
FRESNO COUNTY BOARD OF EDUCATION**Board Bylaws****ACTIONS BY THE COUNTY BOARD**

The County Board shall act by a majority vote of all of the membership constituting the County Board, unless otherwise required by law. (Education Code 1013.)

An "action" by the County Board means (Government Code 54952.6):

1. A collective decision by a majority of the County Board members.
2. A collective commitment or promise by a majority of the County Board members to make a positive or negative decision.
3. A vote by a majority of the County Board members when sitting as the County Board upon a motion, proposal, resolution, or order.

The County Board shall not take action by secret ballot, whether preliminary or final. (Government Code 54953.)

Actions taken by the County Board in open session shall be recorded in the County Board minutes. (Education Code 1015.)

Action on Non-Agenda Items

After publicly identifying the item, the County Board may take action on a subject not appearing on the posted meeting agenda under any of the following conditions (Government Code 54954.2):

1. When a majority of the County Board determines that an emergency situation exists, as defined for emergency meetings pursuant to Government Code 54956.5.
2. When two-thirds of the County Board members present, or if less than two-thirds of the members are present then by a unanimous vote of all members present, determine that the need to take immediate action came to the County Board's attention after the agenda was posted.
3. When an item appeared on the agenda of, and was continued from, a meeting that occurred not more than five days earlier.

Actions Requiring a Two-Thirds Vote of the Entire County Board

A two-thirds vote of the County Board membership shall be required for the following actions:

1. Request for temporary borrowing pursuant to Government Code sections 53820-53833 to pay obligations incurred before receipt of income for the fiscal year sufficient to meet the payment(s). (Government Code 53821.)
2. Upon complying with Government Code section 65352.2 and Public Resources

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Code section 21151.2, action to render city or county zoning ordinances inapplicable to a proposed use of the property by the County Board and/or County Superintendent. (Government Code 53094.)

3. Resolution of necessity to proceed with an eminent domain action and, if the County Board subsequently desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use. (Code of Civil Procedure 1245.240, 1245.245.)
4. Resolution declaring intention to sell or lease real property. (Education Code 17466.)
5. Resolution declaring intent of the County Board to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code 17556. (Education Code 17557.)
6. Resolution authorizing and directing the County Board president, vice president, County Superintendent, or any other County Board member to execute a deed of dedication or conveyance of property to the state or a political subdivision. (Education Code 17559.)
7. Lease for up to three months of school property which has a residence on it and which cannot be developed for county office of education school program purposes because funds are unavailable. (Education Code 17481.)

Actions Requiring a Two-Thirds Vote of the County Board Members Present at the Meeting

A two-thirds vote of the County Board members present at the meeting shall be required for the following actions:

1. Determination that there is a need to take immediate action and that the need for action came to the County Board's attention after the posting of the agenda. (Government Code 54954.2.)
2. Determination that a closed session is necessary during an emergency meeting. (Government Code 54956.5.)

If less than two-thirds of the County Board members are present at the meeting, a unanimous vote of all members present shall be required for the above actions.

Actions Requiring a Four-Fifths Vote of the Entire County Board

A four-fifths vote of the County Board membership shall be required for:

1. Approve the expenditure and transfer of necessary funds and use of property or personnel to meet a national or local emergency created by war, military, naval, or air attack, or sabotage, or to provide for adequate national or local defense. (Government Code 53790-53792.)

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2. Resolution for borrowing based on issuances of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the county office of education's estimated income and revenue for the fiscal year or the portion not yet collect at the time of the borrowing. (Government Code 53822, 53824.)
3. Resolution, adopted between July 15 and August 30, to borrow funds of up to 25 percent of the estimated income and revenue to be received by the county office of education during the current fiscal year from apportionments based on average daily attendance for the preceding school year, of schools operated by the County Superintendent. (Government Code 53822-53824.)
4. Declaration of an emergency to authorize the County Board to include a particular brand name or product in a bid specification. (Public Contract Code 3400.)

Challenging Board Actions

The district attorney's office or any interested person may file an action in court to stop or prevent the County Board's violation or threats of violations of the Brown Act, to determine the applicability of the Brown Act to ongoing or future threatened County Board actions, to determine the validity, under California or federal law, of any County Board rule or action to penalize any of its members or otherwise discourage the member's expression, or to compel the County Board to audio record its closed sessions because of its violation of any applicable Government Code provision. (Government Code 54960.)

The district attorney or any interested person may present a demand that the County Board cure and correct a County Board action which he/she alleges is in violation of law regarding any of the following (Government Code 54960.1):

1. Open meeting and teleconferencing. (Government Code 54953.)
2. Agenda posting. (Government Code 54954.2.)
3. Closed session item descriptions. (Government Code 54954.5.)
4. New or increased tax assessments. (Government Code 54954.6.)
5. Special meetings. (Government Code 54956.)
6. Emergency meetings. (Government Code 54956.5.)

Any demand to "cure and correct" an alleged violation shall clearly describe the challenged action and the nature of the alleged violation, and shall be presented to the County Board in writing within 90 days of the date when the action was taken. If the alleged violation concerns action taken in an open session but in violation of Government Code section 54954.2 (agenda posting), the written demand must be made within 30 days of the date when the alleged action took place. (Government Code 54960.1.)

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Within 30 days of receiving the demand, the County Board shall do one of the following (Government Code 54960.1):

1. Cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct.
2. Determine not to cure or correct the alleged violation and inform the demanding party in writing of its decision to not cure or correct.
3. Take no action. If the County Board takes no action within the 30-day period, its inaction shall be considered a decision not to cure or correct the action. (Government code 54960.1.)

In addition, the district attorney's office or any interested party may file an action in court to determine the applicability of the Brown Act to any past County Board action not specified in Government Code 54960.1, if the following conditions are met (Government Code 54960.2):

1. Within nine months of the alleged violation, a cease and desist letter is submitted to the County Board, clearly describing the past County Board action and the nature of the alleged violation.
2. The time for the County Board to respond has expired and the County Board has not provided an unconditional commitment to cease and desist from and not repeat the past action alleged to have violated the Brown Act.

Adopted: 04/20/1995

Amended: 03/21/2013, 11/15/2018

Legal ReferenceEducation Code

1013 Quorum

1015 Recording Votes

1042 Power to hold and convey real property

1047 Eminent domain

17466 Declaration of intent to sell or lease real property

17481 Lease of property with residence for nondistrict purposes

17510-17511 Resolution requiring unanimous vote of all members constituting board

17546 Private sale of personal property

17556-17561 Dedication of real property

35164 Vote requirements

Code of Civil Procedure

1245.240 Eminent domain vote requirements

1245.245 Eminent domain, resolution adopting different use

Government Code

53090-53097.5 Regulation of local agencies by counties and cities

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53724 Parcel tax resolution requirements
53790-53792 Exceeding the budget
53820-53833 Temporary borrowing
53850-53858 Temporary borrowing
54950-54963 The Ralph M. Brown Act, especially:
54952.6 Action taken, definition
54953 Meetings to be open and public; attendance; secret ballots
54960-54960.5 Actions to prevent violations
65352.2 Coordination with planning agency

Court Decisions

Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors (2003)
112 Cal.App.4th 1313
McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310
Bell v. Vista Unified School District (2002) 82 Cal.App.4th 672
Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109

Management Resources

CSBA Publications

The Brown Act: School Boards and Open Meeting Laws, 2014

Attorney General Publications

The Brown Act: Open Meetings for Local Legislative Bodies, 2003

League of California Cities Publications

Open and Public IV: A Guide to the Ralph M. Brown Act, July 2010
Open and Public IV: A Guide to the Ralph M. Brown Act, Supplement, September 2013

Web Sites

CSBA: <http://www.csba.org>
California Attorney General's Office: <http://www.ag.ca.gov>
Institute of Local Government: <http://www.ca-ilg.org>