

Three Types of Water Agencies

1) Water Districts

- i.e. Westlands Water District, Sacramento Suburban Water District

2) Irrigation Districts

- i.e. Modesto Irrigation District, El Dorado Irrigation District

3) Joint Powers Authorities

- i.e. San Luis & Delta-Mendota Water Authority, San Joaquin Tributary Association

Irrigation Districts

Authority

Wright Act of 1887

Codified by Water Code

Purpose

[An irrigation] district may do any act necessary to furnish sufficient water in the district for any beneficial use. (Water Code §22075)

Joint Powers Authorities

Purpose

Allows public entities to join together to form a new public entity. (Govt. Code §6500)

Benefits

New entity separate from member agencies.

Limitations

Common powers of its member agencies.

Water Districts

General Powers

- Acquire, plan, construct, maintain, improve, operate, and keep in repair the necessary works for;
 - The production, storage, transmission, and distribution of water for irrigation, domestic, industrial, and municipal purposes; and
 - Any drainage or reclamation works connected therewith or incidental thereto.

(Water Code §35401)

Governance

A [water] district shall adopt for the government and control of its affairs a code of by-laws consistent with the Constitution and laws of the State and the provisions of this division.

(Water Code §35300)

Director Requirements

Requirements

Each director shall be one of the following:

- A holder of title to land within the district; or
- Representative of a holder of title to land within the district.

(Water Code §34700)

Elected Office

Election can be limited to landowners in the water district OR general resident election – depends on District. (Water Code §§35003, 35040)

Term

The term of office of each elective officer subsequent to the officers elected at the formation election is four years or until his successor qualifies and takes office. (Water Code §34705)

Building an Effective Board

- Common Goals & Objectives
 - Should be same: manage and conduct District business.
 - Different approach to management and District goals.
- Communication & Understanding of Issues
 - Understand issues before meetings.
 - Communicate with general manager and other staff.

Building an Effective Board

- Staff
 - General Manager
 - General Counsel
 - Operations Staff
 - General Staff
- Advisory Committees
 - Technical/Operational
 - Legal
 - Internal Affairs/Personnel

The Brown Act

Purpose: Public Disclosure and Transparency

- The Brown Act requires actions and deliberations be conducted openly to promote public agency transparency and prevent secret legislation.

(Govt. Code §54950)

Brown Act - Meetings

The Brown Act regulates “meetings”

- A “meeting”:
 - Involves a quorum or voting majority necessary to transact business of the agency;
 - Is held at the same time and place; and
 - Is for the purpose of deliberating on an item within the subject matter jurisdiction of the agency to which it pertains.

[Gov. Code §54952.2(a)]

Brown Act – Non-Meetings

The following are **not** meetings:

- Any gathering without a quorum of the board members;
- Any gathering in which the content discussed is not relevant to the subject matter jurisdiction of the agency;
- A conversation or contact between a board member and any other person;
- A conference or meeting open to the public, sponsored by a different person or organization;
- Purely social or ceremonial occasions; or
- Open and noticed meetings of a different agency.

[Gov. Code § 54952.2(c)(1)-(6)]

Brown Act - Notice

Notice for a “regular meeting” must:

- be posted seventy-two hours before the meeting;
- include a location, time and a copy of the agenda;
- be posted in an area that is accessible to the public without interruption; and
- identify that the meeting is a regular meeting.

Notice for a “special meeting” must:

- be posted twenty-four hours before the meeting;
- be sent to all board members and media outlets that have requested notice in writing;
- specify that the meeting is a special meeting;
- specify the time, place, and the business to be transacted or discussed; and
- identify the public’s right to comment on any item described in the notice.

Notice for an “emergency meeting” must:

- be provided one hour before the meeting; and
- be given to media outlets that requested they receive notice of any special meetings.

Brown Act – Agenda Requirements

Meeting discussion is limited to items properly listed on the agenda, except:

- On informational items (Gov. Code §54954.2(a));
- Where the board determines by majority vote an emergency exists (Gov. Code §54954.2(b)(1));
- Where the board, by two thirds vote, determines an action is necessary (Gov. Code §54954.2(b)(2)); or
- On an item properly appearing on the posted agenda for a meeting which occurred within the past five days. (Gov. Code §54954.2(b)(2))

Brown Act – Closed Session Exception

Closed sessions may be held without public participation pursuant to narrow statutorily defined exceptions (Gov. Code § 54962 et seq.):

- Real property transactions (Gov. Code §54956.8);
- Pending litigation (Gov. Code §54956.9);
- Personnel employment, review, discipline, removal, or complaints, where the employee does not request a public session (Gov. Code §54957); and
- Labor negotiations (Gov. Code §54957.6).

Brown Act – Closed Session Requirements

- Each item to be transacted or discussed in a closed session must be briefly described on an agenda for the meeting. (Gov. Code §54954.2(a))
- Prior to adjourning into closed session, a representative of the agency must orally announce the items to be discussed in closed session. (Gov. Code §54957.7(a))
- Once the closed session has been completed, the agency must reconvene in open session and report votes and actions, if any were taken. (Gov. Code §54957.1)

Brown Act - Violations

Violators of the Brown Act may be subject to penalties including:

- Criminal misdemeanor penalties (Gov. Code §54959);
- Civil actions by the district attorney or an interested party enjoining board members from violating the Brown Act, or voiding a decision or policy formed in violation of the Brown Act (Gov. Code § 54960-54960.1); and
- Attorney fees (Gov. Code § 54960.5).

Conflict of Interest – Government Code §1090 et seq.

Gov. Code § 1090 prohibits government officers or employees from being “financially interested” in any contract made by them in their official capacity.

Gov. Code § 1099 prohibits “public officers” from simultaneously holding two “incompatible” public offices.

Conflict of Interest – Remote Interests

Remote Interest does NOT prohibit contract, but requires Public Officer to:

- Disclose the interest to the legislative body or board of which they are a member;
- Note the “remote interest” in the body or board’s official records; and
- Contract must be created or ratified without counting the vote of the member with the “remote interest.”

(Gov. Code §1091)

Conflict of Interest – Remote Interests

Examples of “remote interests” include:

- Public Officer is officer or employee of a non-profit organization, exempt from taxation [Gov. Code § 1091(b)(1)];
- Public Officer is landlord or tenant of a contracting party [Gov. Code § 1091(b)(5)];
- Public Officer is a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least 5 years prior to his or her election or appointment [Gov. Code § 1091(b)(8)]; and
- Public Officer is receiving salary, per diem, or reimbursement for expenses from a government entity [Gov. Code § 1091(b)(13)].

Conflict of Interest – Non-Interests

Non-Interest does not prohibit contract or require recusal of Public Officer. (Gov. Code § 1091.5)

Examples of non-interest exceptions include:

- That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duties [Gov. Code § 1091.5(a)(2)]; and
- That of a recipient of public services generally provided by the public body or board of which he or she is a member (i.e. water, electricity, etc.), on the same terms and conditions as if he or she were not a member of the body or board [Gov. Code § 1091(b)(3)].

Conflict of Interest – The Political Reform Act

- Prohibits public officials from participating in making, or using their position to influence, any governmental interest in which he or she knows, or has reason to know, he or she has a financial interest. (Gov. Code §87100)
- Does not prevent a public official from making or participating in a governmental decision to the extent his or her participation is legally required for the action or decision to be made or to break a tie amongst other members of the public body. (Gov. Code §87101)

Conflict of Interest – The Political Reform Act

Public official is financially interested in a decision if it is “reasonably foreseeable” the decision will have a “material financial effect, distinguishable from its effect on the public generally,” on the official, a member of the official’s immediate family, or an official’s:

- (a) Business investment worth \$2,000 or more;
- (b) Real property interest worth \$2,000 or more;
- (c) Source of income, aggregating \$500 or more in value;
- (d) Business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management;
or
- (e) Donor of a gift aggregating \$250 or more in value.

(Gov. Code § 87103)

Government Code § 1090 et seq. v. The Political Reform Act

- The Political Reform Act **does not** repeal Gov. Code §1090 et seq., **but** it **does** control over Gov. Code § 1090 et seq. if different outcomes would occur under each statute (59 Ops. Cal. Atty. Gen. 604).
- Gov. Code § 1090 et seq. covers only contracts, whereas The Political Reform Act covers all “decisions.”
- The requirements of Gov. Code § 1090 et seq. are generally more stringent.
- The Political Reform Act allows the decision to be made if the affected official abstains from the decision making process (Gov. Code § 87105), whereas Gov. Code § 1090 et seq. forbids the contract unless the official has a remote interest or non-interest.

Conflict of Interest - Violations

Gov. Code § 1090 et seq.

- A fine of not more than \$1,000; or
- Imprisonment in the state prison; and
- Disqualification from holding any office in the State (Gov. Code §1097).

The Political Reform Act

- Discipline by agency, including dismissal (Gov. Code §91003.5).
- Civil liability for \$1000, or three times the amount of the unlawful contribution, gift, or expenditure, whichever amount is greater (Gov. Code §91005).
- Prohibition of candidacy of elected office or acting as a lobbyist for a period of four years (Gov. Code §91002); and
- A fine of the greater of \$10,000 or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received (Gov. Code §91000).

Mandatory Ethics Training

All local agency officials are required to receive ethics training if they receive compensation, salary, or stipend . (Gov. Code §53235)

Each local agency official shall:

- Receive at least **two hours** of training in general ethics principles and ethics laws relevant to his or her public service **every two years**; and
- From an entity providing ethical training approved by the Fair Political Practices Commission and the Attorney General.

Mandatory Ethics Training - Responsibility of Agencies

Responsibility of the local agency to provide information on training available to meet the requirements of this article to its local officials at least once annually. (Gov. Code §53235(f))

The local agency must maintain records of the completed ethical training for five years. These records must include:

- The dates the local officials satisfied the ethical training requirements; and
- The entity that provided the training.

(Gov. Code §53235.2)