

**DEL MAR UNION SCHOOL DISTRICT
Strategic Plan Financial Task Force
PLEASE BRING YOUR CALENDARS**

DATE: Friday, February 5, 2010
TIME: 7 a.m. – 9 a.m.
LOCATION: Carmel Del Mar School 12345 Carmel Park Dr. San Diego, 92130 - Phone: 858-481-6789

TIMEFRAME	TOPIC	LEAD	NOTES
7:00 – 7:30 a.m.	Welcome Select Timekeeper Items for Discussion/Action: 1. Approval of Minutes 2. PTA Co-Chair Appointment 3. Community ideas email link information 4. Web-link info on Committee members – emails, phone numbers, etc.	Trustee Doug Perkins	
7:30 – 7:45	Brown Act Information Q and A	Supt. Sharon McClain Attorney Melanie Petersen	
7:45 – 8:00	Public Comment	Trustee Doug Perkins	
8:00 – 8:55	Potential Areas for Budget Reduction – Discussion Solar Energy Discussion	CBO Dena Whittington	
8:55 – 9:00	Meeting Schedule	Trustee Doug Perkins	

Minutes

DMUSD Strategic Task Force – January 27, 2010

- Discussion about meeting times. Decision to meet bi-monthly, 1st & 3rd Fridays, from 7-9.
- Discussion about location. Decision to meet at CDM.
- Discussion regarding structure (i.e. sub-committees, ad hoc committees, etc.). Beth Westburg made a motion to form sub-committees to vet issues and report back to group. M. Carmosino 2nd motion. Motion passed unanimously.
- Discussion regarding goals. Short and long term plans, as well as addressing reserves and a transition plan should we lose Basic Aid. Scope of group is to address 4 areas identified by the Board. Broadening of scope would need Board approval.
- Discussion from Sharon McLean regarding Unity of Purpose. Group discussion of the questions set forth and our overall mission and goals.
 1. We adhere to the mission statement set forth by the Board
 2. That we clearly and consistently communicate
 3. Maximize the 'ROI' to value from this effort
 4. Legacy left behind of procedures that can be used in the future, community knowledge, and perceived as fair/reasonable, inclusive, responsive to the community and global thinkers.
 5. Leaving a change to go forward in a positive direction.
 6. Items proposed are equitable across all groups. South representation is minimal, so need to ensure transparency and communication. Push decision making back to the schools and allow Principals to make decisions about how change affects their particular school.
 7. Perception of unity of the community and alleviate the 'Hatfield vs. McCoy' image and give the impression of everyone working together to accomplish a common goal and instill trust in the data such that the decisions are supported.
- Dena Whittington discussion about budget issues and reviewed materials from committee, which are taken from the Board presentation and data on the website that is publicly available.
 1. Review of Financial Data, inclusive of Foundation revenue and expenditures.
- Review of comparison data from prior years for revenue limit and Basic Aid (property tax dependent). Audit report for year being presented for '08-'09. Received \$10.5M additional funding over revenue district. Property taxes have gone down, but our excess funding has increased since.
 1. Revenue: Local revenue includes special-ed funding (Fed, State, Local). We belong to NCC SELFA and they distribute money to districts and money we get goes into local revenue (along with Foundation, field trip revenue, etc.)

2. Expenditures: 81% for Instruction and Instruction related (special day classes). Pupil Services is health clerks; General Administration is DO staff; Plant Services is maintenance work paid out of restricted maintenance fund.
3. Revenue and Expense per Pupil: 09-10 Revenue \$9,567 and Expenditure \$9,782.
4. Expenditure by Object: 83% of expenditures are on Salary Benefits.
5. Deficit spending (projections): We are spending beyond 1/3 limit in 10-11, and will be back within guidelines 11-12.
6. Governor announced further cut to revenue limit districts. Recent announcement encourages supporting revenue limits and that every fair share we do is a reduction in State Revenue. Governor's budget still pending, but proposal gives us a double hit. All revenue districts received less money than their revenue limit.
7. Further discussion regarding financial data and various issues. Dena provided background and definitions for the common terminology used. Discussion about reporting procedures and ratings issues. County holds purse strings in terms of approval, and Board is under the direction of the County. Discussion about reserves minimum and that those dollars are not included in our figures, since we can't spend it.
8. Currently tracking two housing projects in Carmel Valley, but other new housing plans are not included because they are not solidified.
9. Review of 'Savings Being Explored Not Subject to Collective Bargaining' document and various areas already identified for potential cost savings, and prior analysis on the issue. Discussion of class size issues, benefit negotiations with teachers, and contract issues. If we lose Basic Aid, our \$11M reserves give us a year to make adjustments. Insufficient time to change programs by the next year.
10. Parcel tax discussion and regulations regarding process for elections/voting and difficulty in getting passed.
11. Discussion regarding site 9 and ETA for completion. Not concrete.
12. Discussion regarding power savings. Regulated through FCC and set by SDG&E.

TASKS:

1. Sharon to confirm whether this committee is a Brown Act committee.
2. Melanie to provide minutes for review.
3. Sharon to establish an email specific to this group.

- Home
- News Archive
- Calendar
- Staff
- Publications
- Picture Galleries
- 7/11 District Advisory Committee
- After School Programs
- Board of Trustees
- Business Services
- Character Counts
- Child Nutrition
- Community
- Employment Listings
- Financial Task Force
- Human Resources
- Instructional Services
- Legislative Action
- Pupil Services
- School Accountability
- Report Cards
- Schools
- Strategic Plan
- Superintendent
- Summer Programs

Strategic Plan Financial Task Force

California's fiscal crisis has significantly affected Del Mar Union School District's budget. Now, projections indicate a \$XX million budgetary gap for the 2010-11 fiscal year, which begins July 1. Though a final spending plan is not due to the State Department of Education until June, a number of statutory deadlines require the district to take action by March.

If you have suggestions for cost savings and/or revenue enhancements, please take a moment to fill in the fields below. When you are finished, click the button at the bottom of the page and your recommendations will be instantly submitted to the Strategic Plan Financial Task Force for review.

Financial Task Force

Related Publications

Related Events

Cost Savings Recommendation (Please be specific):

Rationale for this Recommendation:

Revenue Enhancement (List amounts, if known):

Additional Comments:

Choose all that apply:

- DMUSD Staff Parent Student Community Member

Note: The following fields are optional

Name:

Address:

Phone:

E-Mail:

Submit to the Financial Task Force





Fagen Friedman & Fulfroft LLP

Peter K. Fagen
 Howard A. Friedman
 Howard J. Fulfroft
 Melanie A. Petersen
 Laurie S. Juengert
 Laurie E. Reynolds
 James B. Fernow
 Christopher D. Keeler
 Jan E. Tomsky
 Jonathan P. Read
 Christopher J. Fernandes
 Douglas N. Freifeld
 Diane Marshall-Freeman
 Roy A. Combs
 Mark S. Williams
 Lenore Silverman
 Kimberly A. Smith
 Brian D. Bock
 Kathleen J. McKee
 Deborah R. G. Cesario
 Elizabeth B. Mori
 Namita S. Brown
 Ricardo R. Silva
 Wesley B. Parsons
 Gretchen M. Shipley
 David A. Moreno

William F. Schuetz, Jr.
 Anne M. Sherlock
 Shawn Olson Brown
 Kelly R. Minnehan
 Angela Gordon
 Cynthia M. Smith
 Emily E. Sugrue
 Jennifer R. Rowe
 Joshua A. Stevens
 Lyndsy B. Rutherford
 Rachel C. Disario
 Dean T. Adams
 Summer D. Dalessandro
 Vivian L. Haun
 Tiffany M. Santos
 L. Carlos Villegas
 Kerrie E. Taylor
 Susan Park
 Melissa Hatch
 Maggy M. Athanasious
 Susan B. Winkelman
 Gregory Rodriguez
 Anna J. Miller
 Melissa L. Phung
 Keith Yanov
 Kelley A. Owens
 Leslie A. Reed
 Melanie D. Larzul

Diana McDonough
 Lynn Murphy, Ed.D.
 Of Counsel

February 2, 2010

Melanie A. Petersen
 Direct Dial: 760-304-6004
 mpetersen@fagenfriedman.com

Via U.S. Mail and Email

Dr. Sharon McClain
 Superintendent
 Del Mar Union School District
 225 Ninth Street
 Del Mar, CA 92014-2716

Re: Applicability of the Brown Act to the Strategic Plan Financial Task Force

Dear Dr. McClain:

This letter responds to your request for a legal opinion regarding the applicability of the Ralph M. Brown Act ("Brown Act") to the Strategic Plan Financial Task Force ("Task Force").

Background

On December 9, 2009, at a regular meeting, the Del Mar Union School District Board of Trustees ("Board") expressed interest in the formation of the Task Force. Based on Board input, on January 22, 2010, the Task Force was comprised of the following appointed members (18 in total):

- One Citizen Appointee each from each Board member (5);
- One Appointee from each School's PTA (8);
- One Appointee from DMCTA (1);
- One Appointee from DMSEF (1);
- One Appointee from the District Office Cabinet (1);
- One Principal (1); and
- One Classified Staff Member (1).

The Task Force will be co-chaired by one Board member and one appointee from the PTA designated by the Board President. The purpose of the Task Force is to provide recommendations to the Board regarding: (i) short term financial planning, (ii) reserves, (iii) long term financial planning, and (iv) revenue enhancement opportunities. The Task Force is expected to present its first report at the February 24, 2010 Board meeting and conclude its work within three to four months.

Dr. Sharon McClain
February 2, 2010
Page 2

Issue Presented

Is the Task Force subject to the Brown Act? If yes, is the Task Force subject to the public participation requirements?

Short Answer

Yes, the Task Force, as a subsidiary body created by formal action of the Board and composed of members appointed by the Board, is subject to the notice, agenda, and public participation requirements of the Brown Act.

Legal Analysis

The Brown Act is an opening meeting law that requires that all meetings of the "legislative body" of a local agency be open and public. (Gov. Code § 54953(a).) The governing board of a school district is a legislative body. (Gov. Code § 54951.)

A subsidiary body, such as an commission, advisory committee, or other body created by formal action of a legislative body is itself a legislative body, and thus subject to the requirements of the Brown Act. (Gov. Code § 54952(b).) "Formal action" of a legislative body is not limited to a formal resolution or formal vote by the body. (*Frazer v. Dixon Unified School District* (1993) 18 Cal. App. 4th 781, 792-793.) Here, the Task Force is as an advisory body created by the Board's formal action and composed of members appointed by the Board. Thus, the Task Force is subject to the Brown Act.

Note, there is a specific exemption from the Brown Act for advisory committees which are composed solely of less than a quorum of members of the legislative body that created the advisory body. (Gov. Code § 54952(b).) However, this exemption does not apply because the Task Force consists of individuals appointed by the Board.

With respect to the public participation requirement, the Brown Act requires that every agenda for regular meetings of a legislative body provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body. (Gov. Code § 54954.3(a).) Thus, the agenda for the Task Force meetings should specify that the public will have the opportunity to address the Task Force.

Dr. Sharon McClain
February 2, 2010
Page 3

We hope this information is helpful to you. Please let us know if we can be of additional assistance to the Del Mar Union School District. Thank you.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP



Melanie A. Petersen

MAP:dlp

00118.00023/179553.1

CALIFORNIA CODES—GOVERNMENT CODE SECTION 54950-54963

THE RALPH M. BROWN ACT

54950. Declaration of public policy

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.

54950.5. Title of act

This chapter shall be known as the Ralph M. Brown Act.

54951. "Local agency"

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

54952. "Legislative body"

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

Code section text source: Legislative Counsel of California (<http://leginfo.ca.gov/calaw.html>).

Code sections reprinted and used by permission of WestLaw.

Code section heading source: Deering's California Codes Annotated (<http://lexisnexis.com/>).

Headings reprinted and used by permission of Lexis Nexis.

THE RALPH M. BROWN ACT

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

54952.1. Conduct and treatment of electee

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

54952.2. Multimember body with delegated authority as "legislative body"

(a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) Except as authorized pursuant to Section 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.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person.

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a

CALIFORNIA CODES—GOVERNMENT CODE SECTION 54950-54963

THE RALPH M. BROWN ACT

majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body 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, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body 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.

54952.6. "Action taken"

As used in this chapter, "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.

54952.7. Copy of chapter

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

THE RALPH M. BROWN ACT

54953. Requirement that meetings be open and public; Teleconferencing

(a) 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.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "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. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

54953.1. Grand jury testimony

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

54953.2. Meetings to conform with Americans with Disabilities Act

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of

Code section text source: Legislative Counsel of California (<http://leginfo.ca.gov/calaw.html>).

Code sections reprinted and used by permission of WestLaw.

Code section heading source: Deering's California Codes Annotated (<http://lexisnexis.com/>).

Headings reprinted and used by permission of Lexis Nexis.

CALIFORNIA CODES---GOVERNMENT CODE SECTION 54950-54963

THE RALPH M. BROWN ACT

1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

54953.3. Registration of attendance

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

54953.5. Recording proceedings

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a video or tape player made available by the local agency.

54953.6. Restrictions on broadcasts of proceedings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

54953.7. Access to meetings beyond minimal standards

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by

Code section text source: Legislative Counsel of California (<http://leginfo.ca.gov/calaw.html>).
Code sections reprinted and used by permission of WestLaw.
Code section heading source: Deering's California Codes Annotated (<http://lexisnexis.com/>).
Headings reprinted and used by permission of Lexis Nexis.

THE RALPH M. BROWN ACT

the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

54954. Rules for conduct of business; Time and place of meetings

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

CALIFORNIA CODES—GOVERNMENT CODE SECTION 54950-54963

THE RALPH M. BROWN ACT

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) 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 by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

54954.1. Request for notice; Renewal; Annual fee

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet 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. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

54954.2. Posting of agenda

(a) 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

CALIFORNIA CODES—GOVERNMENT CODE SECTION 54950-54963

THE RALPH M. BROWN ACT

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. 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. 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.

54954.3. Public testimony at regular meetings

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the

Code section text source: Legislative Counsel of California (<http://leginfo.ca.gov/calaw.html>).
Code sections reprinted and used by permission of WestLaw.
Code section heading source: Deering's California Codes Annotated (<http://lexisnexis.com/>).
Headings reprinted and used by permission of Lexis Nexis.

CALIFORNIA CODES—GOVERNMENT CODE SECTION 54950-54963

THE RALPH M. BROWN ACT

legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

54954.4. Legislative findings and declarations relating to reimbursements; Legislative intent; Review of claims

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any

Code section text source: Legislative Counsel of California (<http://leginfo.ca.gov/calaw.html>).

Code sections reprinted and used by permission of WestLaw.

Code section heading source: Deering's California Codes Annotated (<http://lexisnexis.com/>).

Headings reprinted and used by permission of Lexis Nexis.

CALIFORNIA CODES---GOVERNMENT CODE SECTION 54950-54963

THE RALPH M. BROWN ACT

manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

January 19, 2010

To: Board Members

From: Dena Whittington, Assistant Superintendent Business Services

Through: Dr. Sharon McClain, Superintendent

Subject: Agenda Item 10.10: Solar Energy – Updated

From the December 9, 2009 Regular Board Meeting

Attached is an article from School Services of California, Inc. titled “Solar Projects-Don’t Get Burned”. The article addresses the complexity of solar projects. And the importance of evaluating the District’s energy needs.

There are a couple of options in purchasing a solar facility. One is a Power Purchase Agreement. The District would enter into a contract with a provider that would finance, design install, monitor and maintain the facility. The District would also enter into a ground lease or easement with a third party to place the solar facility on the ground, roof or shade structure. The District would have the option of purchasing the facility at fair market value after seven years, or would enter a long term agreement for 20+ years. Although the district would receive a discounted price there is a profit margin built into the cost. Another option is Direct Purchase. The District would design and construct, operate and maintain the facility. Financing for this project may be done with GO bonds, federal funds, loan incentives or with district funds. There is a federal investment tax credit, but that is available to private taxable entities. The District would not be eligible because of its tax exempt status.

A nonmonetary goal may be achieved by teaching staff and students new energy habits.

The District’s electric cost was approximately 1.5% or \$591,507 of the total General Fund expenditures for 2008-2009 and is currently budgeted at \$635,478 or approximately 1.5% for 2009-2010.

In January 2009 an energy study by T.A.C. showed the District’s current energy policies to be very efficient. The Maintenance and Operations Department has implemented strategies in reducing energy costs to the district by monitoring thermostats centrally. In 2005-2006 the District went through a light fixture retrofit. The Business Services Department tracked electricity consumption the following year and recognized a significant drop in usage.

Updated Information

It would be prudent for the District to hire an independent contractor with expertise in this area to review and further evaluate a proposed solar project.

Since this board item was originally prepared, the district has been approached by vendors with a Power Purchase Agreement. The 20-year lease price of the agreement may be 85% of the district's current electrical costs. During this 20-year agreement, the vendor will be benefiting from both Federal and State Rebates the district is not eligible for. If technology advances, or the SDG&E rate structure changes, the district would not be able to take advantage of the changes.

In addition, all roof tops would need to be evaluated to determine how many solar panels would fit, and the amount of energy they would generate. It is possible that shade structures be put in the parking lots to hold additional solar panels. This would not be possible at sites where the parking lot is not owned by the District.

The solar panels are placed on the roof for a 20-year period. The current life cycle of each roof would have to be determined. It would be prudent to replace all roofs prior to placing the solar panels. This would be an additional expense that would prematurely deplete our Deferred Maintenance Fund.

The topic of renewable energy is a very technical endeavor with long term benefits and obligations. Eric Hall & Associates has the experience to complete such a task. The amount of time necessary for Eric Hall & Associates to develop bid specifications and to assist in the bidding process for solar projects at all sites is \$17,625.

FISCAL IMPACT: **Cost** – \$17,625 for bid process
 Program or Department – Facilities (Funds from CFD's may be able to offset costs)
 Is this a Restricted Program? Unrestricted
 Was this expenditure anticipated in the adopted budget? No
 Will this Program or Department be over budget after this expenditure? Yes

RECOMMENDED: The Superintendent recommends approval of the contract with Eric Hall and Associates.

The **FISCAL REPORT** an informational update

Copyright © 2009 School Services of California, Inc.

Volume 29

For Publication Date: September 4, 2009

No. 18

Solar Projects—Don't Get Burned

By Jonathan Edwards & Keith Weaver
Certified Independent Public Finance Advisors
Government Financial Strategies Inc.
(916) 444-5100

[Editor's note: From time to time, we publish guest articles that we think inform readers on topics of interest. Necessarily, the views and opinions of the authors are their own, but we think the article below is interesting and informative.]

Solar energy generation/photovoltaic projects are a hot topic right now (no pun intended). Solar projects can provide financial and nonfinancial benefits. The most obvious potential financial benefit is a savings in utility costs. Nonfinancial benefits include being environmentally friendly, the project being an education opportunity, etc.

In terms of the financial aspects, school districts should proceed cautiously when considering a solar project, whether district owned or a power purchase agreement (PPA), because they are very complicated, and the savings are often less than the cost to implement the project (i.e., solar projects can lose money!). Since solar projects often do not "pencil out," it is extremely important that school districts undertake the appropriate due diligence before committing to a project.

We believe that the keys to a successful solar project are:

1. Implementing the right process to become an informed consumer.
2. Understanding the public procurement requirements.
3. Understanding the financing and funding options.

The Right Process Leads to Informed Decision-Making

Because solar projects are very complex, it is natural that school districts may look to an outside party for a feasibility analysis (including project design, which is very important because design is a key driver of feasibility). In order to ensure the integrity of the savings projections, when using an outside party with technical expertise, it is important that they do not have a financial stake in the project actually being implemented. This is

true whether a district is considering a project where it would own the solar system or a power purchase agreement, where a third party would own the system and sell energy to the district. "Guaranteed savings" cannot protect a district from faulty analysis, as there are often loopholes in such guarantees that make it very difficult for the "guarantee" to be enforced.

Because of the complexity of solar projects, in order for a school district to be a well-informed consumer, we advise the following process:

1. Have a feasibility analysis conducted by an independent third party solar expert with no financial stake in whether or not a project is undertaken. One such entity is the California Energy Commission (CEC), which is a state agency and which, through its Bright Schools program, can provide feasibility analysis services at no cost to a school district. There are also other entities that can provide an independent analysis.
2. After the independent feasibility analysis is completed, if a district wishes to continue exploring the possibility of a solar project, using the analysis as a guide, request bids or proposals (RFPs) for the provision of solar projects. The CEC can assist with reviewing a bid or RFP document.
3. Using the independent feasibility analysis as a guide, evaluate the bids/proposals to identify the contractors and/or vendors needed to implement the project. The CEC can assist with evaluating the bids/proposals received.
4. Decide whether or not to implement the project.

We find that many districts miss the first step, which is the most important. Specifically, some districts either do not engage in a public bid or RFP process, and instead begin working with a company that has solicited the business, or, even if they invite bids/proposals, the districts rely on the feasibility analysis subsequently produced by the company chosen. In both situations, an independent, impartial analysis is lacking.

Bidding Solar Projects

California law (Public Contract Code Section 20110 et. seq.) requires that school districts publicly bid for public projects, with certain limited exceptions. Since public bidding is the norm, if a school district wishes to consider, for business reasons (e.g. faster project implementation, avoid change orders, etc.), using a different method, then it is important to carefully implement a process in accordance with the rules of the exception.

One exception to the public bidding requirement is for energy projects pursuant to Government Code Section 4217.10 et. seq. Under this code section, school districts may utilize a proposal request process or may sole source the project; however, there must be a public hearing, after which the school board must make certain findings related to the project having financial benefits to the district.

Paying for Solar Projects

In terms of financing, obviously the lower the financing costs to the district, the more likely it is that a solar project can provide a net benefit. A relatively new feature that can be incorporated into a financing is called Qualified School Construction Bonds (QSCBs), which effectively provides financing at a zero (or very low) interest rate, because investors receive a tax credit in lieu of interest. The CEC also has financing programs, the interest rates on which are currently 1% or 3%, depending on the program.

Finally, even if the projected savings from a solar project are less than the project costs, it may still be worthwhile considering the project if the project can be funded with facilities funds that are restricted (e.g., redevelopment revenues, Mello-Roos taxes, general obligation bond proceeds, etc.), since the utility cost savings will be experienced in the general fund.

Conclusion

In summary, there can be financial and nonfinancial reasons for a school district to implement a solar project. Even if a project does not "pencil out" financially, it is a policy decision for a school board whether or not to pursue a project for the nonfinancial benefits; however, it is the responsibility of district staff to communicate accurate and unbiased financial information. The best way to achieve this goal is to have the feasibility analysis conducted by an entity both with the expertise and no financial stake in whether or not a project is undertaken.

posted 09/02/2009