



Monthly Newsletter - Issue 7

January 1, 2014

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Please find below the HK School Law newsletter for January 2014. Happy New Year from our family to yours! [If you like our newsletter, please forward it to an interested friend.](#)

IMPORTANT BROWN ACT AMENDMENTS

OVERVIEW

Effective January 1, 2014, [Senate Bill 751](#) ("SB 751") requires the votes of each member of a legislative body of a local agency, including Charter Schools, to be publicly reported. As chaptered, SB 751 amends Government Code section 54953 to add Section 54953(c) (2), which not only requires the legislative body to publicly report any action taken, but also to report the vote or abstention on that action of each member of the agency present for the action.

The purpose of the legislation was to achieve greater public transparency from local public boards, commissions and local regulatory agencies. The legislative history of the bill indicates that its purpose is to improve the ability of the public and others who monitor legislative meetings of local agencies to know how members voted on a particular action.

SENATE AND ASSEMBLY ANALYSIS OF THE NEED FOR THE LAW

The Brown Act already requires legislative bodies to report individual votes on actions taken during teleconferenced meetings and on certain actions taken in closed session. SB 751 extends this requirement to all actions taken in open session during any meeting of a legislative body subject to the Brown Act.

Effectively, then, every action taken by a Board must be recorded in the meeting minutes as a "roll call" vote so that the public can identify whether a member voted yea, nay or abstained.

The Bill's author, with the support of the Orange County Business Council (OCBC), wrote SB 751 to achieve greater public transparency from local public boards, commissions and other local regulatory agencies. As a matter of practice, many local government agencies resisted public requests for recordation and publishing of individual member votes.

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For example, the Association of Bay Area Governments (ABAG) publishes only the number of ayes or noes in a given vote on the minutes. This practice frustrated organizations like OCBC and members of the public that have an interest in how individual members of a given agency vote on specific issues. SB 751 remedies this issue by amending the Brown Act to require roll call voting for all actions taken by a public board.

According to the Bill's author and sponsors, the Brown Act's intent is that the actions of public commissions, boards and councils in California be taken openly and that their deliberations be conducted openly. See e.g., Government Code section 54950. SB 751 requires all votes be individually recorded and published for public review. The Bill's author and sponsors felt that it was important for the public to hold voting members of a legislative body accountable for their votes. According to the Senate Governance and Finance Committee analysis, this bill will improve the ability of the public and others who monitor legislative meetings of local agencies to be certain of how members voted on an issue when action is taken. Policy decisions made by public boards often affect the overall economic viability of their respective regions, and so it is important for the public to hold board members accountable for the votes they cast.

WHAT YOU NEED TO DO

SB 751 adds Government Code § 54953(c)(2), which requires that the "legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action."

SB 751 applies to Charter Schools. Beginning January 1, 2014, the votes of individual board members must be publicly reported. Individual charter school board members should orally report the roll-call vote when it occurs and carefully record this roll-call vote in the formal meeting minutes. For example, meeting minutes may not simply reflect that the board adopted or rejected an agenda item; the individual votes must be contemporaneously reported, and how the member voted must also be recorded. Failure to report voting consistent with the requirements of SB 751 is a violation of the Brown Act (and is similar in this regard to the requirement that votes taken during closed session must be reported out under certain circumstances pursuant to Government Code section 54957.1). By January 1, 2014, board policies, bylaws and meeting agenda should be reviewed and updated to conform to this requirement. Additionally, board members who chair meetings subject to the Brown Act should be advised they must orally report the roll-call vote on each item on the public agenda to ensure compliance.

To assist you with this requirement, we have included with this newsletter a [sample Brown Act compliant board meeting/committee meeting template](#). Please note this agenda is not being provided as legal advice. This agenda is only a template; specific situations will likely require editing the template to ensure compliance with the Brown Act and other applicable laws or regulations. We always recommend seeking legal advice if you have any questions about drafting a meeting agenda.

In any event, the best practice is always to include the vote tally, and any abstentions, as part of the minutes.

As a practical matter, this legislation may have little practical impact for bodies that already record roll call votes or otherwise keep an accurate tally of how board or committee members vote. For Boards or committees that do not keep such a record, however, SB 751 now requires them to do so.

Further, Brown Act committees or advisory bodies that are not already reporting each member's vote or abstention, if and when the body votes, may now need to provide that information to the public.

OTHER BROWN ACT AMENDMENTS

Additional revisions to the Brown Act resulting from the recent passage of **AB 246** and **AB 381** are also effective January 1, 2014.

The Brown Act authorizes legislative bodies of local agencies to hold closed sessions only for certain purposes. Among those purposes is to hold closed sessions with certain state and local officials on matters posing a threat to the security of facilities or public services. AB 246 amends *Government Code* section 54957 to authorize the legislative body of a local agency to hold these closed sessions with the Governor, as well as the other listed officials.

With certain exceptions, meetings are to be open and public. Agendas and other documents distributed to the governing board are discloseable records with certain exceptions. AB 381 amends *Government Code* section 54957.5 to include certain alternative investments among the types of information exempted from disclosure under the Brown Act.

QUESTIONS?

As always, if you have questions about this newsletter or any other matter, please call us at any time for guidance.

Regards,

HK School Law

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