

Bylaws of the Board

BB 9323.2(a)

ACTIONS BY THE BOARD

Note: Many statutes require that a public hearing be conducted before Boards are able to take a certain action. Notice and other applicable requirements for public hearings may be more extensive than those for public meetings and will depend upon the specific statute that requires the public hearing.

An "action" by the Governing 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 members to make a positive or negative decision
3. A vote by a majority of the members when sitting as the Board upon a motion, proposal, resolution, order or ordinance

Note: See E 9323.2 for specific Board actions that require more than a majority vote.

When required by law, action shall instead require a two-thirds, four-fifths, or unanimous vote of either the Board or Board members present at the meeting.

The Board may take action in a regular meeting on a subject not listed on the published agenda only when it publicly identifies the item to be acted upon in conjunction with one of the following circumstances: (Government Code 54954.2)

1. The Board, by majority vote of its members, determines that the action responds to an emergency situation.

(cf. 9320 - Meetings and Notices)

2. The Board determines, either by a two-thirds majority vote of the members present at the meeting or, if less than two-thirds of the members are present, by a unanimous vote of all members present, that the need to take immediate action came to the district's attention after the posting of the agenda.

ACTIONS BY THE BOARD (continued)

3. The matter was properly posted for a previous meeting occurring not more than five days earlier and was continued to the meeting at which action is being taken.

(cf. 9322 - Agenda/Meeting Materials)

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)

(cf. 9324 - Minutes and Recordings)

Challenging Board Actions

Note: Government Code 54960.1 authorizes the district attorney or any interested person to file a lawsuit for the purpose of having specified types of Board action declared null and void. However, Government Code 54960.1 provides that other specified actions are exempt from being declared null and void.

Before seeking court action, the interested person must "make a demand" of the Board to correct or cure the action as specified below. When a Board has corrected an alleged violation, any action seeking to void the Board's action will be dismissed by the court with prejudice. In Boyle v. City of Redondo Beach, the court found that, when a Board discusses an item not on the agenda but does not take action, there is no cause of action alleging a violation of the Brown Act, especially when the potential violation is cured.

Any demand by the district attorney or any interested person to correct a Board action because of an alleged violation of Government Code 54953 (open meeting and teleconferencing), Government Code 54954.5 (closed session item descriptions), Government Code 54954.6 (new or increased tax assessments), or Government Code 54956 (special meetings) shall be presented to the Board in writing within 90 days of the date when the action was taken. (Government Code 54960.1)

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. The demand shall clearly describe the challenged action and the nature of the alleged violation. (Government Code 54960.1)

ACTIONS BY THE BOARD (continued)

Within 30 days of receiving the demand, the Board shall either cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct. If the Board decides to not cure or correct the challenged action, the demanding party shall be informed in writing of that decision. (Government Code 54960.1)

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. (Government Code 54960.1)

Note: Pursuant to Government Code 54960.1, a demanding party who desires to file a lawsuit must do so within 15 days of receiving the Board's decision to not cure or correct the challenged action or within 15 days of the expiration of the 30-day Board review period, whichever is earlier.

Government Code 54960 contains authority for the district attorney or any interested person to sue the Board to stop or prevent Brown Act violations, to determine the legal validity of any Board action to penalize or otherwise discourage the expression of one or more of its members, or to compel the Board, under certain circumstances, to tape record its closed sessions.

Pursuant to Government Code 54960.5, a court may award the plaintiff court costs and reasonable attorney's fees if the Board is found to be in violation of any of those sections. In addition, a court may award the defendant court costs when the defendant has prevailed and the court finds that the action was clearly frivolous and totally lacking in merit.

Legal Reference: (see next page)

ACTIONS BY THE BOARD (continued)

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
- 17556-17557 Resolution of intention
- 17559 Public hearing and adoption of resolution
- 17582 District deferred maintenance fund
- 17583 Deferred maintenance fund; transfer of excess local funds
- 35144 Special meeting
- 35145 Public meetings
- 35164 Majority vote of all members constituting board for board action
- 48660 Establishment of community day schools
- 48661 School site restrictions for community day schools

GOVERNMENT CODE

- 53094 Authority to render zoning ordinance inapplicable
- 53097 Compliance with ordinances
- 53790-53792 Exceeding the budget
- 53820-53833 Temporary borrowing
- 53850-53858 Temporary borrowing
- 54950 Meetings: declaration; intent; sovereignty
- 54952.6 Action taken, definition
- 54953 Meetings to be open and public; attendance; secret ballots
- 54953.5 Right to record proceedings; conditions
- 54954.2 Agenda posting requirements; board actions
- 54954.5 Closed session item descriptions
- 54954.6 New or increased taxes or assessments; hearings; notice
- 54956 Special meetings; call; notice
- 54956.5 Emergency meetings in emergency situations
- 54960 Action to prevent violations
- 54960.1 Challenge of governing board actions
- 54960.5 Costs and attorney fees

PUBLIC CONTRACT CODE

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

COURT DECISIONS

- Boyle v. City of Redondo Beach, (1999) 70 Cal.App.4th 1109