



November 7, 2018

GET READY: BROWN ACT TECHNICAL POSTING REQUIREMENTS TAKE EFFECT JANUARY 1, 2019

If you're a Brown Act nerd, you might remember Assembly Bill 2257 from 2016 which contains specific requirements aimed at increasing effective access to online agenda documents.¹ The technical requirements will kick in on January 1, 2019. The bill's authors claimed that agendas were often buried on agency websites which were not intuitively navigable and that documents were often posted in formats not universally available or not capable of being retrieved or electronically searched. In this update, we will review the requirements so you can take them to your IT departments and ensure that the district's website is shipshape and Bristol fashion for January 1.²

The technical requirements in AB 2257 are contained in the Brown Act and are separate from other accessibility requirements (such as those under the Americans with Disabilities Act).

1. Who is subject to the new requirements?

The new law applies specifically to school districts and "political subdivisions of the state" which are subject to the Brown Act but does not apply to all Brown Act bodies. It encompasses Brown Act bodies which are "local agencies" and other local bodies created by state or federal statute. At a minimum, this includes school and community college districts and county boards of education; counsel should be consulted in particular situations³

¹ The bill was sponsored by the public affairs firm GrassrootsLab and authored by San Diego Assembly Member Brian Maienschein.

² A copy of the full text of the new law is attached so you can discuss the technical requirements with your IT department.

³ The legislation states that it applies only to Brown Act bodies described in Government Code section 54952(1) (governing bodies of local agencies or any other local bodies created by state or federal statute) but not to other bodies like commissions, committees, etc., described in subsections (b) and (c). This could mean, for example, that it would not apply to certain joint powers organizations or nonprofit foundations established by districts.

2. What documents must comply with the new requirements?

The requirements apply only to online posting of the current (upcoming) board meeting agenda. Many districts also post agenda packets and minutes online, but that isn't required by the Brown Act.⁴

3. What are the requirements in terms of posting?

AB 2257 addresses two types of agenda postings: one for districts which simply post a copy of their agendas on the district website and another for districts that use an “integrated agenda management platform,” which would include platforms or software such as Agenda Online or BoardDocs or similar in-house programs.⁵

A. Basic Agenda Posting Requirements

Districts that do not use an integrated agenda management format or software must observe the “one click to the agenda” rule. There must be a prominent, direct link to the agenda on the agency’s primary website. The law specifically states that the direct link cannot be in a contextual menu.

While these terms are not defined, it seems reasonable that a link at the bottom of a website in small print would not be “prominent” and a link that requires users to click through several links or use a “contextual” menu would not be “direct.” Basically, an easy to spot button or link labeled “Current Board Agenda,” that takes the user not to another menu or list but directly to the agenda document, should satisfy this requirement.

B. Basic Posting Requirements for Districts Using an Integrated Agenda Management Platform

The rules for districts using an integrated agenda management platform are slightly different. In that case, the website must have a prominent, direct link to the platform that takes the user directly to a website with the agency’s agenda. The current agenda must be the first agenda available at the top of the integrated agenda management platform. As with other districts, the link cannot be in a contextual menu.

⁴ In the case of districts using an “integrated agenda management platform,” the law says that districts “may” post prior agendas for meetings after January 1, 2019, but there is no requirement to do so.

⁵ Specifically, an “integrated agenda management platform” is defined as an Internet website dedicated to providing the entirety of the agenda information for the district or agency.

4. What are the requirements in terms of document formats?

The new law has technical requirements for both types of agenda systems relating to the ability to retrieve and search the agenda document.⁶ The user should not have to log in or access proprietary systems and the formatting should allow anyone with Internet access to retrieve the agenda document. The agenda must be posted in an open format meeting all of the following requirements:

- Retrievable⁷, downloadable, and indexable 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 reuse or redistribution of the agenda.

This Thanksgiving we knew you would want to give some thought to these new requirements and give thanks for the Legislature's attention to detail. Please contact our office if you have any questions or need further information.

Grant Herndon

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

⁶ The bill does not define the technical terms; we have provided some common sense interpretations based on conversations with IT employees. However, Schools Legal Service disclaims liability for tekkie definitions! We recommend you discuss these with your IT staff. In general, while the legislation does not say so, these terms are consistent with terms found in the 2009 federal Open Government Directive.

⁷ Search engines can locate and retrieve the document efficiently.


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AB-2257 Local agency meetings: agenda: online posting. (2015-2016)

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Assembly Bill No. 2257

CHAPTER 265

An act to amend Section 54954.2 of the Government Code, relating to local government.

[Approved by Governor September 09, 2016. Filed with Secretary of State September 09, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2257, Maienschein. Local agency meetings: agenda: online posting.

(1) The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act further requires the legislative body of a local agency to post, at least 72 hours before the meeting, an agenda containing a brief general description of each item of business to be transacted or discussed at a regular meeting, in a location that is freely accessible to members of the public and to provide a notice containing similar information with respect to a special meeting at least 24 hours prior to the special meeting. The act requires that the agenda or notice be freely accessible to members of the public and be posted on the local agency's Internet Web site, if the local agency has one.

This bill would require an online posting of an agenda for a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site to be posted on the local agency's primary Internet Web site homepage accessible through a prominent, direct link, as specified. The bill would exempt a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site from this requirement if it has an integrated agenda management platform that meets specified requirements, including, among others, that the current agenda is the first agenda available at the top of the integrated agenda management platform. The bill would authorize an integrated agenda management platform to include prior meeting agendas, as specified. The bill would require any agenda posted pursuant to these provisions to be in an open format that meets specified requirements, including, among others, that the agenda is platform independent and machine readable. The bill would also define terms for these purposes.

(2) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 54954.2 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

It is in the public interest to ensure that members of the public can easily and quickly find and access meeting agendas of legislative bodies of specific local agencies on the Internet homepage of those certain local agencies.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.