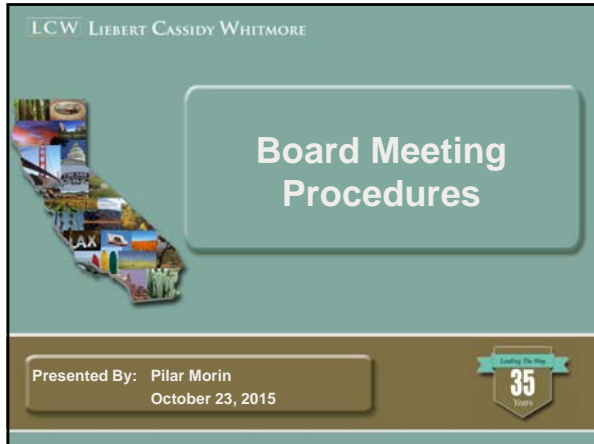


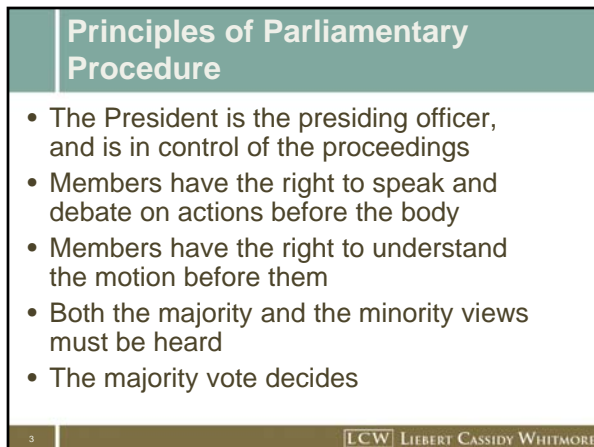
Board Meeting Procedures

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Presented by: Pilar Morin







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Parliamentary Procedures

- Assist with running effective meeting
 - Keep order
 - Allows for fairness in the process
 - Allow the Board to complete the meeting in a timely manner

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The Role of The Chair

- Runs the meeting
- Recognizes speakers
- Mediates debate – but does not participate in debate
- Plays an impartial role

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Roberts Rules of Order

- Agenda
- Motions
 - Requests
 - Inquiries
 - Incidental motions
- Chair sets the agenda

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Example of Order of Business

- Call to order
- Roll call of members present
- Read and approval of minutes
- Committee reports
- Special orders – business for consideration at this specific meeting
- Old business
- New business
- Announcements
- Adjourn meeting

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Motions

- What is a motion?
 - It is a proposal presented to the Board for consideration and decision
- It is the *only* way in which the Board takes actions
 - Action items are presented by the Administration on the Agenda
 - Action items are placed on the Agenda by members of the public

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Making Motions

- A Trustee makes a motion
 - President requests clarification if necessary
- Another Trustee seconds the motion
- The Board President states the question on the motion
- **No debate or discussion until these three things have occurred!**

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Can motion be Amended?

- Yes, during debate but:
 - Must not change the intent of the initial motion
 - Must be seconded to start discussion

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Debating Motions

- Trustees must be recognized by the Board president to speak
 - The first trustee to be recognized is the maker of the motion
 - Thereafter, trustees are recognized in order of the request to speak
- No one speaks again until all who wish to speak have been recognized
- The Board president speaks last

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Debating Motions

- Debate Procedures
 - President should try to alternate between positions, once they are known
 - Comments must be germane to the motion
 - Debate should be impersonal

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Considering Motions

- Common mistakes
 - Failure to wait for a second
 - Failure to wait for the President to state the motion
 - Failure to wait for recognition by the President
 - Failure to wait until all members have spoken
 - Failure to limit remarks to the motion
 - Failure to ask necessary questions

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Voting on Motions

- President puts the vote to the board if everyone who wishes to speak has spoken
- Any member can “call the question”
 - President can close debate if no one objects

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Calling the Question

- Technically is a Motion to Close Debate or “for the Previous Question”
 - Not in order when Trustees wish to speak who have not yet addressed the issue
 - Not in order when another Trustee has the floor
 - Needs a second, although sometimes passes by acclamation
 - Is not subject to debate
 - Requires 2/3 vote to succeed

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Voting on Motions

- The Board President puts the question to a vote
 - Restates the question
 - Takes the vote (“All those in favor? All those opposed?”)
- The Board President announces the vote
- At this point the matter is over

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Incidental motions

- Point of Order
 - Seeks to enforce rules of order and conduct
 - Must be addressed immediately by chair whether accepts it or rejects it
 - If accepted chair must rectify situation
- Point of Information
 - Seeks information on a specific question either about the process or about the motion
 - Does not give the speaker privilege to provide the information

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Some Frequent Questions

- Does quorum exist once it has been established?
- What constitutes a majority?
- What is abstention?
- What is a vote of no confidence?
- Tabling v. Postponing

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Understanding the Brown Act

Agenda

- Key Principles: Transparency, public access...**and** conducting productive meeting
- Open v. Closed: Complying with open meeting requirements...**and** protecting confidentiality of closed session
- Agendas: Satisfying legal requirements...**and** making agendas useful tools
- Meetings: Satisfying legal requirements...**and** maximizing flexibility
- Public's Rights: Affording public access & input...**and** maintaining order & completing the agenda

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The Brown Act – Background

- The Brown Act is contained in Gov. Code section 54950, *et seq.*
- Enacted to respond to the then increasing utilization of secret and informal meetings by legislative bodies
- Generally requires for meetings of legislative bodies to be open and public – “open meeting requirement”

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Transparency in Government

- **Presumption: Government business is conducted in the open, subject to limited exceptions.**

"The people in delegating authority do not give their public servants the right to decide what is good for the people to know and what is not good for them to know."

Ralph M. Brown Act, 1953

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Key Principles

- Transparency in government:
 - Presumption in favor of public meetings, subject to limited, specific exceptions.
- Public access/participation:
 - Protected by requirements relating to posting and content of agendas & public right to participate
- **Within Context of a "Business Meeting":**
 - Get comfortable with public, collegial debate
 - Protect confidentiality of closed session
 - Limit public comment to matters within jurisdiction
 - Enforce non-content based rules on public comment

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Agencies and Legislative Bodies Subject to the Act

Local agencies covered by the Act:

- Counties, cities, city and county, towns, school districts, municipal corporations, districts, political subdivisions, community college districts, joint powers agencies
- Boards, commissions and agencies within the above listed agencies

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Agencies and Legislative Bodies Subject to the Act

Legislative bodies covered by the Act:

- Governing body of local agency or other local body created by state or federal statute
- Other bodies of local agencies created by charter, ordinance resolution or formal action of a legislative body
 - Faculty Senate
 - Associated Student Organization
- Example: boards of trustees and personnel commissions

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Agencies and Legislative Bodies Subject to the Act

Legislative bodies covered by the Act:

- Bodies that govern private corporations or similar entities that are created by the legislative body or receive funds from a local agency
 - i.e. auxiliary organizations or “foundations” for CCDs

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What is a Meeting Covered by the Act?

- Congregation of a majority of the Board
 - Same time and place
 - To “hear, discuss or deliberate”
 - On any item within its subject matter jurisdiction.
- Meeting of a committee created by formal action
 - Permanent or temporary
 - Decision making or advisory

* Gov. Code § 54952.2

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What is NOT a Meeting Covered by the Act?

- Attendance of a majority at conferences/seminars, community meetings, social events
 - If no discussion of district business
- Meetings of an advisory committees composed solely of members less than a quorum, unless...
 - Standing committee
 - Executive Board
 - Ad Hoc Committee
 - Continuing subject matter jurisdiction
 - Meeting fixed by statute or rule

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Be Careful – Serial Meetings Prohibited!

No communication between Board members that:

- Comes to include a majority through email, telephone, intermediaries, etc.
- To hear, discuss or deliberate on any item within the subject matter jurisdiction of the district.

NOTE: Prohibition no longer limited to communications to develop a "collective concurrence."*

*[Gov. Code § 54952.2(b)]

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Meeting at Ribbon Cutting Ceremony?

The district held a ribbon cutting ceremony for the newly constructed campus student center. Five of the seven district board members attended. The members did not discuss any particular issues related to the center's approval, but one of the members commented that he was elated by the fact that the new center will be located near the major street in town.

Did a "meeting" under the Brown Act occur at the ribbon cutting ceremony?

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Meeting at Diner?

At the district's board meeting held earlier in the day, the board discussed potential changes for the use of the recreation room at the district. After the meeting, four of the five Board members went to the local diner for dinner. At dinner, they discussed the latest blockbuster movie. During dessert, one of the members briefly recalled an issue related to his personal use of the recreation room and how it affects his opinion regarding the potential changes to its use.

Did a meeting under the Brown Act occur at the diner?

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Email String

Jane, one of the five board members sends an email to another board member, Joe, regarding ideas she has for a funding proposal that was discussed at the last board meeting.

Has a serial meeting occurred?

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Email String

Joe likes Jane's ideas in her email and forwards Jane's email to Mike, another board member. Jane is not cc'd on this email.

Has a serial meeting occurred?

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Email String

Mike is confused by one of Jane's ideas and replies to both Joe and Jane in his reply email, which includes Jane's original email. In his email, he tells Jane that Joe forwarded to him her email, and asks Jane to clarify the idea she posed in her email to Joe.

Has a serial meeting occurred?

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Agendas: Tools for a Well Run Meeting

- Agenda items contain brief description
 - Enough to inform the public
- Provide focus to the Board & the public
- Help legislative bodies plan & prioritize
- Improve communication
- Build institutional memory

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Public Access: Agenda is Key

- **Is The Meeting Properly Agendized?**
 - Timely
 - Accessible to public, regardless of time of day
 - States time and location
 - Provides brief general description of each item
 - Reflects all meetings commence in public session
 - Includes opportunity for public comment
 - on any matter of public concern
 - within subject matter jurisdiction of the board
 - before or during board's consideration of the item
 - Including closed session items
 - States where public may inspect records

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Public Access: Agenda is Key

- **Agendas Should NOT:**
 - Use “place holders” for closed session (i.e. list generic closed session items to cover things that may come up)
 - Misuse closed session exceptions to cloak what should be part of the public discourse
 - Require members of the public to provide identifying information to attend [Gov. Code § 54953.3]
 - Prohibit public criticism of policies, procedures, programs services, or acts or omission of the Board

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Running Efficient (and Brown Act Compliant) Business Meetings

- **When Board may discuss or act:**
 - 1) On a properly agendized item at a regular meeting
 - 2) On a properly agendized item at a special meeting
 - 3) At an emergency meeting
 - Majority of board must declare emergency
 - 4) On an emergency matter at regular meeting
 - Majority of board must declare emergency
 - 5) When immediate action is required
 - 2/3rds of members present, or if less than 2/3rds are present, a unanimous vote of those present, determine need to take immediate action came to the attention of the district after agenda was posted.

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Public Access to Documents

- **Right to inspect Documents:**
 - Open session backup documents are public records
 - Where public documents are provided to a majority of body less than 72 hours before a regularly scheduled meeting, they must be made available for public inspection at the time the writing is distributed to all, or a majority, of the members of the body.
 - Agenda must advise where they may be inspected

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Types Of Meetings

- Regular
- Special
- Emergency

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What is a Regular Meeting?

- Meeting held at a time & place specified by applicable bylaw/rule
- Occurs at a regularly scheduled time
- Agenda posted at least 72 hours prior
- Posting location freely accessible
- Agenda encompasses notice

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What is a Special Meeting?

- Meeting called at *any* time by the presiding officer of the legislative body or by a majority of the members
 - Notice posted at least 24 hours before the meeting
 - Notice delivered to members and press at least 24 hours before the meeting
 - Date, time and location of meeting
 - Brief description of matter to be discussed
 - Only matters in notice may be discussed at meeting
 - **2012 UPDATE:** no special meetings regarding compensation for any local agency executive.

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What is an Emergency Meeting?

- Emergency = work stoppage, crippling activity, disaster, or other activity that severely impairs or threatens public health and/or safety
 - No written notice required
 - Notice to media
 - Posting of minutes
 - Limited closed sessions

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Closed Session

- Closed sessions are generally prohibited
- Presumption in favor of open session
- Statutory exceptions listed at Government Code section 54954.5
 - Safe harbor language for agendas
- Announcement in open session
- Reporting out varies by exception

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Closed Session—Common Exceptions

- Pending litigation
- Personnel matters
- Conference with labor negotiator
- Real property transactions
- Student discipline

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Closed session?

The ASO learns that its President, Amy, has been accused of sexually assaulting another student during a sports event at another college. Amy is currently under criminal investigation and under investigation by the Title IX coordinator. The student leaders decide to go into closed session to remove her as president. The ASO agenda has the matter under "discipline."

Did the ASO comply with the Brown Act?

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Closed Session Agenda Description

- Pending litigation – state name of pending case
– If litigation is anticipated – state "potential action involving significant exposure to litigation pursuant to..."
- Personnel matters – "Public employee discipline/dismissal/release"
- Student discipline – "Consideration of student discipline (suspension/expulsion/ other action) pursuant to Ed. Code § 72122.
– Student #1"

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Conducting Closed Session Meetings

- Closed session meetings should usually involve only the members of the legislative body of the local agency, plus any additional support staff required or any witnesses required
- Individuals not necessary to the meeting should be excluded

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Pending Litigation Exception

- Legislative body confers with or receives advice from its legal counsel
- Includes: ongoing litigation, significant exposure to litigation, decisions to initiate litigation, settlement discussions
- What to say before closed session
 - “facts and circumstances”

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To Discuss or Not Discuss?

During closed session, the Board discusses the single item on the agenda, negotiating a real estate deal with a local developer XYZ. In the middle of the discussion, Tony, one of the Board members mentions that since they are altogether, they might as well discuss the viability of a special events program involving developer ABC that is up for renewal soon.

Is it okay for the Board to discuss the second program? Why or why not?

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Reporting Out Issues

- Generally after closed session must return to open session and report out
 - Action taken in closed session
 - Vote or abstention of every member (SB 751)
- Reporting deferred after adopting discipline charges
 - If there is an appeal
- When you do report out report by position or title

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Confidentiality of Closed Session

- No disclosure of personal recollection of closed session discussions
- A person may not disclose confidential information that was acquired by being present in a closed session
- Sanctions
- Exceptions
 - Informing DA/grand jury re violation
 - Questioning propriety/legality of actions

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Call From the Press

A major decision was made by the Board last night after discussion during closed session. A local newspaper reporter calls Mary, one of the Board members, and asks if Mary could discuss why the Board made the decision. Mary tells the reporter that she can only discuss what she said during the closed session but not what anyone else said.

Will Mary breach confidentiality of the closed session?

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Teleconferenced Meetings

- All votes by roll call;
- Agenda posted at all locations;
- Protect the rights of the public;
- Each location identified in agenda;
- Each location open and accessible;
- Quorum of members within boundaries of District;
- Public comment at each location.

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Limits on Public Comment

- May adopt reasonable regulations for public comment
 - Time limit on particular issues and for each speaker
 - May **not** prohibit public criticism of the staff, policies, procedures, programs, services or acts of the legislative body
 - May prohibit making comments outside of the body's jurisdiction

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Running Efficient (and Brown Act Compliant) Business Meetings

- **Time Management**
 - **Permissible Communications With Administrators:**
 - Between administrators and individual members or group less than a quorum;
 - To convey information or answer questions; *if*
 - Staff does not communicate Board comments/positions or act as intermediaries.

[Gov. Code § 54952.2(b)(2)]

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Running Efficient (and Brown Act Compliant) Business Meetings

- **Disorderly Conduct During Meetings**
 - Remind disruptive individual(s) of rules re: willful interruption, proper decorum
 - If disruption continues, may clear the room
 - Media remains if did not participate in disruption
 - Apply procedure for re-admittance of non-disturbing individuals

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Remedies for Violations of the Act

- District attorney or other interested person may
 - Bring an action to prevent violations or threatened violations
 - Determine the applicability of the Act to actions or future actions

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Remedies for Violations of the Act

- Attorney fees and costs
 - Court may award court costs and reasonable attorneys fees to the prevailing plaintiff
 - Costs and fees must be paid by the local agency and is not a personal liability of any public officer or agency employee
 - Agency may be awarded fees and costs for frivolous actions

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Trustee Conduct and Decorum: Application

Electronic Communications in the Board Room

- Potential Issues:
 - > Brown Act—serial meetings
 - > Ethical obligations—appearances of impropriety/fairness
 - > Creation of a public record?
"any writing[s] containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." *
VERY IMPORTANT
 - > Effectiveness & respectful discourse

*Gov. Code § 6252(e)

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Electronic Communications in the Board Room

The ABC CCD is considering layoffs. Assistant Superintendent of Business, Jones, is giving a detailed budget report to a meeting with high attendance of concerned students and faculty in “no layoff” T-shirts and carrying signs.

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Electronic Communications in the Board Room

During the meeting each of the following occurs:

- Trustee Smith, dubious of Jones' numbers, gets out her personal iPad and starts doing her own research
- Trustee Jones sends a text from her personal iPhone to Trustee Green: “What do you think of proposing a furlough instead?”
- Trustee Green replies, “interesting. Do you think the Union would go for it. I’m copying Jim so he can respond.” (Jim is the Union president and is in the audience)
- Trustee Brown sends an email from his personal iPad to the Superintendent’s work email: “Please have Jones update her calculations.”
- Trustee Lee sends a tweet from her iPhone: “I promised no layoffs and I will stand by that promise.”
- Trustee Frank sends a text to his son reminding him to feed the dog

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Trustee Conduct and Decorum: Application

Concerns?

- **Trustee Smith**
 - Appearance of impropriety and/or inattention
 - Failure to be fully present and attentive at the meeting
 - Not effective—blurs staff and board roles
- **Trustees Jones & Green**
 - Appearance of impropriety and/or inattention
 - Failure to be fully present and attentive at the meeting
 - Creates risk of serial meeting
 - Public record? (*City of San Jose v. Superior Court* pending...)
 - Not effective—blurs staff and board roles & risks possible UPC

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Trustee Conduct and Decorum: Application

Concerns?

- **Trustee Brown**
 - Appearance of impropriety and/or inattention
 - Failure to be fully present and attentive at the meeting
 - Probably a public record
- **Trustee Lee**
 - Appearance of impropriety and/or inattention
 - Failure to be fully present and attentive at the meeting
- **Trustee Frank**
 - Appearance of impropriety and/or inattention
 - Failure to be fully present and attentive at the meeting

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THANK YOU

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Questions?

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