

SUMMARY OF THE BROWN ACT

Government Code sections 54900, *et seq.*

The Brown Act embodies the philosophy that public agencies exist for the purpose of conducting public business, and the public has the right to know how its “collaborative decisions” are being made. It represents the determination of the balance that should be struck between access on the one hand, and the need for confidential candor on the other. There is a presumption in favor of access, with exceptions for confidentiality where there has been a demonstrated need. The exceptions are construed narrowly.

Discussions of the Brown Act are usually divided into six topics: to whom does the Act apply, what is a meeting, what are the agenda requirements, what are the public's rights, what may be done in closed sessions, and what are the consequences for violation.

1. Bodies covered by the Brown Act.

- A. Legislative body of local agencies, e.g., boards, commissions, councils and committees. This also applies to a person who is elected as part of body who has not yet taken office.
- B. This does not apply to individual decision makers, e.g., department heads, legislative bodies acting in judicial capacity, bodies created by single decision maker.
- C. "Local agencies" include cities, counties, school districts, special districts, municipal corporations, etc. (There is a separate law for state agencies.) Factors used in assessing "localness" include geographical coverage, duties of the agency, and existence of oversight, provisions concerning membership and appointment.
- D. "Legislative bodies" include governing bodies and their subsidiary bodies, e.g., boards, commissions, committees or other bodies of a local agency that are created by charter, ordinance, resolution or "formal action" of a legislative body. This applies regardless of "temporary v. permanent", and "advisory v. decision making."
- E. THERE IS A SPECIFIC EXCEPTION FOR: "NON-STANDING" ADVISORY COMMITTEES THAT ARE COMPOSED OF LESS THAN A QUORUM OF THE LEGISLATIVE BODY.
 - 1. Standing committees are those whose meeting schedule is fixed by resolution or action of the body that created the committee.

2. If a legislative body designates less than a quorum of its members to meet with representatives from another body to exchange info, a separate body is not formed. However, if less than a quorum meets with another agency to perform a task, e.g., make a recommendation, a separate legislative body is formed.
- F. The act covers private corporations created by legislative bodies for the purpose of exercising authority, entities which receive funds from a local agency where the agency appoints one of its members to the board. Mere receipt of public funds by a nonprofit corporation does not subject a nonprofit corporation or other entity to the Brown Act.

2. What is a meeting?

- A. Any congregation of **a majority** of the members of legislative body at the same time and place to hear, discuss or deliberate on any matter within its jurisdiction. This can include lunches, social gatherings, or board retreats.
- B. Exemptions for: 1) conferences open to the general public which involve issues of interest to the body, 2) other public meetings, 3) meetings of other bodies under the same local agency, or 4) social or ceremonial occasions, **as long as a majority of the members do not discuss application of specific issues to the legislative body.**
- C. **Serial meetings** are included within the Brown Act if they are **for the purpose of developing a concurrence as to action to be taken.**
 1. Serial meeting is a series of communications, (whether in person or by phone or other media) each of which individually involves less than a quorum, but which, taken as a whole, involve a majority of the board's members. Examples include meetings of board members' intermediaries, chain communications (a | b | c), and hub communications (a | b, a | c).
 2. "Concurrence as to action to be taken" includes substantive matters that are or are likely to be on board's agenda, but does not include purely housekeeping matters (e.g., times, dates and locations of upcoming meetings.)
- D. Individual contacts between members of the public and board members are exempt from definition of meeting.

3. Notice and Agenda Requirements

- A. Regular meetings are those whose time and place is set by ordinance, bylaw or resolution.
 1. At least 72 hours prior to meeting, the agency must post an agenda containing a brief general description (generally no longer than 20 words)

of each action or discussion item to be considered, including items to be considered at closed sessions. The purpose is to notify members of the public of items in which they may wish to participate.

2. Exceptions for three types of matters, each of which must be publicly announced before proceeding:
 - a. Emergencies (requires majority vote).
 - b. Need for immediate action arising after publication of agenda (requires 2/3 of entire body, or if fewer than 2/3 remain, 100% of all remaining members).
 - c. Matter which has been posted for a previous meeting which is carried over for no more than five days.
 3. Agenda must contain an opportunity for public testimony on matters not listed on the agenda. The agency may impose reasonable time limitations on this comment period. The board or commission cannot take action on a matter raised for first time in "public comment" if the item is not on its agenda.
- B. Special meetings require 24 hours' notice. No business may be considered except that for which meeting was called.
- C. Emergency meetings (crippling disasters, strikes, public health and/or safety threats) may be called on one hour notice, determined by a majority of the body. No closed session is permitted.
- D. Closed sessions require three types of notice: a listing in the agenda, a pre-closed session announcement, and a post-closed session report of action taken.
1. Statutes contain "safe harbor" format for closed session agenda requirements.
 2. Special statutory requirements re: exposure to potential litigation. There must be a finding of one of the following in order to qualify for this exception:
 - a. Facts and circumstances exist that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs need not be disclosed.
 - b. Facts and circumstances exist that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs shall be publicly stated on the agenda or announced.
 - c. The agency has received a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff

threatening litigation, which claim or communication shall be available for public inspection.

d. A statement has been made by a person in an open and public meeting threatening litigation.

e. A statement threatening litigation has been made by person outside an open and public meeting.(No closed session allowed in absence of record of the statement prior to the meeting.)

3. No requirement for disclosure of written communications that are privileged and not subject to disclosure pursuant to the Public Records Act

4. At the end of a closed session, the body must convene in open session and report on action taken, either orally or in writing. Specific statutory requirements must be met as to form of report. (See sample)

5. Adjournments and continuances need not be separately posted if the subsequent meeting is continued for no more than five days. However, notice of adjournment (continuance) must be posted.

6. The location of meetings must generally be within the geographic boundaries of the body's jurisdiction, except for compliance with law or court order, to inspect real property, to conduct meetings of multi agency significance, to reach the nearest available facility if the body has no meeting facility available, to meet with state or federal officials to discuss regulatory issues, to view a facility to discuss the facility itself, to visit legal counsel to reduce fees, or in the case of schools, to attend conferences on collective bargaining or interview a potential employee from another district or interview public about a candidate for superintendent.

7. There are special procedures re: new or increased taxes or assessments.

4. **Rights of the Public.**

A. Access generally means the right to be notified of items to be considered (agenda), to attend meetings of legislative bodies without identifying oneself, to record the meeting, to have access to documents distributed to members of the legislative body, not to pay for the agency's costs in complying with Brown Act, to be free from discrimination, and to provide public comment.

B. Legislative bodies may provide greater public access than required by Brown Act.

5. **Permissible Closed Meetings.**

A. Personnel exception.

1. This exception applies to the appointment, employment, evaluation, discipline or dismissal of public employee.
2. The employee may request that the hearing be conducted in public only if the purpose is to discuss specific instances of misconduct. The employee has the right to 24 hours' notice of hearing on charges of misconduct.
3. In this context, an employee does not include elected officials, independent contractors, or members of the legislative body.
4. The meeting must pertain to a particular employee, not employees in general. There cannot be abstract discussions re: creation of new positions unless workload discussion involves the performance of a specific employee.
5. The meeting does not be used to discuss salary.

B. Pending litigation and attorney-client privilege.

1. This exception is based on attorney client privilege, but applies only to litigation.
2. Litigation includes any adjudicatory proceeding.
3. Litigation is "pending" when any of the following circumstances exist:
 - (a) Litigation, to which the local agency is a party, has been initiated formally.
 - (b) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.
4. "Existing facts and circumstances" are limited to the following:
 - (a) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff.
 - (b) Facts and circumstances, e.g., an accident, disaster, incident, or transaction that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs.
 - (c) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation.

(d) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(e) A statement threatening litigation made by a person outside an open and public meeting on a specific matter.

5. The pending litigation exception also includes those cases where the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

C. Real Estate Negotiation

D. Labor Negotiations

E. Public Security

6. **Consequences of Violation.**

A. Criminal penalties-- misdemeanor where action taken in violation of the act.

B. Civil remedies--

1. Injunction, mandamus, declaratory relief

2. Action may be voided following notice to correct, which must be received within 90 days, and acted on within 30 days, lawsuit filed within 15 days.

C. Attorney fees

1. Awarded against agency, not individual.

7. **New Legislation.**

A. New Legislation, effective January 1, 2003 (AB 1945), confirms that it is a violation of the Brown Act to disclose confidential, closed session information.