. **Unless the student, or his or her parent, or guardian shall, in writing, within 48 hours after receipt of the written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider those matters shall be conducted by the governing board in closed session.** If the written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at the meeting that might be in conflict with the right to privacy of any student other than the student requesting the public meeting or on behalf of whom the meeting is requested, shall be in closed session. Whether the matter is considered at a closed session or at a public meeting, the final action of the governing board of the community college district shall be taken at a public meeting and the result of that action shall be a public record of the community college district.

The governing board of a community college district may hold closed sessions to consider the conferring of honorary degrees or to consider gifts from a donor who wants to remain anonymous.

The Public Records Act

Government Code sections 6250-6270.7

1. Overview
2. Social Media and Cell Phone Records
3. Enforcement



The Public Records Act: *Social Media; Cell Phone Records*



GC 6250-6270.7



ARTICLE 1. General Provisions [6250 - 6270.7] (*Article 1 heading added by Stats. 1998, Ch. 620, Sec. 1.*)

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

(*Amended by Stats. 1970, Ch. 575.*)

The Public Records Act: *Enforcement*

Government Code sections 6258 and [6259](#)

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why the officer or person should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

Conflicts of Interest

1. Government Code section 1090
2. The Political Reform Act-GC 87100 et seq
3. Common Law
4. Incompatibility of Office--GC 1099



Conflicts of Interest

Government Code section [1090-1099](#)

[Link to 1099](#)

[Link to Complete PDF](#)



Conflicts of Interest

Government Code section [87100](#)

87100. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

(Added June 4, 1974, by initiative Proposition 9.)



Conflicts of Interest

California AG Pamphlet of Conflicts of Interest ([2010 Edition](#))

CONFLICTS OF INTEREST

OFFICE OF THE ATTORNEY GENERAL

Edmund G. Brown Jr.
Attorney General



Conflicts of Interest: *Political Reform Act of 1974*

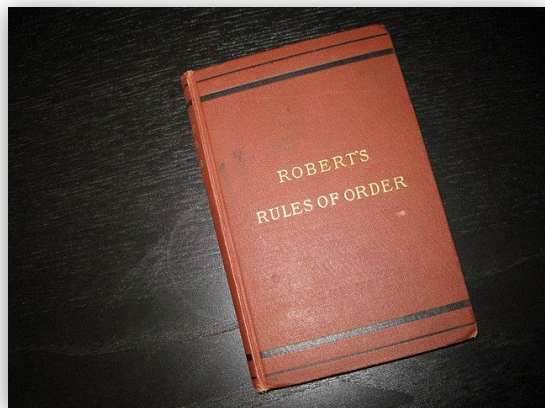


- Assuming office statement
- [Political Reform Act](#)
- Government Code section [87100](#) et seq

87100. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

(Added June 4, 1974, by initiative Proposition 9.)

Robert Rules of Order



Rules and Procedures

Small Boards

Policy on Tie Votes: Dry Creek Valley Court Case

[Link to PDF](#)

- 6 Areas to Cover



Voting

Dry Creek Valley Court Case

1. Government Code section 25003 provides that: “[A county board of supervisors] may make and enforce rules and regulations necessary for the government of the board, the preservation of order, and the transaction of business.”

Voting

Dry Creek Valley Court Case

2. “Rule 12. In the event that one less than the necessary number of ‘aye’ votes has been cast, then an ‘abstain’ vote shall constitute concurrence and the Clerk shall set forth in his minutes that the matter was passed and pursuant to this rule.”

Voting

Dry Creek Valley Court Case

3. “The courts of other jurisdictions have [generally] steadfastly adhered to the doctrine that when members of a board, present at a meeting, desire to [67 Cal. App. 3d 843] accomplish their purpose, and that their refusal to vote is, in effect, a declaration that they consent that the majority of the quorum may act for the body of which they are members.”

This rationale appears to have a common law genesis in *Rex v. Foxcroft* (1760)

Voting

Dry Creek Valley Court Case

4. We are of the opinion that rule 12 does not permit an abstaining board member, while appearing to be impartial, to in effect cast his vote for a measure thus to deceive the interested public generally. The rule is a matter of public record and notice, and the true effect of a member's abstention will undoubtedly be widely known. Nor does rule 12 in any way restrict a member in his voting; he is only required to vote, if present. He may, as indicated, approve a measure by an "aya" or "abstain" vote, and in his freedom to vote as he chooses he is untrammelled.

Voting

Dry Creek Valley Court Case

5. It may be that an abstention because of a conflict of interest would reasonably call for a different rule than that which we apply, but a resolution of that question must await a case where the point is at issue and properly presented to the court.

Voting

Dry Creek Valley Court Case

6. 35010

- (a) Every school district shall be under **the control** of a board of school trustees or a board of education.
- (b) The governing board of each school district shall prescribe and enforce rules not inconsistent with law, or with the rules prescribed by the State Board of Education, for its own government.

Ethics

Fair Political Practices Commission.

Local Agency Ethics Training.

[Link to PDF](#)

Scenarios?

[Link to Scenarios 1-3](#)



Resources

- The Brown Act - Gov't Code: [Codes: 54950 - 54963](#)
- Conflicts of Interest - Gov't Code: [Code: 1090-1099](#)
- Government Code section 87102: [Code: 87102](#)
- California AG Conflicts of Interest [Pamphlet](#)
- Workshop Resources [Google Folder](#)