

Keeping It Collegial and Legal: Governing Documents, Robert's Rules of Order, and the Brown Act



PHIL CRAWFORD, NORTH REPRESENTATIVE
JOHN FREITAS, AREA C REPRESENTATIVE

FACULTY LEADERSHIP INSTITUTE
JUNE 12-14, 2014
SAN DIEGO



ACADEMIC SENATE
for CALIFORNIA COMMUNITY COLLEGES

Welcome!



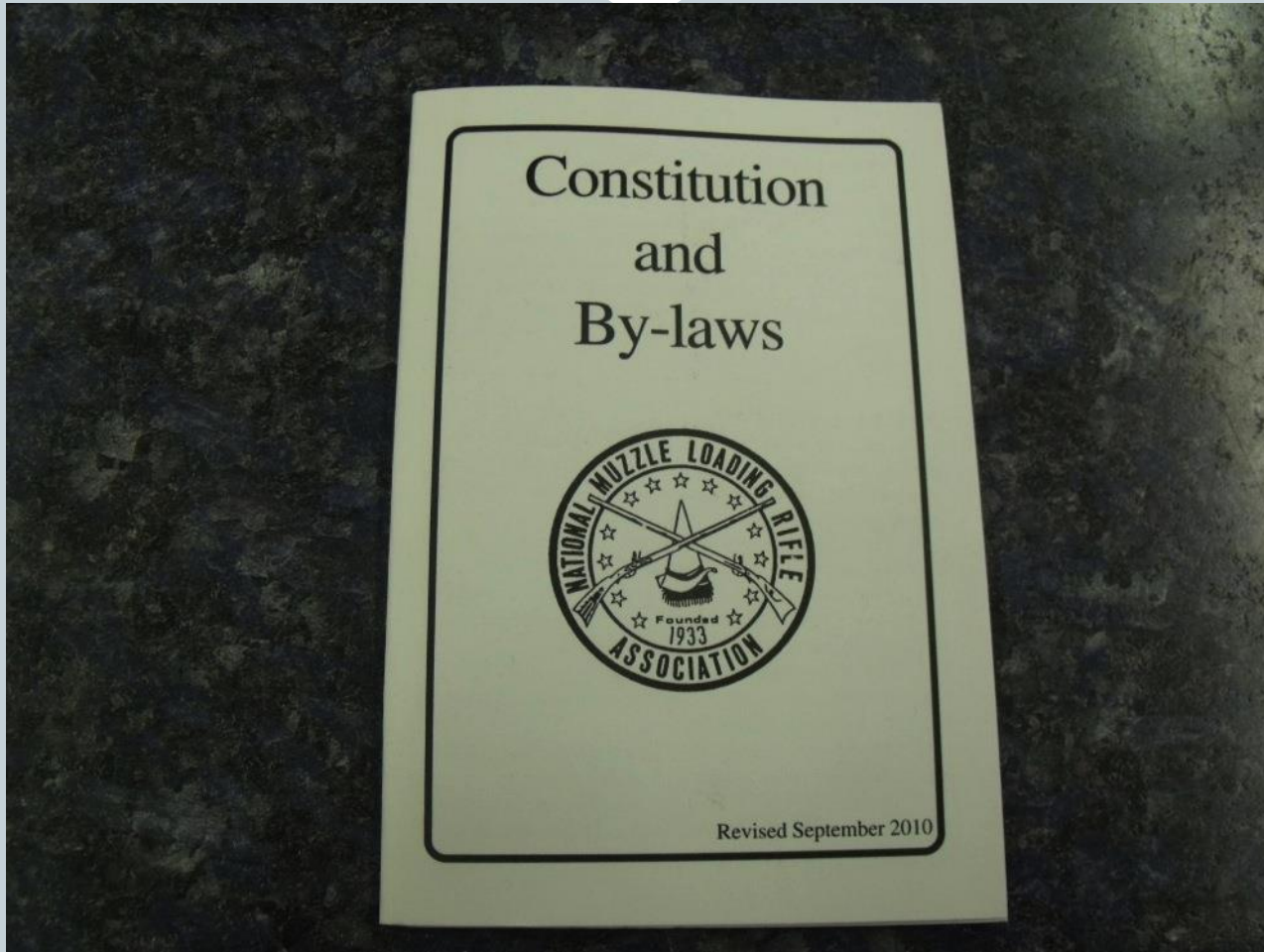
- What brings you here?
- What questions would you like answered?

Topics to be covered today



- Senate governing documents – constitution and bylaws
- Robert's Rules of Order – why we use them and some basics
- The Brown Act – the basics that apply to local senates

Governing Documents



Constitution



- Provides the basic structure and authority of your senate
- Should include at a minimum:
 - The purpose of the senate and source of authority
 - The elected officers of the senate with basic duties
 - The basic organization of the senate
 - Process for amending (normally 2/3 vote of the faculty votes cast)
 - Basic provisions for election (frequency, when held)
 - Parliamentary authority used (e.g. Robert's Rules of Order)

Constitution



- **Should not** include operational details, such as:
 - Committee structure and membership
 - Election procedures
 - Filling vacancies
 - Meeting times and dates
 - How to suspend bylaws (Grrr!)

These are more appropriate for bylaws

Bylaws



- Provide the operational structure of the senate consistent with the provisions of the constitution
- Approved and amended by 2/3 vote of the senate, not the faculty at large
- Cannot supersede the constitution!!!

Bylaws



- Should include at a minimum:
 - Executive committee membership
 - Committee names, membership, and process for selecting chairs and membership of committees
 - Duties of officers and committee chairs
 - Election procedures and filling of vacancies
 - Process for amending bylaws
 - Process for suspension...should be very rare and require 2/3 vote!
 - Other?

Board/Administration Role in Senate Constitutions and Bylaws

None!

Title 5, section 53202:

(c) The governing board of a district shall recognize the academic senate and authorize the faculty to:

- 1) Fix and amend by vote of the full-time faculty **the composition, structure, and procedures** of the academic senate.
- 1) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.

Here's Robert!



Why Should You Use Robert's Rules?



- A. They provide a form of protection
- B. Rules result in better meetings with better input
- C. Consistent meeting formats create a fair, collegial playing field for everyone in the meeting
- D. They are effective at enabling all sides to speak during angst-ridden, emotion-driven debate leading to better results.
- E. All of the above.

Parliamentary Meetings Revolve Around...



- A. The president
- A. The voting process
- B. The motion
- C. Discussion
- A. All of the above

Hail the Almighty Motion!



- Central to parliamentary process
- All action revolves around the main motion
 - Resolutions are just fancy main motions
- Main motion can be acted upon in a myriad of ways

Acting on the Motion – The Privileged, the Subsidiary and the Incidental



CLINT EASTWOOD

ELI WALLACH

Acting on the Motion – The Privileged, the Subsidiary and the Incidental



The Main Motion is introduced and seconded, then you can have...

- **Subsidiary Motions** – help the body dispose of the main motion
 - postpone indefinitely, amend, refer to committee, postpone to certain time, limit/extend debate, move the previous question, lay on the table
- **Privileged Motions** – not related to the main motion, but are of immediate importance to the body
 - orders of the day (stick to the agenda!), raise question of privilege, recess, adjourn, fix time to adjourn
- **Incidental Motions** – deal with questions of procedure arising from pending business, but do not affect pending business
 - point of order, appeal, divide the question, division of the assembly, suspend the rules, requests and inquiries

The Priority Order of Privileged and Subsidiary Motions



- Fix time to which to adjourn (P)
- Adjourn (P)
- Recess (P)
- Raise a question of privilege (P)
- Orders of the day (P)
- Lay on the table (S)
- Previous question (S)
- Limit/Extend debate (S)
- Postpone to a certain time (S)
- Refer to committee (S)
- Amend (S)
- Postpone indefinitely (S)
- Main motion (M)

NOTE:

- **Bottom up** = order of **making** motions
- **Top down** = order of **voting** on motions
- **Incidental** motions can just **butt in!**

Majority, Supermajority, Consensus



- General rule of thumb: If it takes away rights it takes a supermajority (two-thirds vote)
 - e.g. limiting or extending debate, moving previous question, object to consideration, suspending bylaws, removing from office,
- Motion to adopt by acclamation requires consensus
- Consensus = all are unwilling to object (General or unanimous consent)
 - Useful for adopting non-controversial motions...consider a consent calendar!

Things to Remember



- Large bodies - chair presides with impartiality
 - Facilitates the meeting
 - Avoid making motions and engaging in debate
 - Should vote only to break a tie (pass a motion) or make a tie (kill a motion)
- Standard rules can be modified
 - e.g. define a quorum differently, rescinding a previously adopted motion
- The rules are not the goal they are the means to ensuring effective and collegial meetings.

Committees Are Different Than Senates



- The purpose of a committee is to get work done
- Still have requirements...(Brown Act, accreditation)
 - Agendas
 - Minutes with recorded actions and votes
- But operate less formally than your senate...
 - Goal should be consensus, but votes must be recorded in minutes for senate committees!
 - Chair engages in discussion and can vote

Don't Let This Happen to Your Senate... Keep it Collegial!



The Brown Act - Open and Public



Ralph M. Brown 1959

Photo courtesy The Modesto Bee

“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.”

California Government Code §54950

How Much Do You Know About the Brown Act?



Quiz time...5 minutes!

The Brown Act



- Applies to meetings of all local legislative bodies (GC 54952) including
 - The Board of Trustees
 - Any subcommittee or task force created by the Board with a majority of Board members serving on the group
 - Any subcommittee or task force created by the Board which has a definite ongoing charge (either decision-making or advisory) OR has a regularly-scheduled meeting set by the Board, regardless of Board membership

What is a Meeting?



- A meeting of a local legislative body (GC 54952.2) occurs whenever a majority of members gather to discuss business within their charge. A majority can meet in the following provided they do not discuss any business within their charge among themselves.
 - Attendance at a conference
 - An open meeting of some other group to address local issues (even a Board-recognized group under the definition of “legislative bodies”)
 - Social gatherings

Does the Brown Act Apply to Local Academic Senates?



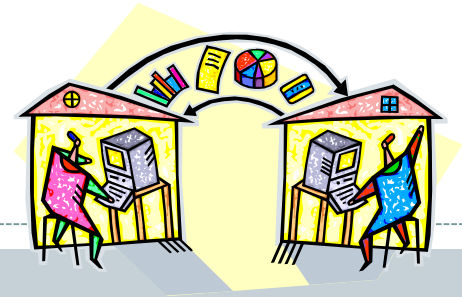
Committees and Subcommittees

The Brown Act also applies to meetings of all:

- Standing committees – a committee that has continuing jurisdiction over a particular topic §54952(b) For example: Budgets, personnel, etc.
- Advisory committees that include a majority of the body and are not standing committees
- Advisory committees that are standing committees (regardless of the size and membership)

Exception: The Brown Act does not apply to a subcommittee that is made up of less than a majority of the body, is an advisory committee AND is not a standing committee

Serial Meetings



- Serial meetings are not allowed
- Serial meetings occur when a majority of the members have communicated about an issue and have developed a collective concurrence.
- A collective concurrence is developed when:
 - Members have either directly or indirectly heard each other's opinion on a topic enough to collectively develop or begin to develop an agreement on an issue.

Types of Serial Meetings



A daisy chain meeting:

- **Example:** When Senator Bob calls Senator Bill to talk about a resolution then Bill calls Senator John to talk about it and finally John calls Senator Fred, etc., until a majority of senators has been contacted. A majority of the senators have talked about the topic and a collective concurrence has been established.

Types of Serial Meetings



Hub and spoke meeting:

- **Example:** For instance, if VPI Terri calls Senator John and discusses a senate issue to get his opinion, then she calls Senator Robert, then calls Senator Bill, and then calls Senator Tim telling each what the other has said, eventually a majority of the senate may have indirectly discussed the topic without public notice and is therefore in violation of the Brown Act.

E-mail



§5492.2(b):

Except as authorized pursuant to §54953, any use of direct communication, personal intermediaries, or **technological devices** that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited

The attorney general has issued an opinion stating that this section of the act applies to email.

The Attorney General's Opinion Regarding E-mail

- In 2001 the CA Attorney General issued an opinion regarding the use of email. (Opinion #00-906, 2001)
- The opinion concluded: A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act.
- Even if the emails are made public they would still be a violation of the Act because the board would be depriving the public of the deliberative process.
- The opinion also states, “The term ‘deliberation’ has been broadly construed to connote ‘not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.’ [Citation.]” (*Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 234; see *Roberts v. City of Palmdale*, *supra*, 5 Cal.4th at p. 376.)
- You can find the opinion at:
<http://ag.ca.gov/opinions/published/00-906.pdf>

Agendas



- **Include meeting time and location, including address**
- **Post agenda in a 24/7 publicly accessible area 72 hours before meeting (physically and virtually)**
- **Special meetings require 24 hours notice and are limited to agenda items**
- **Senates do not call emergency meetings (which do not require 24 hour notice) – public safety is not under senate jurisdiction!**
- **Allow for public comments before or during discussion of agenda items**
- **Include all action items on the agenda, with a brief description**
- **Can change order of agenda**

Action is Limited to Items on the Agenda



- Exception: Action may be taken on a non-agenda item, BUT this requires:
 - That the need for immediate action was discovered after the agenda was posted, and
 - A vote of 2/3 of members present if more than 2/3 of the total membership are present, or a unanimous vote if less than 2/3 of the total members are present.

Meetings and Votes are Open



- Meetings must be held within your senate's jurisdiction
- Closed sessions are for
 - litigation (for instance, the senate is or will be sued)
 - personnel matters (such as, the senate has responsibility for evaluating a senate employee)
 - negotiating with a bargaining agent (which the senate does not do).
- All votes are open!
 - No secret ballots...even for elections (if they are conducted during senate meetings).
 - It is now required that all ayes, nays and abstentions on motions be attributed to member casting a vote!

At Meetings...



- Members may respond to public comments but not take action
- All items distributed by the Senate before or during meetings must be available to the public at the meeting (reasonable fees may be charged for duplication).

Be Prepared!



- Bring extra copies of documents
- If other items are brought for distribution, offer to send copies later to those requesting them in writing
- Be careful what is distributed at meetings – it becomes public document
- Set time limits for discussion, particularly for public comments
- Keep discussion within the scope of the agenda item

Teleconferences



54953(b)(1) permits the use of teleconferencing.

Requirements for teleconferences include:

- Teleconferences must comply with the rest of the Act
- All votes taken during a teleconference must be taken by roll call.
- Agendas must be posted at all teleconference locations.
- Each teleconference location must be identified in the agenda.
- Each teleconference location must be accessible to the public.
- At least a quorum of the board must participate from locations within the district boundaries.
- The agenda must provide for public comment at each teleconference location.

Enforcement



- Demand to cure or correct
- Threat to sue
- Lawsuit

A Short Quiz



Who Must Comply with the Brown Act?



- A. Board of Trustees
- B. Academic Senate
- C. Subcommittees of the Board of Trustees
- D. Senate committees, subcommittees and Curriculum committee
- E. All of the above

Bottom Line

- Commitment to
 - Openness
 - Transparency
 - Public access to information



Resources Available



- **Robert's Rules Website:**
<http://www.robertsrules.com/default.html>
- **Robert's Rules Online**
<http://www.rulesonline.com/index.html>
- **The Parliamentary Procedure Instructional Materials Center**
http://pzen.northwest.net/index.php?main_page=index
- **Toastmasters**
http://westsidetoastmasters.com/resources/roberts_rules/toc.html
- **CA Attorney General Guide (2003):**
<http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/brownAct2003.pdf?>
- **League of California Cities 2010 Brown Act Guide:**
<http://www.cacities.org/UploadedFiles/LeagueInternet/86/86f75625-b7df-4fc8-ab60-de577631ef1e.pdf>

Questions?



Phil Crawford (pjcrawford@aol.com)

John Freitas (freitaje@lacitycollege.edu)

Thank you!