



**FACULTY SENATE MEETING**

October 3, 2022

EXHIBITS



**ACADEMIC SENATE**  
for California Community Colleges  
LEADERSHIP • EMPOWERMENT • VOICE

# The Brown Act: Making the Process Work for You

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# POLICY

“The people of this State do not yield their sovereignty to the agencies which serve them. 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. The people insist on remaining informed so that they may retain control over the instruments they have created.”

- GC Section 54950



# 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 This a Legislative Body?

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



# “Governing Bodies”

- The governing body of a local agency or any other local body created by state or federal statute is subject to the Brown Act.
- 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...”
- Bottom Line: If created by statute, the local body is covered by the Brown Act



# “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.
- **Bottom Line:** Committees created by formal action of a legislative body are subject to the Brown Act.
- **EXAMPLE:** The Chancellor of the Salton Sea CCD appoints a committee to make recommendations on a new mascot for Salton Sea College. Are the meetings of the mascot committee subject to the Brown Act?





# Salton Sea CCD



- No!
  - An advisory body created by formal action of a legislative body is subject to the Brown Act. In this example, the mascot committee was created by the Chancellor.
  - What if a member of the board of trustees informally establishes an advisory committee to advise her on mascot- related issues as they arise





# Salton Sea CCD

- No!
- An advisory body created by formal action of a legislative body is subject to the Brown Act. A mascot committee created informally by an individual member of the board, and not by formal action of the body, is not subject to the Brown Act.



# 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 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.



# Salton Sea CCD



- The Salton Sea CCD Board of Trustees establishes a two member advisory committee to make a recommendation on a new mascot for Salton Sea College.
- The mascot committee's two members are both members of the Salton Sea CCD Board of Trustees.
- Are the meetings of this mascot committee subject to the Brown Act?

**NO!**



# Private Entities

- Certain private entities are subject to the Brown Act
- The governing body of any private organization that is either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated to a private entity; or (2) receives agency funding and whose governing board includes a member of the legislative body appointed as a full voting member of the private entity's governing board.



# What About Local Academic Senates?

- A “legislative body” includes “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 the legislative body.”
- Is a local academic senate an advisory body of the community college district board of trustees?



# What About Local Academic Senates?

- Title 5, section 53200(b) defines *academic senate*:
  - “an organization...whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters.”
- By definition an academic senate is an advisory body to the district board of trustees



## What About Local Academic Senates?

- A “legislative body” includes “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 the legislative body.”
- Is a local academic senate an advisory body created by formal action of the board of trustees?





# What About Local Academic Senates?

- 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)



# 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



# Teleconference Meetings

- 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



# Teleconferencing and COVID

Executive orders N-29-20 and N-35-20 suspended provisions of the Brown Act in light of the COVID pandemic.

- The requirement to notice each teleconference location from which members of the legislative body participate.
- The requirement that each teleconference location be accessible to the public.
- The requirement that members of the public be able to address the legislative body from each teleconference location.
- The requirement that at least one member of the legislative body be physically present at each meeting location.
- The requirement that during a teleconference meeting, at least a quorum of the legislative body participate from locations within the boundaries of the district.



# AB 361

AB 361 (Rivas) was signed by Governor Newsom in September of 2021. This act extended the provisions for teleconferencing until January 2024

“This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.”





# Teleconferencing and COVID

If a local agency chooses to use the teleconferencing exemption, Government Code section 54953(e)(2) requires the local agency to:

- Give timely notice of the meeting and post agendas as required by the Brown Act;
- Allow members of the public to access the meeting and directly address the legislative body as provided by Section 54954.3. Each agenda must provide notice of the means by which the public may access the meeting and offer public comment. The agenda must identify and include an opportunity for all persons to attend via a call-in option OR an internet -based service option ;
- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body;
- In the event of a service disruption that prevents broadcasting the meeting or in the event of a disruption within the local agency's control that prevents public comment for members of the public using the call-in option or internet-based option, stop the meeting and take no further action on agenda items until public access is restored. Actions taken on agenda items during a disruption may be subject to challenge pursuant to Section 54960.1.



# AB 2449

On September 13, 2022, California Governor Gavin Newsom signed California Assembly Bill 2449 (AB 2449) into law. This law goes into effect in January of 2023 and does not replace AB 361

- As a threshold matter, AB 2449 requires that at least a quorum of members of the local legislative body participate in person from a single physical, public location clearly identified on the agenda and within the local agency's territorial jurisdiction. Gov't Code § 54953(f)(1). Unless there is a physical quorum of members present, the governing body may not utilize AB 2449.
- If the physical attendance quorum requirement is met, AB 2449 permits a member who is not physically present to request virtual attendance at the local legislative body's meeting under two circumstances: (1) for "just cause" and (2) due to "emergency circumstances". Both "just cause" and "emergency circumstances" are defined under the statute.



# AB 2449: Just Cause and Emergency Circumstances

“Just cause” is defined as any one of the following circumstances: (1) childcare or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (2) a contagious illness that prevents a member from attending in person; (3) a need related to a physical or mental disability; or (4) travel while on business of the legislative body or another state or local agency.

“Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person. The legislative body shall request a general description of the circumstances relating to the member’s need to appear remotely at the given meeting. This description generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law



# AB 2449: Other Provisions

- Your Academic Senate must provide a way for the public to remotely hear, visually observe, and remotely address the legislative body
- Meeting Agendas must also provide notice on how to make public comments and allow for online ~~and~~ in-person comments.
- Agendas must also include procedures for ADA accommodation requests
- Members participating remotely must announce if anyone under 18 is in their vicinity
- Senate members cannot attend meetings online for more than 3 consecutive months, or more than 20% of regular meetings in a year. If your senate meets less than 10 times per year, a member can only request online participation two times.
- AB 2449 sunsets in January of 2026



# NOTICE AND AGENDAS

“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)



# The Basics – Regular Meetings

- 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 Academic Senate logo





# Adding an Item to an Agenda (Urgency Items)

- The Brown Act generally prohibits any action or discussion of items not on the posted agenda.
- Urgency Items: When 2/3 of all members present (or all members if less than 2/3 are present) determine that there is a need for immediate action and the need to take action “came to the attention of the local agency subsequent to the agenda being posted.”
- Note that this exception may not be used if the legislative body or the staff knew about the need to take immediate action before the agenda was posted.



# Special Meetings – 24 Hours

- A special meeting may be called by the presiding officer or by a majority of the members of a legislative body.
- Written notice of the special meeting must be posted and sent at least 24 hours in advance to each member of the legislative body and to each local newspaper and radio or TV station that has requested notice in writing.
- The body may only consider business identified in the notice (no urgency item additions).



# Emergency Meetings – 1 Hour

- An emergency meeting may be called with one hour advance notice to media outlets.
- An emergency is limited to “a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.” -GC Section 54956.5
- The one hour notice requirement is waived for “dire emergencies.”



# PUBLIC PARTICIPATION

“All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

- GC Section

54953(a)



# The Public's Place at the Table

- 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

- 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
- 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



# CLOSED SESSIONS

“All meetings of a legislative body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

- GC Section

54953(a)

Without specific statutory authority for a closed session, a matter must be discussed in public.





# Authorized Closed Session Topics

- The Brown Act authorizes closed sessions for specific topics, including:
  - Existing or anticipated litigation
  - Real property negotiations
  - Public employee appointments, evaluation and discipline
  - Labor negotiations
  - Threats to security
- Note: There is no statutory exemption for topics that are embarrassing, difficult, sensitive uncomfortable or controversial



# Education Code Section 72122

Authorizes a community college district board to meet in closed session to:

- Consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary or academic information about the student in violation of state or federal student privacy laws (the student or parent/guardian may request a public hearing)
- Consider the conferring of honorary degrees
- Consider gifts from a donor who wants to remain anonymous



# Closed Session Process

- Closed session items must be briefly described on the posted agenda and the description must state the specific statutory authorization
- The Brown Act supplies a series of sample agenda descriptions for various types of authorized closed sessions (“safe harbor descriptions”)
- The legislative body must make a public announcement prior to the closed session (may reference the closed session agenda)
- Following a closed session, the legislative body must provide an oral or written report on certain actions taken in closed session



# Closed Sessions

- When considering a closed session, always consult with your local counsel!
- Your attorney will ensure:
  - The topic is appropriate for a closed session
  - The closed session agenda is properly drafted
  - The proper individuals attend the closed session
  - Appropriate reporting out of closed session



# Why should I care?

- Lawsuits
- Depending on the circumstances, the decision of the body may be invalidated
  - Before filing a court action seeking invalidation, a person must send a “cure and correct” demand to the legislative body
  - Demand must describe the challenged action, the nature of the claimed Brown Act violation, and the “cure” sought.
  - Legislative body then has 30 days to “cure and correct” the action
- Injunctions against future violations
- A prevailing plaintiff may recover attorneys fees and costs of litigation
- Criminal misdemeanor penalties
  - If a member attends a meeting of the legislative body where action is taken in violation of the Brown Act, and where the member **intends** to deprive the public of information to which the member knows or has reason to know the public is entitled.



# Don't Forget

- We are public servants who represent our community college districts
- We are conducting the public's business and expending public funds
- The open meeting laws were adopted with full knowledge that some efficiencies would be lost
- The court of public opinion— this is about the public's perception of how its business is conducted



# Talk to local counsel!

When in doubt, ask for help!

- The ASCCC and the Office of the General Counsel at the State Chancellor's Office provide our colleges with general legal resources and information.
- The information in this presentation is for general background, and does not constitute legal advice.
- Always check in with your local counsel if you have specific legal questions.



# Opportunity to Share

What local practices do you have to:

1. Announce meetings
2. Post agendas
3. Allow public comment
4. Teleconference
5. Vote
6. Keep minutes
7. Collect agenda items from your Senators/faculty





# Senate Subcommittees

Questions about local subcommittees, workgroups, and task forces



# ASCCC's Role

## Professional Development:

- Plenary Sessions, Institutes, Webinars, Papers
- Local Senate Visits
- Awards and Faculty PD scholarships to ASCCC events
- Collaboration with system partners' events



# ASCCC's Role

Working with CCC system and intersegmental (CSU/UC) partners:

- Represent CCC faculty at the BOG (T5 53206)  
[https://govt.westlaw.com/calregs/Document/I605C95034C6911EC93A8000D3A7C4BC3?viewType=FullText&originalContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I605C95034C6911EC93A8000D3A7C4BC3?viewType=FullText&originalContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))
- Chancellor's Office committees, workgroups, and task forces, for example
  - CCCCC
  - Ethnic Studies Task Force
- Liaisons to other CCC Groups, for example:
  - CCCIOs
  - RP Group
- Intersegmental groups, for example
  - ICAS
  - ICW



# ASCCC's Role

## Advocacy

- Advocacy:
  - Legislative visits (not a lobbying group), written statements and testimonies
  - Formal positions are established by resolutions adopted at Plenary sessions



# Local vs. ASCCC Advocacy

*Ed Code section 7054 (a) states that “No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.” In short, academic senates cannot use any district resources to support or oppose any candidate or ballot measure. This restriction applies not only to district funds but also to materials, email, and even employee time when the employee is scheduled to work. Any discussion of ballot measures or elections among senators therefore should not take place on campus or during academic senate meetings.*

*However, Ed Code section 7054 (b) adds that “Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met: (1) The informational activities are otherwise authorized by the Constitution or laws of this state. (2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.” Academic senates may therefore publish information to educate the public regarding the impact of a given ballot measure as long as they do not advocate either for or against the measure.*

**source:** <https://asccc.org/legislative-updates>



# Resolutions Process

Resolutions initiate from:

- ASCCC Executive Committee
- ASCCC Committees and Caucuses
- Local Senates through Area Meetings
- Individual faculty through Area Meetings
- Resolutions are shared broadly for discussion and debate.
- Voting occurs at plenary sessions
- Resolutions can be used to establish an ASCCC position, adopt/change min quals, direct the work of ASCCC (to work with system partners or provide professional development to the field)



# Resolutions: What They Don't Do

They don't:

- Aim to solve local issues.
- Duplicate prior positions/resolutions
- Go beyond/outside the 10+1



# The 10+1

1. Curriculum including establishing prerequisites and placing courses within disciplines
2. Degree and certificate requirements
3. Grading policies
4. Educational program development
5. Standards or policies regarding student preparation and success
6. District and college governance structures, as related to faculty roles
7. Faculty roles and involvement in accreditation processes, including self-study and annual reports
8. Policies for faculty professional development activities
9. Processes for program review
10. Processes for institutional planning and budget development
11. Other academic and professional matters as are mutually agreed upon between the governing board and the academic senate.

Title 5 53200:

[https://govt.westlaw.com/calregs/Document/I604256434C6911EC93A8000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/calregs/Document/I604256434C6911EC93A8000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1)





# Rely Primarily vs. Mutual Agreement

## Meanings in Title 5 53203

[https://govt.westlaw.com/calregs/Document/I6050FC434C6911EC93A8000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I6050FC434C6911EC93A8000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

(1) in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) in instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.



# Local Board Policies

- Establish which of the 10+1 are “rely primarily” or “mutual agreement”
- Establishes the +1 related to faculty hiring
- **Source:** <https://www.palomar.edu/governingboard/wp-content/uploads/sites/64/2017/05/BP-2510-Participation-in-Local-Decision-Making-adopted-5-4-21.pdf>



Faculty Senate Goals

	<u>In Progress</u>	<u>Complete</u>
<b><u>Faculty Senate 2021-22 Goals</u></b>		
Clarify the Faculty Senate's involvement with the PRP Process	x	
Action items from Part-Time Equity Document	x	
Training for Senate committee and council reps	x	
Re-evaluate Senate release time positions	x	
Clarify the NOHE process	x	
Communication strategies from Senate to the faculty/campus	x	
Review of committees	x	
FAQ or training about 10 + 1 + 1 & Onboarding for Senators	x	

**Faculty Senate 2022-23 Goals DRAFT**

- Review the faculty senate reporting process
- Invite leadership/members to Senate meetings (Cast, AA, Classified)
- Review and understand implications of AB928, AB1111
- Increase Faculty Liasons to ASCCC
- Understand the budgeting process - for areas like DE
- Address concerns about accomodations and disability discrimination
- Discuss faculty involvement on committees
- HSI Recommendations



## Notes

Discuss as agenda item  
Take information to VPI/  
relevant Council

Discuss as agenda item  
Form work group to pursue

Discuss as agenda item  
Create document and/or  
outreach plan

Create in Senate Council &  
bring as agenda item for  
discussion & approval

Discuss as agenda item  
Form joint work group with  
PFF

Discuss as agenda item

Discuss recommendations  
from ConC as agenda item

Discuss as agenda item  
Onboarding for new senators in early spring