

ACTIONS BY THE BOARD

The Governing Board shall act by a majority vote of all of the membership constituting the Board, unless otherwise required by law. (Education Code 35164)

- A. A majority vote of all members of the Governing Board is necessary for an item to carry, even in those cases where some members are absent.
- B. For districts with a five-member board, an item will pass with three votes, even if only three members are present or there is a vacancy.
- C. Abstentions: The Board believes that when no conflict of interest requires abstention, its members have a duty to vote on issues before them. When a member abstains, his/her abstention shall not be counted for purposes of determining whether a majority of the membership of the Board has taken action. (Board Bylaw 9323)

D. The law specifies certain board actions as requiring more than a majority vote.

1. Actions Requiring a Two-Thirds Vote of the Board:

- a. Resolution declaring intention to sell or lease real property (Education Code [17466](#))(cf. [3280](#) - Sale or Lease of District-Owned Real Property)
- b. Resolution declaring intent of Governing Board to convey or dedicate property to the state or any political subdivision for the purposes specified in Education Code [17556](#) (Education Code [17557](#))
- c. Resolution authorizing and directing the Board president, or any other presiding officer, secretary, or member, to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code [17559](#))
- d. Lease, for up to three months, of school property which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code [17481](#))
- e. Request for temporary borrowing pursuant to Government Code [53820-53833](#), to pay district obligations incurred before the receipt of district income for the fiscal year sufficient to meet the payment(s) (Government Code [53821](#))
- f. Upon complying with Government Code [65352.2](#) and Public Resources Code [21151.2](#), action to render city or county zoning ordinances inapplicable to a proposed use of the property by the district (Government Code [53094](#))
- g. Resolution of intent to issue general obligation bonds with the approval of 55 percent of the voters of the district (Education Code [15266](#))
- h. Resolution of intent to issue bonds within a school facilities improvement district with the approval of 55 percent of the voters of the school facilities improvement district (Education Code [15266](#))
- i. Resolution to place a parcel tax on the ballot (Government Code [53724](#))
- j. Resolution of necessity to proceed with an eminent domain action and, if the 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](#))

2. Actions Requiring a Two-Thirds Vote of the Board Members Present at the Meeting:

- a. Determination that there is a need to take immediate action and that the need for action came to the district's attention after the posting of the agenda. If less than two-thirds of the Board members are present at the meeting, a unanimous vote of all members present is required. (Government Code [54954.2](#))
- b. Determination that a closed session is necessary during an emergency meeting. If less than two-thirds of the Board members are present, a unanimous vote of all members present is required. (Government Code [54956.5](#))

3. Actions Requiring a Four-Fifths Vote of the Board:

- a. Expenditure and transfer of necessary funds and use of district 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](#))
- b. Resolution for district borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the district's estimated income and revenue for the fiscal year or the portion not yet collected at the time of the borrowing (Government Code [53822](#), [53824](#))
- c. Resolution for district borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the district during that fiscal year from apportionments based on ADA for the preceding school year (Government Code [53823-53824](#))
- d. Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification (Public Contract Code [3400](#))

4. Actions Requiring a Unanimous Vote of the Board:

- a. Resolution authorizing and prescribing the terms of a community lease for extraction of gas (Education Code [17510-17511](#))
- b. Waiver of the competitive bid process pursuant to Public Contract Code [20111](#) when the Board determines that an emergency exists and upon approval of the County Superintendent of Schools (Public Contract Code [20113](#))

5. Action Requiring a Unanimous Vote of the Board Members Present at the Meeting:

Private sale of surplus property without advertisement in order to establish that such property is not worth more than \$2,500. Disposal of surplus property in the local dump or donation to a charitable organization requires the unanimous vote of the Board members present to establish that the value of such property would not defray the cost of arranging its sale. (Education Code [17546](#))

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

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

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

Actions taken by the Board in open session shall be recorded in the Board minutes. (Education Code 35145)

Action on Non-Agenda Items

After publicly identifying the item, the 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 Board determines that an emergency situation exists, as defined for emergency meetings pursuant to Government Code 54956.5
2. When two-thirds of the 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 district'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

Challenging Board Actions

The district attorney's office or any interested person may file an action in court to stop or prevent the Board's violation or threats of violations of the Brown Act, to determine the applicability of the Brown Act to ongoing or future threatened Board actions, to determine the validity, under California or federal law, of any Board rule or action to penalize any of its members or otherwise discourage the member's expression, or to compel the 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 Board cure and correct a 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 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 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)

Within 30 days of receiving the demand, the 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 Board takes no action within the 30-day review period, its inaction shall be considered a decision not to cure or correct the action.

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 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 Board, clearly describing the past Board action and the nature of the alleged violation.
2. The time for the Board to respond has expired and the 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.

Legal Reference:

EDUCATION CODE

15266 School construction bonds

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
35140-35149 Meetings
35160-35178.4 Powers and duties
48660-48661 Community day schools, establishment and restrictions

CODE OF CIVIL PROCEDURE

425.16 Special motion to strike in connection with a public issue
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
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

PUBLIC CONTRACT CODE

3400 Bid specifications
20111 Contracts over \$50,000; contracts for construction; award to lowest responsible bidder
20113 Emergencies, award of contracts without bids

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, 2009

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, 2007

WEB SITES

CSBA: <http://www.csba.org>

California Attorney General's Office: <http://www.oag.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

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