

CHANCELLOR'S OFFICE DISCUSSION: BROWN ACT COMPLIANCE

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WHAT IS THE BROWN ACT?

- *GOVERNMENT CODE SECTION 54950-54963*
 - 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.



**“I’M NOT A LAWYER...
BUT I’VE PLAYED ONE ON
THE STAGE...”**

THE ASCCC DOES NOT PROVIDE LEGAL ADVICE

- We will be discussing
 - Prevalent interpretations of the application of the brown act
 - Effective practices which have been applied at California Community Colleges
- Your Senate should consult with your College/District's general counsel to ensure that the interpretation is applicable to your college and or districts.



DOES THE BROWN ACT APPLY TO ACADEMIC SENATES?

- **Government Code. Title 5. Division 2. Part 1.
Chapter 9. §54952**
 - **As used in this chapter, “legislative body” means:**
 - **The governing body of a local agency or any other local body created by state or federal statute.**
 - **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.**

DOES THE BROWN ACT *REALLY* APPLY TO ACADEMIC SENATES?

- The Brown Act is explicitly addressed in California Attorney General opinion 83-304, dated July 28, 1983.
 - “The Attorney General concluded that academic senates *are* subject to Brown Act requirements because Title 5 requires that local community college governing boards *must* recognize their local academic senate and thus local senates are subordinate creations of local boards of trustees.”

WHAT SUBCOMMITTEES OF THE SENATE DOES THE BROWN ACT PERTAIN TO?

- **Government Code. Title 5. Division 2. Part 1. Chapter 9. §54952.**
 - **As used in this chapter, “legislative body” means:**
 - **The governing body of a local agency or any other local body created by state or federal statute.**
 - **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. 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.**

UNDER WHAT CONDITIONS WOULD A COLLEGE COMMITTEE *NOT* BE SUBJECT TO THE BROWN ACT?

- Government Code. Title 5. Division 2. Part 1. Chapter 9. §54952.
 - As used in this chapter, “legislative body” means:
 - The governing body of a local agency or any other local body created by state or federal statute.
 - 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. 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.

UNDER THE BROWN ACT, WHEN CAN A SENATE HOLD A SECRET VOTE?

- Government Code. Title 5. Division 2. Part 1. Chapter 9. §54953. (c)
 1. No legislative body shall take action by secret ballot, whether preliminary or final.
 2. The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

DOES THE BROWN ACT REQUIRE ROLL CALL VOTES?

- Roll Call votes are required in only three places in the Brown Act:
 - §54953.(b).(2).
 - Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.
 - 54956.5. Emergency Meeting (not applicable to Senates)
 - (a)(1) An emergency, which shall be defined as 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.
 - 54956.81. Pension Fund Investment

WHAT DOES THE BROWN ACT REQUIRE REGARDING VOTES?

- Government Code. Title 5. Division 2. Part 1. Chapter 9. §54953. (c)
 1. No legislative body shall take action by secret ballot, whether preliminary or final.
 2. The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

HOW DOES THE BROWN ACT IMPACT SENATE ELECTIONS?

- Government Code. Title 5. Division 2. Part 1. Chapter 9. §54953. (c)
 1. No legislative body shall take action by secret ballot, whether preliminary or final.
 2. The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

ALTERNATE QUESTION: IS THE BROWN ACT CONCERNED ABOUT THE METHODOLOGY OF THE VOTE OR HOW THE RESULTS ARE RECORDED?

- Government Code. Title 5. Division 2. Part 1. Chapter 9. §54953. (c)
 - The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

HOW DOES THE BROWN ACT IMPACT CONSENT ITEMS ON AN AGENDA?

- Consent Agenda Items are permitted under the Brown Act
- The vote needs to be recorded

WHAT TYPES OF AGENDA ITEMS CAN SENATES GO INTO CLOSED SESSION OVER?

- Government Code. Title 5. Division 2. Part 1. Chapter 9. §54954.5. (a) to (k)
 - Conference with legal counsel—existing litigation
 - Conference with legal counsel—anticipated litigation
 - Liability claims
 - Threat to public services or facilities
 - Public employee appointment
 - Conference with labor negotiators
 - Case review/planning
 - Report involving trade secret
 - Charge or complaint involving information protected by federal law
 - Conference involving a joint powers agency
 - Audit by California state auditor's office

ARE ACADEMIC SENATES REQUIRED TO PROVIDE A SECTION OF THEIR AGENDA FOR PUBLIC COMMENT?

■ Government Code. Title 5. Division 2. Part 1. Chapter 9. §54954.3.

- (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2.

However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body.

Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

WHAT LIMITATIONS MAY ACADEMIC SENATES PLACE ON PUBLIC COMMENT?

- **Government Code. Title 5. Division 2. Part 1. Chapter 9. §54954.3.**
 - (a) ...However, the agenda **need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee**, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, **unless the item has been substantially changed since the committee heard the item, as determined by the legislative body.**

WHAT LIMITATIONS MAY ACADEMIC SENATES PLACE ON PUBLIC COMMENT?

- Government Code. Title 5. Division 2. Part 1. Chapter 9. §54954.3.
 - (a) ...
 - (b) The legislative body of a local agency may adopt **reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.**

WHAT LIMITATIONS MAY ACADEMIC SENATES PLACE ON PUBLIC COMMENT?

- Government Code. Title 5. Division 2. Part 1. Chapter 9. §54954.3.
 - (a)...
 - (b)....
 - (c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.

WHAT ARE THE RULES AND SPECIFICS ABOUT SENATE AGENDAS?

- **Government Code. Title 5. Division 2. Part 1.
Chapter 9. §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.**

WHAT ARE THE RULES AND SPECIFICS ABOUT SENATE AGENDAS?

- Government Code. Title 5. Division 2. Part 1.
Chapter 9. §54954.2(a)(1)
 - A brief general description of an item generally need not exceed 20 words.

WHAT ARE THE RULES AND SPECIFICS ABOUT SENATE AGENDAS?

- Government Code. Title 5. Division 2. Part 1.
Chapter 9. §54954.2(a)(1)
 - 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.**

WHAT ARE THE RULES AND SPECIFICS ABOUT SENATE AGENDAS?

- **Government Code. Title 5. Division 2. Part 1. Chapter 9. §54954.2(a)(1)**
 - 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.

WHAT ARE THE RULES AND SPECIFICS ABOUT SENATE AGENDAS?

- **Government Code. Title 5. Division 2. Part 1. Chapter 9. §54954.2(a)(1)**
 - 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.

WHAT ARE THE POTENTIAL PENALTIES FOR VIOLATING THE BROWN ACT?

- **Government Code. Title 5. Division 2. Part 1. Chapter 9. §54959**
 - Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, 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 under this chapter, is guilty of a misdemeanor.