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LEGAL UPDATE

October 13, 2017

**To: Superintendents/Presidents/Chancellors, Member Community
College Districts**

From: Frank Zotter, Jr., Senior Associate General Counsel

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**Subject: Brown Act Procedures During a Public Emergency
Memo No. 21-2017(CC)**

This Legal Update addresses three areas of the Brown Act that have come into focus because of the recent events in which wildfires have devastated large swaths of the State and may require school boards to take action on short notice to address the effects of those wildfires.

1. Notice and Requirements for an Emergency Meeting.

Government Code § 54956.5 provides that in an “emergency situation,” some Brown Act notice and agenda-posting requirements are not required. “Emergency situation” is given two definitions under § 54956.5, subdivision (a):

- An “emergency” is 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” (subd. (a)(1)).
- A “dire emergency” is defined as “a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body” (subd. (a)(2)).

Under Govt. Code § 54956, press organizations can request that they be given notice of special meetings (i.e., those normally held on 24 hours’ notice). In the case of an “emergency” as defined in § 54956.5, referring to the less-serious “emergency situation” defined in the statute, the presiding officer of the school district, or his or her designee, must give a one hour notice to such press outlets prior to the emergency meeting.



This notice should be given by telephone to numbers provided in the most recent request for notice of special meetings. If telephone services are not functioning, the notice requirements are waived, and the school district must notify those press outlets that it held the emergency meeting, why it did so, and the results of the meeting, as soon after the meeting as possible.

For a “dire emergency,” i.e., the more serious of the two kinds of meetings, the presiding officer is supposed to inform these same press organizations (those that previously requested notice of special meetings) at or near the time that the board members themselves are notified of the emergency meeting. As can be seen from the definition above, the difference between the two kinds of “emergency situations” is itself based on the “dire emergency” being so immediate and significant that giving even the one-hour notice may endanger public safety.

Apart from the “dire emergency” allowing the district to dispense with the full one-hour telephonic notice, therefore, there is little difference between the two situations. The statute largely leaves the question of whether to give the one-hour notice to the discretion of a majority of the board—i.e., whether the situation will permit the district to give a full one-hour notice, or not. Again, we emphasize that the notice only need be given to those press outlets that have formally requested notice of special meetings, and if no such special notice requests are on file, no other notice is required before an emergency meeting.

All other requirements of a special meeting apart from the 24-hour notice are to be followed by a board holding an emergency meeting. This means that an agenda should be prepared even though it need not be posted in advance, and if any members of the public attend, they should be permitted to address items on the agenda. Upon a two-thirds vote of the full board, or a unanimous vote of the board members attending if less than two-thirds of the body are present, the board may hold closed session to discuss possible threats to public facilities, and can include in the closed session various public safety personnel set forth in Govt. Code § 54957.¹

After the conclusion of the meeting, the minutes of the meeting, a list of persons whom the presiding officer of the legislative body notified or attempted to notify, a copy of any roll call vote, and any actions taken at the meeting must be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

2. Holding Meetings Outside the District’s Territory.

Under normal circumstances, “Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction.” Govt. Code § 54954, subd. (b). There is a long list of exceptions for ordinary situations, such as to inspect district-owned property located outside the territory, or to hold a joint meeting with another public entity.

In the case of an emergency, however, subdivision (e) of that statute provides a special rule: “If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place

¹ This provision is likely limited to situations involving prospective threats to public safety or public facilities where public knowledge of the basis for the threat would potentially create additional risk.



designated [for regular meetings], the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.”

Once again, as discussed above with respect to emergency meetings, this notice must only be given to those press organizations that have requested notice of any special meetings. This subdivision would permit the school board to meet either within the territory if the place for its regular meetings is inaccessible or unusable, or to meet outside the district’s territory if required by the circumstances of the emergency.

3. Use of Teleconferencing for Remote Board Members.

The Brown Act permits a board member who is not physically present at a meeting to use audio or audio-visual means to participate through a teleconference. The requirements are found in Government Code § 54953, subd. (b). This statute includes numerous requirements, including:

- 1) The remote location from which the other member or members are “dialing in” must be handicapped-accessible, and members of the public must be allowed to attend either “end” of the meeting and to make public comments from the remote location;
- 2) Both ends of the meeting must be posted with an agenda informing the public that one or more members will be participating from a remote location, identifying that location;
- 3) At least a quorum of the full body must participate in the meeting from locations within the entity’s territory;
- 4) All votes taken during the teleconference must be by roll call.

There is no specific relaxation of these requirements because of an emergency situation. Nevertheless, given that the other statutes described above permit both a meeting on either one hour’s notice or no notice to the public at all, and that a board meeting itself need not be held within the territory of the district, we believe that if the situation constitutes either an “emergency” or certainly a “dire emergency,” teleconferencing can be made that does not meet all of the requirements set forth above. For example, some board members may have been evacuated because of an emergency, or may be unable to reach the same location as the rest of the board because of road closures, road blockage, etc. The non-participation of such members might also deny the board a quorum that would otherwise be necessary to take action during the emergency meeting.

Accordingly, in the limited circumstances that constitute an “emergency situation” as defined in § 54956.5, we conclude that as long as the board chair complies with the other requirements of that statute to call and hold an emergency meeting, one or more board members whose attendance can be secured only through teleconferencing can participate remotely, and need not comply with every requirement of § 54953, subd. (b). For example, a board member who could not safely leave his or her home could call into such an emergency meeting from home, and need not comply with either



the public access or handicapped accessibility requirements at the remote end of the teleconference. Likewise, no agenda need be posted at the remote end of the call, nor need a majority of the board be within the jurisdictional territory of the entity. However, the board should still comply with those requirements that pose no practical burden such as holding all votes by roll call.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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