LAW UPDATE EDUCATION

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BROWN ACT REVISIONS – 2016 LEGISLATIVE SESSION

Several bills were signed into law which impact the Brown Act as of January 1, 2017.

1. ORAL REPORT OF PROPOSED EXECUTIVE COMPENSATION CHANGES

SB 1436 adds new transparency requirements relating to "local agency executives." You may recall legislation from 2012 (AB 1344) in the wake of the City of Bell controversy, which, among other things, prohibits approval of compensation for local agency executives at a special board meeting.[1] The stated purpose of the new law is to further the goals of AB 1344 by calling for boards to "orally report a summary of a recommendation for a final action on salaries, salary schedules or compensation paid in the form of fringe benefits for local agency executives." The oral report must be made prior to taking final action on the compensation, in open session at the same meeting where the final action is taken.

The bill's author, Senator Bates, summarized the bill's purpose as follows:

> There is a public interest in ensuring that decisions made by legislative bodies of local agencies regarding local agency executive compensation are open and transparent. Local agency executives . . . are offered fringe benefits including health care coverage and pensions in amounts that can have a significant long-term impact on the budget and that deserve particular scrutiny by the public. The intent of the law for openness and transparency is not achieved if the final action on executive compensation is taken without an oral reporting of a summary of the recommendation for final action.[2]

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[1] "Local agency executives" is a term which is not particularly suited to the education agency context. It has been interpreted to extend to superintendents/chancellors and other certificated district office administrators, other certificated administrators subject to an employment contract, and probably college presidents. It does not apply to classified employees and likely does not extend to K-12 principals.

[2] See comments from hearing by Senate Committee on Appropriations, June 29, 2016.

Local agencies do not always develop formal recommendations for proposed compensation changes. In some school and community college districts, a proposed salary increase, salary schedule modification, and/or executive employment contract is simply brought to the board for consideration in open session. In that case, the Board President should take the extra step of providing an oral summary of the elements of the proposed compensation/fringe benefit by reciting the proposed salary amount or salary schedule, term of the contract, other compensation such as degree or longevity stipends, and the nature of any fringe benefits. Some districts may designate labor negotiators to negotiate with unrepresented administrators regarding compensation, and it may be that the negotiators' recommendation could serve as the basis for the oral report.

The term "fringe benefit" is not defined in the new law. There may be differing interpretations of this term. In general, a fringe benefit refers to elements of compensation beyond what would be considered salary. Fringe benefits could include health and welfare benefits, paid vacation, compensation for excess work days, auto allowance or use of District vehicle, cell phone allowances, education assistance not part of salary, professional dues and housing allowances. Districts should discuss this with their accountants.

A sample of a possible oral report is as follows:

> The recommended new contract for the Superintendent to be considered by the board will be for a three-year term beginning on July 1, 20__, for a salary of $_____ based on a ___ day work year, along with a master's degree stipend of $_____. In addition, the Superintendent will receive the following fringe benefits: District health and welfare benefits (same as are provided to certificated/ management employees), professional dues in the amount of $_____ (ACSA), and compensation for up to 10 additional workdays per year.

Of course, the report will need to be tailored to the particular facts. If you are working with counsel on an employment contract, they can assist with this. It is recommended that the minutes of the meeting reflect at a minimum that the Board president orally reported a summary of the proposed final action on salaries, salary schedules or compensation paid in the form of fringe benefits.

The new law also states that it will not impact the public's rights under the California Public Records Act to inspect and copy records created or received when developing this compensation recommendation.[3]

2. WEBSITE POSTING - NEW REQUIREMENTS EFFECTIVE IN 2019 – CONSULT TEKKIES!

As you know, agendas must be posted on the Internet website of any districts which maintain such a site. The legal consequences of failing to timely post electronically are the same as for failure

[3] We normally take the position that a draft contract can be maintained as a confidential document if it will be used in closed session discussions with labor negotiators, but it would become a public record at the point that it goes to a Board majority for consideration as an open session item.

to post the physical agenda, although the Attorney General has opined there may be some leeway in narrow circumstances for "fleeting" or "trivial" website failures.

The author of Assembly Bill 2257 felt that "many agendas are buried in agency websites or otherwise not intuitively navigable by a site visitor. Formatting may restrict the capacity for citizens to search for or access agenda information." The bill's sponsor, GrasrootsLab, stated, "Requiring machine readability of the document . . . will ensure the agendas are indexed by search engines and readable through a wide array of tools used in modern communication."[4]

Beginning with meetings taking place on or after **JANUARY 1, 2019**, a number of new requirements will be in place:

- The agenda link on the District website must be a prominent and direct link to the current agenda. The direct link cannot be placed only in a "contextual menu" (for example, a series of menus and sub-menus) on the homepage that would otherwise require a user to search for the link. Additional links could, however, be accessible through a contextual menu.

- The agenda must be posted in an "open" format that meets the following requirements:

    - Retrievable, downloadable, indexable and electronically searchable by commonly used Internet search applications
    - Platform independent and machine readable
    - Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda

Formats such as text-searchable PDF, .txt and .rtf files would likely meet these requirements, while proprietary word processing format (such as Word and WordPerfect) and image files such as .jpg and .tif would likely not meet the requirements.

If a district website has an "integrated agenda management platform" (an Internet website of a district dedicated to providing the entirety of the agenda information for the district) dedicated to providing the entirety of the agenda information for the district, the above requirements will not specifically apply so long as the following requirements are met:

- A direct link to the integrated agenda management platform is posted on the district's primary website and not formatted as a contextual menu. When a person clicks on the direct link to the platform, the direct link must take the person directly to a website with the district's agendas, and

- The current agenda is the first agenda available at the top pf the Platform, even if the Platform contains prior agendas.

[4] AB 2257 as amended June 22, 2016, Author's Statement and Arguments in Favor, Concurrence in Senate Amendments.

We will provide further input on how districts can meet these requirements as the effective date draws nearer. It is recommended that districts work with their information technology personnel to review compliance issues. Districts may wish to consult their county superintendents of schools to determine whether assistance in assessing and achieving compliance is available.

As you know, the Office for Civil Rights has also been pursuing school district websites for accessibility issues for people with disabilities. See our November 14, 2016 Update entitled *Website Accessibility* for more information on that topic.

3. PUBLIC COMMENT TIME – ADJUST FOR TRANSLATION

Most districts have adopted "time, place and manner" restrictions on public speech at Board meetings. A typical restriction is 3 minutes on a topic per speaker, or 20 minutes total. This allows the Board to organize the discussion and maintain reasonable limits on the public input portion of the meeting. (For K-12 districts, see CSBA Board Bylaw 9323 [Meeting Conduct].)

Senate Bill 1787 amended Government Code section 54954.3 of the Brown Act to require that whenever a district limits the time for public comment, it must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the Board.

This new requirement does not come into play if the district uses simultaneous translation equipment in a manner that allows the Board to hear the translated public testimony simultaneously.

If you have any questions concerning any of these changes or related issues, do not hesitate to contact our office.

– Grant Herndon

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