Transparency Laws: The Big Picture

- Fundamentally, what public officials do is transact the public's business.
- As elected representatives to the ASG, responsible for representing BCC students before the Board of Trustees, you are considered “public officials.”
- Conducting oneself and transacting the public’s business in a transparent fashion gives the public an opportunity to monitor and participate in the ASG’s decisions and is required by law.
- Today we will talk about two of those laws, the Brown Act (open meetings) and the Public Records Act (the people’s business).

Purpose

- “In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”
- “The people of this State do not yield their sovereignty to the agencies which serve them. 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. The people insist on remaining informed so that they may retain control over the instruments they have created.”

Government Code section 54950
Principle

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

Government Code section 54953(a)

3 Key Components

- All meetings shall be open and public.
- The public shall know ahead of time when and where you plan to meet and what you intend to discuss.
- All persons shall be permitted to attend and testify at the meeting.

This so called... “Meeting”

- “As used in this chapter, “meeting” means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body”

Government Code section 54952.2(a)

- “‘Meeting’ includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

Government Code section 11122.5(a)
Meetings

- A meeting is a gathering of a majority of members to hear or discuss any item of ASG business or potential business (very broad). A meeting can simply be the exchange of information.
- The ASG CANNOT meet to discuss ASG business outside of a meeting that the public has not received proper notice about. Generally, ASG members cannot meet for coffee or lunch to discuss ASG business outside of a meeting.
- There are a few exceptions where a majority of you can get together without violating the Brown Act, e.g., attending a conference that is open to the public, social or other event - but don’t talk shop.

Discussing Outside of a Meeting

- “A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

Government Code section 54952.2(b)

“Action Taken”

- “Action taken” means:
  - A collective decision made by a majority of the members of a legislative body,
  - A collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or
  - An actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

Government Code section 54952.6
Not a Meeting
1. Individual contacts or conversations
2. The attendance of a majority of the members at a conference or similar gathering open to the public
3. The attendance of a majority of the members at an open and publicized meeting organized to address a topic of local community concern
4. The attendance of a majority of the members at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency
5. The attendance of a majority of the members at a purely social or ceremonial occasion
6. The attendance of a majority of the members at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

Socializing
- The Bottom Line: You must avoid talking about ASG business while you are at an event (social, conference etc...).
- The only time a majority can discuss ASG business outside a meeting is if the business is part of the other organization's agenda and the agenda has been properly posted.
- For example, if the Board of Trustees requests that the ASG attend their meeting to discuss ASG business and the BOT had properly posted notice of the meeting.

Teleconferencing
- “Teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.
- Each location shall be identified in the notice and agenda of the meeting;
- Each teleconference location shall be accessible to the public;
- The agenda shall provide an opportunity for members of the public to address the legislative body directly;
- Agendas must be posted at all teleconference locations; and
- Teleconference meetings must be conducted in a manner that protects the statutory and constitutional rights of the parties or the public.
- Government Code section 54953
Meetings within Boundaries except:

- Comply with state or federal law or court order, or attend a judicial or administrative proceeding;
- Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency’s jurisdiction;
- Meet outside their immediate jurisdiction with elected or appointed officials;
- Visit the office of the local agency’s legal counsel for a closed session on pending litigation;
- Attend a conference on nonadversarial collective bargaining techniques;
- Interview members of the public residing in another district;
- Interview a potential employee from another district;
- Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies;
- If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated;

Government Code section 54954

Types of Meetings

There are three types of meetings:

1. Regular
   - Regularly scheduled council meetings.
   - The ASG must formally set the time and place for these regular meetings in their bylaws, by resolution or some similar formal rule.

2. Special
   - Meetings called by agreement of a majority of the council to discuss a specific issue.

3. Emergency
   - Not applicable to ASG.

Emergency Meetings

Emergency meetings may be called on less than 24 hours notice when, as determined by a majority of the ASG, there is an:

- An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body; or
- A dire emergency, which shall be defined as a crippling disaster, mass destruction, ... may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

Government Code section 54956.5
Special meetings

- A special meeting may only be called by:
  - The President of the Board, or
  - A majority of the Board in writing;

- Written notice must be delivered at least 24 hours before the time of the special meeting to:
  - Each Board member, and
  - Local newspapers or radio and television stations, if requested by them;

- The agenda of a special meeting must be posted at least 24 hours in advance, and:
  - List the time and place of the special meeting, and
  - The business to be transacted or discussed.

  Government Code section 54956

Notice of regular meetings

- Agendas must:
  - Be posted 72 hours in advance in a location freely accessible to the public;
  - Contain a brief description of each item of business (generally not needing to exceed 20 words); and
  - Specify the time and location of the meeting.

  Government Code section 54954.2(a)

Agenda Requirements

- Posting requirements - Agendas must be posted at least 72 hours before the regular meeting in a location freely accessible to the public.

- Content requirements - The agenda should contain a brief general description of each item of business to be transacted or discussed at the meeting.

- Agendas must have enough information to enable members of the general public to determine the general nature of subject matter of each agenda item to be discussed. (Need not exceed 20 words.)

- Agendas must allow for general public comment.

- ASG cannot discuss or take action or deliberate on any item that is not on the agenda.
**Electronic Medium**

- Except as authorized pursuant to § 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

**Is it a Public Record?**

- Documents and information are public records. Documents in any format can be public records.
- "Writing" includes "handwriting, typewriting, printing, photographing, photocopying, transmitting by electronic mail or facsimile and every other means of recording upon any tangible thing any form or communication or representation."
- The definitions of "public record" and "writing" in the PRA are "intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed." (Braun v. Taft, (1984) 154 Cal.App.3d 332, 340.)
- Public records are created/stored in many formats other than paper, including:
  - E-mail & text messages
  - Electronic calendars
  - Voice mail
  - Digital photographs
- The content of a document, not its format, determines whether it is a public record and whether it must be disclosed.

**Resources**

- Summary of the Brown Act by the League of California Cities - [http://www.cacities.org/opengovernment](http://www.cacities.org/opengovernment)