

BROWN ACT DO'S AND DON'TS FOR ACADEMIC SENATES

This summary does not substitute for legal opinion or serve as an official interpretation of the statutes. Readers are cautioned to use this summary information judiciously.

*Relations with Local Senates committee
The Academic Senate for California Community Colleges
June 1996, Revised June 1998*

BROWN ACT COVERAGE

The Brown Act applies to the meetings of all legislative bodies (GC 54952) which includes:

1. The Board of Trustees
2. Any subcommittee of task force created by the Board with a majority of Board members
3. Any subcommittee or task force created by the Board which has a definite, ongoing charge (either decision-making or advisory) OR has a regular meeting schedule set by the Board, regardless of Board membership.

THIS MEANS THAT THE BROWN ACT APPLIES TO THE ACADEMIC SENATE AND ALL COLLEGE COMMITTEES RECOGNIZED BY THE BOARD AS ADVISORY OR DECISION MAKING IN ITS BOARD POLICIES.

A meeting of a legislative body (GC 54952.2) occurs whenever a majority of members gather to discuss business within their charge with the following exceptions. All exceptions require that a majority of members do not discuss among themselves any business within their charge.

1. attendance at a conference
2. an open meeting of some other group to address local issues (even a Board-recognized group under the definition of "legislative bodies"), and
3. social gatherings

THIS MEANS THAT A MAJORITY OF SENATE MEMBERS CAN GO TO CONFERENCES, UNION MEETINGS, OR OTHER GATHERINGS IF THEY DO NOT DISCUSS SENATE BUSINESS AMONG THEMSELVES.

AGENDAS

Required: (GC 54954.1 – 3)

Include time and place (must be within district with some exceptions).

Mail agenda one week before meeting to those who request it.

Post agenda 72 hours before meeting.

Special meetings require 24 hour notice and are limited to agenda items.

Senates do not call emergency meetings (which do not require 24 hour notice).

Allow for public comments before or during discussion of agenda items (no sign in requirements).

Include all action items on the agenda, with a brief description.

Recommended:

Use resolution format for action items.

Have a first reading at the meeting before action is taken.

Sections: approval of minutes and agenda, public comment, reports (officers, liaisons, committees), action items (first or second reading), discussion items (no action)

MEETINGS

Required: (GC 54952.2, 54953-.6, 54957.5-.9, 54957-.7)

All meetings are open; closed sessions are for litigation (the senate is or will be sued), personnel matters (senate has the responsibility for evaluating a senate employee) or negotiating with a bargaining agent (the senate does not do this).

All votes are open; no secret ballots.

Action is limited to those items on the agenda.

Exception: action may be taken on a non-agenda item, but this requires:

1. that the need for immediate action was discovered after the agenda was posted, and
2. a vote of two-thirds of all members (not just those present) or unanimous if less than two-thirds of members are present.

Members may respond to public comments but not take action (time limits may be used).

All items distributed by the Senate before or during meetings must be available to the public at the meeting (reasonable fees may be charged).

Exception: items under Title 1 Sections 6253.5, 6254, or 6254.7.

Recommended:

Bring extra copies of documents which may have been distributed at previous meetings and make these available to the public for discussion of action items.

If others bring items to distribute, you are not required to provide public copies immediately, but offer to send copies later to those who request them in writing (use a sign-up list).

Be careful what you distribute at meetings—these are now public documents.

Set time limits for discussion, particularly for public comments (e.g., 15 minutes total and 3 minutes per person on each action item).

Senates usually allow public comment on agenda items during the discussion of that item. Use the public comments section of the agenda for citizen's items not on the agenda.

Keep discussion within the scope of the agenda item.

BROWN ACT SITUATIONS

Which of the following are violations of the Brown Act?

1. A Board member is pushing an issue by calling each of the other members, one after the other, to argue for a favorable vote.
2. The college president has lunch with the President of the Board each Wednesday to talk district business.
3. The majority of the Board members attend the conference of the California Community College League.

4. The Board requires members of the public to sign in before speaking under public comments.
5. Your mailed notice of a regular Board meeting is postmarked three days before the meeting date.
6. The Board agenda is posted on Saturday at 8:00 a.m., for a Tuesday night board meeting.
7. The president of the academic senate has an emergency item and decides to poll the executive officers prior to the regular senate meeting.
8. The Board forms a subcommittee to study a specific subject and report back to the full board.
9. The administration discusses a management reorganization in concept with the Board in closed session.
10. During public comment, an issue is raised and the senate promises to take action but does not do so with a formal motion.

1) Violates 54952.2. 2) OK. 3) OK if business not discussed: 54952.2c2. 4) Violates 54953.3. 5) Must be 1 week: 54954.1. 6) OK 72 hrs: 54954.2. 7) Violates 54952.2. 8) Subject to Brown Act: 54952. 9) Violates 54962. 10) Violates 54854.2: action on non-agenda item.

Open Meeting Laws In California The Brown Act Government Code §54950-54960.5

This guide is intended to be a quick reference on the Brown Act as of February 10, 1996. It does not substitute for research or consultation with a lawyer on detailed questions. It is intended to address the most common access problems, but can't cover everything.

First Amendment Project:

www.well.com/user/fap/index.html

This page maintained by fap@well.com

THE BASICS

Meetings of public bodies must be "open and public," actions may not be secret, and action taken in violation of open meetings laws may be voided (§§54953(a), 54953(c), 54960, 54960.1).

WHO'S COVERED

- 1) Local agencies, including counties, cities, school and special districts (§54951).
- 2) "Legislative bodies" of each agency are the boards whose meetings are governed by the Brown Act – the agency's governing body plus any board, commission, committee, task force or other advisory body created by the agency, whether permanent or temporary (§54952(b)). Collectively these will be called "covered boards."
- 3) Any standing committee of a covered board, regardless of number of members (§54952(b)).
- 4) Nonprofit corporations formed by a public agency or which includes a member of a covered board and receives public money from that covered board (§54952).
- 5) NOT affected are: meetings of ad hoc, advisory committees consisting of less than a quorum of the covered board (§54952(b)); most nonprofit corporations; courts and court agencies; state government. (See Bagley-Keene Act for state agencies, §§ 11120-11132.)

WHAT'S COVERED

A "meeting is any gathering of a majority of the members of a covered board to hear, discuss, or deliberate on matters within the agency's or board's jurisdiction. "Note: no vote or action is required for the gathering to be a meeting, nor must the members meet face-to-face (§54962.2).

MEETING RULES

To preserve the public's rights under the Brown Act, an agency must:

- Post and send notice and an agenda for any regular meeting (§§54594, 54954.2): mail notice one week before regular and special meetings to those who request it (§54954.1): notice special and emergency meetings (§54956, §54956.1).

- Notify the media of special or emergency meetings (§54956, §54956.5); allow media to remain in meetings, cleared due to public disturbance (§54957.9).
- Limit action to items on the agenda, absent special circumstances (§54954.2(a)(b)).
- Hold meetings in the jurisdiction of the agency except in limited circumstances (§54954(b)(1)-(4),(c),(d),(e)), and in places accessible to all, with no fee (§54961(A)).
- Do not require a “sign in” for anyone (§54953.3)
- Allow recording and broadcast of meetings (§54953.5(a)), and let the public have a copy of and listen to any recording made by the agency of its open meetings (§54953.5(b)).
- Allow the public to address the covered board at regular or committee meetings. On any item in the agency’s jurisdiction (§54954.3(a)).
- Conduct only public votes, with no secret ballots (§54953(c)).
- Treat documents as public “without delay,” if distribution before or at the meeting, unless they are also exempt under the Public Records Act (§54957.5).

WHAT IF...

- A council member is on a board of a nonprofit corporation – is it covered? YES, if the council appointed him or her, and funds the corporation (§54952(c)(2)).
- An agency delegates authority to some other entity – is that entity covered? YES, if it was created by the agency’s elected body) §54952(b)(c)(1)).
- A council committee meeting has less than a quorum – is it required to meet openly? YES, if the committee has *either* a set meeting schedule or a continuing subject matter jurisdiction (§54952(b)).
- A quorum of an agency is at a social gathering – is that a violation? NO, so long as the members do not discuss business matters within their jurisdiction (§54952.2(b)(4)). BUT regular “social” gatherings like luncheons are meetings, since it’s likely public business is discussed (43 Opps. Atty. Gen. 36 (1964)).
- Members use individual contacts to collectively decide an issue – Is that a violation? YES. Information communicated to a quorum through a series of contacts, individuals phone calls (“daisy chain”), or a third person (“spoke and wheel”) to evade the public is a “meeting” (§54952.2(a)(2); 63 Opps. Atty. Gen. 820 (1980); Stockton Redevelop Agency, 171 CA 3d 95 (1985); Common Cause v. Stirling, 147 CA 3d 518 (1983)).
- Agency members attend a conference and call another member – is this covered? NO, so long as they do not discuss specific business matters within their jurisdiction (§54952.2(b)(2),(3)).
- A meeting is held by video-teleconference. This is ALLOWED, for testimony and deliberation only, if the public’s rights are protected (§54953(b)).

RULES FOR CLOSED MEETING

Closed meetings are the exception, and permitted only if they meet defined purposes and follow special requirement (§54953(a), (c), §54954.5, §54962).

EVEN AT CLOSED SESSIONS:

Special public notice and agenda requirements apply §54954, 54954.2, 54954.5). All actions taken and all votes in closed session must be publicly reported orally or in writing within 24 hours (§54957.1), and copies of any contract or settlements approved must be made available promptly (§54957.1(c)).

CLOSED MEETINGS MAY BE HELD FOR: PERSONNEL.

Only to discuss the appointment, employment, performance, evaluation, complaints about or dismissal of a specific employee or potential employee (§54957). (The employee may request a public meeting on any charges or complaints). Closed sessions are NOT ALLOWED for general employment discussions; independent contractors not functioning as employees; salary discussions; any elected official or member of the covered board; “the local agency’s available funds, funding priorities or budget.”

PENDING LITIGATION:

Only if open discussion “would prejudice the position of the agency in the litigation.”
The litigation must be named on the posted agenda or in open session (§54956.9).

To qualify, the agency must:

- Be a party to pending litigation (§54956.9(a));
- OR expect, based on certain specifies facts, to be sued (§54956.9 (b)(1), (2));
- OR expect to file suit itself (§54956.9(c)).

LABOR NEGOTIATIONS

- Only to instruct the agency’s negotiator’s on compensation issues (§54957.6).
(Note: school districts are covered by the Rodda Act.)

PROPERTY NEGOTIATIONS

- Only to discuss, with an agency’s bargaining agent, price or payment terms. The parcel name of the prospective seller or purchaser must be on the agenda. Final price and payment terms must be disclosed when the actual lease or contract is discussed for approval (§54956.8) .

OTHER

- Other closed meetings include license and permit applications for people with criminal records (§54958.7); threats to public services or facilities (§54957); Insurance pooling (§54956.95).

WHAT TO DO IF:

A MEETING IS CLOSED THAT SHOULD BE OPEN

- Refuse to leave, and use this Guide to check the law, to protest and enforce all notice requirements
- Leave only if ordered by law enforcement
- Call your editor or lawyer at once

AN ILLEGAL CLOSED MEETING HAS BEEN HELD

- Ask participants what happened, and get reports of actions taken and copies of contracts approved.
- Call first Amendment Project, (<http://www.well.com/user/fap/index.html>), Society of Professional Journalists (<http://town.hall.org/places/spj>) or California First Amendment Coalition (<http://ccnet.com/CSNE/cfac.html>).
- Write a story or letter to the editor about it
- Contact the District Attorney under §54980(a) against violations or a “gag rule” imposed on a body’s members.
- A court may:
 - Force the agency to make and preserve tapes of closed sessions (§54960(b));
 - Declare actions taken null and void (§54960.1)
 - Award costs and attorneys fees (§54960.5).

Government Code on Public Meetings

The Ralph M. Brown Act

Some relevant sections of the Government Code

54951 As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or other local public agency.

54952 As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee, or other body is organized and operated by such local agency or by private corporation.

54952.2 As used in this chapter, "legislative body" also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body to a local agency delegated to it by that legislative body.

Meetings of the academic senate or faculty council of a California community college are subject to the open meeting requirements of the Ralph M. Brown Act (Section 54950 et seq). [66 Ops. Atty. Gen. 252, 7-28-83]

54953 (a) 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 the local agency, except as otherwise provided in this chapter.

(b) Not with standing any other provision of law, the legislative body of a local agency may use video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The use of video teleconferencing, is authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body. If the legislative body of a local agency elects to use video teleconferencing, it shall post agenda at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local agency. The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location. This section shall remain in effect until January 1, 1994, and on that date is repealed unless a later enacted statute, which is chaptered before January 1, 1994, deletes or extends that date.

54952.6 as used in this chapter, "action taken" means a collective decision by the majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or

an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

54953.5 Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the legislative body of the local agency that such recording constitutes, or would constitute, a disruption of the proceedings.

The Brown Act requires

1. Agendas posted at least 72 hours before a regular meeting. Agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting. (54954.2)
2. No action shall be taken on any item not appearing on the posted agenda except for emergencies, in instances where two-thirds of the legislative body (or all if less than 2/3 are present) determine that the need for action arose after the agenda was posted, or the item was posted for a prior meeting not more than five calendar days prior to the meeting and the item was continued to the meeting at which action is to be taken. (54954.2)
3. Meetings of public agencies be open and public (54952.3, 54953)
4. Notice of meetings must be delivered to those requesting notice at least 24 hours before the time of such meeting (54952.3)
5. If regular meetings are held, they must be provided for in bylaws or some other rules of the body. In this case, no other notice is required. (54952.3)
6. Special meetings may be called by the presiding officer, or by a majority vote of the members of the legislative body. Only business described in the notice of the meeting can be considered. (54956)

Note: failure of any person to receive notice does not constitute grounds for any court to invalidate the actions of the legislative body for which the notice was given. (54954.1)

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4/18/91

**Defining And Understanding
The Role Of The Academic Senate
Excerpts From Title 5**

SECTION 53200 DEFINITIONS

Academic Senate means an organization whose primary function is to make recommendations with respect to *academic and professional matters*.

Academic and Professional matters means the following policy development and implementation matters:

1. Curriculum, including establishing prerequisites.
2. Degree and certificate requirements.
3. Grading policies.
4. Educational program development.
5. Standards or policies regarding student preparation and success.
6. College governance structures, as related to faculty roles.
7. Faculty roles and involvement in accreditation processes.
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 mutually agreed upon.

Consult Collegially means that the district governing board shall develop policies on *academic and professional matters* through either or both of the following:

1. Rely primarily upon the advice and judgment of the *academic senate*, OR
2. The governing board, or its designees, and the *academic senate* shall reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

SECTION 53203 POWERS

A) The governing board shall adopt policies for the appropriate delegation of authority and responsibility to its college *academic senate*.

B) In adopting the policies described in section (a), the governing board or designees, shall *consult collegially* with the *academic senate*.

C) While *consulting collegially*, the *academic senate* shall retain the right to meet with or appear before the governing board with respect to its views and recommendations. In addition, after consultation with the administration, the *academic senate* may present its recommendations to the governing board.

D) The governing board shall adopt procedures for responding to recommendations of the *academic senate* that incorporate the following:

1. When the board elects to rely primarily upon the advice and judgment of the *academic senate*, the recommendation of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted.
2. When the board elects to provide for mutual agreement with the *academic senate*, and an agreement has not been reached, existing policy shall remain in effect unless such policy exposes the district to legal liability or fiscal hardship. In cases where there is no existing policy, or when legal liability or fiscal hardship requires existing policy to be changed, the board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

- E) An *academic senate* may assume such responsibilities and perform such functions as may be delegated to it by the governing board.
- F) The appointment of faculty members to serve on college committees shall be made, after consultation with the chief executive officer or designee, by the *academic senate*.

SECTION 55002: STANDARDS AND CRITERIA FOR COURSES AND CLASSES

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

EDUCATION CODE: Selected Passages Specifying the Roles of the Academic Senate

SECTION 70902 (b)(7) GOVERNING BOARDS; DELEGATION

The governing board of each district shall establish procedures to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, and to ensure that these opinions are given every reasonable consideration, and the right of *academic senates* to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

SECTION 87359 (b) WAIVER OF MINIMUM QUALIFICATIONS; EQUIVALENCY

The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the *academic senate*. The process shall further require that the governing board provide the *academic senate* with an opportunity to present its views to the governing board before the board makes a determination.

SECTION 87360 (b) HIRING CRITERIA

Hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by the representatives of the governing board and the *academic senate*.

SECTION 87458 (a) ADMINISTRATIVE RETREAT RIGHTS

The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the *academic senate*. The process shall further require that the governing board provide the *academic senate* with an opportunity to present its views to the governing board before the board makes a determination.

SECTION 87610.1(a) TENURE EVALUATION PROCEDURES

The faculty's exclusive representative shall consult with the *academic senate* prior to engaging in collective bargaining regarding those procedures.

SECTION 87663 (f) EVALUATION PROCEDURES

The faculty's exclusive representative shall consult with the *academic senate* prior to engaging in collective bargaining regarding those procedures.

SECTION 87743.2 FACULTY SERVICE AREAS

The exclusive representative shall consult with the *academic senate* in developing its proposals with regards to faculty service areas.