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LEGAL UPDATE

March 13, 2020

To: Superintendents, Member School Districts (K-12)
From: Jennifer Henry, Assistant General Counsel *J.H.*
Subject: **Governor’s March 12, 2020 Executive Order N-25-20
Regarding Teleconferencing of Board Meetings; and
Emergency Meeting Requirements under the Brown Act
Memo No. 13-2020**

**1. Governor’s March 12, 2020 Executive Order N-25-20 Relaxes
Restrictions on Holding Board Meetings by Teleconference**

On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which included provisions relaxing the Brown Act rules regarding local legislative bodies, such as school boards, holding meetings via teleconference. One of the stated reasons for issuing this Executive Order was to avoid situations where “strict compliance” with statutes such as the Brown Act would “prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.” (See <https://www.gov.ca.gov/2020/03/12/governor-newsom-issues-new-executive-order-further-enhancing-state-and-local-governments-ability-to-respond-to-covid-19-pandemic/>, which includes a link to the Executive Order.)

The Executive Order **waived the following Brown Act requirements:**

- (i) state and local bodies **notice each teleconference location** from which a member will be participating in a public meeting;
- (ii) **each teleconference location be accessible** to the public;
- (iii) members of the **public may address the body at each teleconference conference location;**
- (iv) state and local bodies **post agendas at all teleconference locations;**
- (v) **at least one member of the state body be physically present** at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, **at least a quorum of the members of the local body participate from locations within the boundaries** of the territory over which the local body exercises jurisdiction.



Governing boards may only waive the above six requirements if they comply with the following two conditions:

- (i) each state or local body must give **advance notice** of each public meeting, according to the timeframe otherwise prescribed by the Brown Act, and using the means otherwise prescribed by the Brown Act, as applicable; and
- (ii) consistent with the notice requirement in paragraph (i), each state or local body **must notice at least one publicly accessible location** from which members of the public shall have the right to observe and offer public comment at the public meeting, consistent with the public's rights of access and public comment otherwise provided for by the Bagley Keene Act and the Brown Act, as applicable (including, but not limited to, the requirement that such rights of access and public comment be made available in a manner consistent with the Americans with Disabilities Act).

The Executive Order urged all state and local governing bodies “make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.”

In summary, governing boards of K-12 public schools, charter schools, and community college districts may now, in order to prevent the spread of COVID-19, hold board meetings by teleconference with no quorum of board members in the district’s geographic boundaries, without having board members physically present, without having to post an agenda or allow public access at each board member’s teleconference location, and without having to post each teleconference location on the agenda. However, boards are only privy to these exceptions if they notice at least one publicly accessible location from which the public can attend and observe the meeting, and otherwise comply with the pre-existing Brown Act notice requirements of 72 hours for a regular board meeting, 24 hours for a special board meeting, or less than 24 hours for an emergency board meeting.

Lastly, the Executive Order reminds all Californians to only proceed with gatherings of less than 250 people if they can implement social distancing of 6 feet per person.

2. Brown Act Notice Requirements for Special and Emergency Meetings

Notwithstanding the above, governing boards of K-12 school districts, charter schools, and community college districts can still hold special and emergency board meetings.

Special Board Meetings – 24 Hour Notice

The Board President or majority of a governing board can continue to call a special board meeting with only a 24 hour notice pursuant to Government Code Section 54956(a):



A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. **The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed.** No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public. (Emphasis added).

Emergency Meetings – Less Than 24 Hour Notice

In an emergency, a governing board may hold an emergency meeting without complying with the 24 hour notice and posting requirement, pursuant to Government Code Section 54956.5:

(a)...(1)An emergency, which shall be 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.**

(2) A dire emergency, which shall be 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.**

(b) (1) Subject to paragraph (2), **in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.**

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting...

(c) During a meeting held pursuant to this section, **the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote** of the members present. (Emphasis added).



In summary, where public health and/or safety are severely impaired or in immediate and significant peril, the governing board may hold a meeting with less than 24 hour posted notice. Also, where prompt action is necessary due to an actual or threatened disruption of public facilities, the governing board may hold a meeting without complying with any notice or posting requirements. In both cases, the majority of the board members must make a determination (usually by Resolution) confirming the facts that created the emergency. A closed session may be held in either emergency meeting, only if agreed to by either 2/3 of the governing board, or by unanimous vote when less than 2/3 of the board attends the meeting. We recommend in any case, to post an agenda on your website at the very minimum.

Lastly, it is an important reminder to governing boards of the following two Brown Act provisions: 1) Government Code Section 54954(e) allows the Board President to designate a new location for the physical location of the board meeting when the usual Board meeting location is deemed unsafe due to emergencies; and 2) Government Code Section 54957(a) allows a governing board to meet in closed session with legal counsel, law enforcement, or a security consultant or manager, to discuss matters that pose a threat to the security of public buildings and/or public services.

Please contact our office with questions regarding this Legal Update, for sample agenda or Resolution language, or any other legal matter.

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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