

**Exhibit 9323.2-E(1): Actions By The Board**

Status: DRAFT

Original Adopted Date: Pending

**RESTRICTIONS ON BOARD ACTIONS**

**This exhibit is a non-exhaustive list of the Governing Board actions that require more than a majority vote as well as restrictions and prohibitions on when the Board may take certain actions. Other such actions may exist and may be identified in the future.**

**ACTIONS REQUIRING A SUPER-MAJORITY VOTE**

Note: The following exhibit lists some of the Governing Board actions that require more than a simple majority vote. Other such actions may exist and may be identified in the future.

**Action Requiring a Two-Thirds Vote of the Membership of the Board**

For an action requiring a two-thirds vote to pass, a three-member board will need two board members to vote in favor of the item, a five-member board will need four board members to vote in favor of the item, and a seven-member board will need five board members to vote in favor of the item.

1. Resolution declaring the Board's intention to sell or lease real property (Education Code 17466)
2. Resolution declaring the Board's intent to convey or dedicate property to the state or any political subdivision for the purposes specified in Educational Code 17556 (Education Code 17577)
3. Resolution authorizing and directing the Board president, or any other presiding officer, secretary, or member, to execute a deed of dedication or conveyance of property to the state or a political subdivision (Education Code 17559)
4. Lease, for up to three months, of school property which has a residence on it and which cannot be developed for district purposes because funds are unavailable (Education Code 17481)

Note: Item #5 below is different from temporary borrowing pursuant to Government Code 53850-53858 which requires only a majority vote of the Board.

5. Request for temporary borrowing of funds needed for immediate requirements of the district to pay district obligations incurred before the receipt of district income for the fiscal year sufficient to meet the payment(s) (Government Code 53821)
6. Upon complying with Government Code 65352.2 and Public Resources Code 21151.2, action to render city or county zoning ordinances inapplicable to a proposed use of the property by the district **so long the proposed use of property is not for nonclassroom facilities** (Government Code 53094)

(cf. 7131 – Relations with Local Agencies)  
(cf. 7150 – Site Selection and Development)  
(cf. 7160 – Charter School Facilities)

7. When the district is organized to serve only grades K-8, action to establish a community day school for any of grades K-8 (Education Code 48660)

(cf. 6185 – Community Day School)

8. When the district is organized to serve only grades K-8, has an average daily attendance (ADA) of 2,500 or less, or desires to operate a community day school to serve any of grades K-6 (and no higher grades) and seeks to situate a community day school on an existing school site, certification that satisfactory alternative facilities are not available for a community day school (Education Code 4866)
9. Resolution of intent ~~Decision~~ **to issue pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution** to ~~issue~~ **pursue the authorization and issuance** of general obligation bonds with the approval ~~of 55 percent of the voters~~ **pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution** (Education Code 15266)

*(cf. 7214—General Obligation Bonds)*

10. Resolution of necessity to proceed with an eminent domain action and, if the Board subsequently desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use (Code of Civil Procedure 1245.240, 1245.245)

*(cf. 7213—School Facilities Improvement Districts)*

11. Resolution to place a parcel tax on the ballot (Government Code 53724)

*(cf. 3471—Parcel Taxes)*

Note: Code of Civil Procedure 1245.240 requires that, prior to commencing an eminent domain action, the Board adopt a resolution of necessity approved by a two-thirds vote of the Board unless a greater vote is required by statute, charter, or ordinance. In addition, if the Board desires to use the property for a different purpose than stated in the resolution of necessity, then pursuant to Code of Civil Procedure 1245.245, the Board must adopt, by two-thirds vote, another resolution authorizing the different use unless a greater vote is required by statute, charter, or ordinance.

Resolution of necessity to proceed with an eminent domain action and, if the Board subsequently desires to use the property for a different use than stated in the resolution of necessity, a subsequent resolution so authorizing the different use (Code of Civil Procedure 1245.240, 1245.245)

Note: Item #12 is for use by districts governed by a three-member board that have elected to use an alternative procedure for awarding contracts for public works projects pursuant to the Uniform Public Construction Cost Accounting Act (UPCCAA) (Public Contract Code 22000–22045), which establishes a 3311.1—Uniform Public Construction Cost Accounting Procedures.

11. When the district has a three-member Board and has adopted the procedures set forth in the Uniform Public Construction Cost Accounting Act (UPCCAA), action to respond to an emergency facilities condition without giving notice for bids to award contracts, including the repair or replacement of district facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment, services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and determination during a regular Board meeting of the need to continue the action (Public Contract Code 22035, 22050)

*(cf. 3311.1—Uniform Public Construction Costs Accounting Procedures)*

#### **Actions Requiring a Two-Thirds Vote of the Board Members Present at the Meeting**

1. Determination that there is a need to take immediate action and that the need for action came to the district's attention after the posting of the agenda. If less than two-thirds of the Board members are present at the meeting, a unanimous vote of all members present is required. (Government Code 54954.2)
2. Determination that a closed session is necessary during an emergency meeting. If less than two-thirds of the Board members are present, a unanimous vote of all members present is required. (Government Code 54956.5)

*(cf. 9320—Meetings and Notices)*

*(cf. 9321—Closed Session)*

#### **Actions Requiring a Four-Fifths Vote of the Membership of the Board**

Note: For an action requiring a four-fifths vote to pass, a three-member board will need a unanimous vote in favor of the item, a five-member board will need four board members to vote in favor of the item, and a seven-member board will need six board members to vote in favor of the item.

1. Resolution for district borrowing based on issuance of notes, tax anticipation warrants, or other evidences of indebtedness, in an amount up to 50 percent of the district's estimated income and revenue for the fiscal year

or the portion not yet collected at the time of the borrowing (Government Code 53822, 53824)

2. Resolution for district borrowing, between July 15 and August 30 of any fiscal year, of up to 25 percent of the estimated income and revenue to be received by the district during that fiscal year from apportionments based on ADA for the preceding school year (Government Code 53823, 53824)
3. Declaration of an emergency in order to authorize the district to include a particular brand name or product in a bid specification (Public Contract Code 3400)

*(cf. 331 – Bids)*

Note: Item #4 is for use by districts governed by a five-member or seven-member board.

Items #4 – 5 are for use by districts that have elected to use an alternative procedure for awarding contracts for public works projects pursuant to the UPCCAA. For further information, see BP 3311.1 – Uniform Public Construction Cost Accounting Procedures.

4. When the district has a five-member or seven-member Board and has adopted the procedures set forth in UPCCAA, action to respond to an emergency facilities condition without giving notice for bids to award contracts, including the repair or replacement of district facilities, the taking of any other action that is directly related to and immediately required by that emergency, the procurement of the necessary equipment, services, and supplies for those purposes, the delegation of authority to the Superintendent or designee to take such action, and the determination during a regular Board meeting of the need to continue the action (Public Contract Code 22035, 22050)
5. Resolution to award a contract for a public works project at \$212,500 or less to the lowest responsible bidder, when the district is using the informal process authorized under the UPCCAA for projects of \$200,000 or less, all bids received are in excess of \$200,000, and the Board determines that the district's cost estimate was reasonable (Public Contract Code 22034)

#### **Actions Requiring a Four-Fifths Vote of the Board Members Present at the Meeting**

1. A four-fifths vote of the Board members present at the meeting shall be required to approve **Approval of** the expenditure and transfer of necessary funds and use of district property or personnel to meet a national or local emergency created by war, military, naval, or air attack, or sabotage, or to provide for adequate national or local defense. (Government Code 53790 – 53792)

*(cf. 3110 – Transfer of Funds)*

#### **Actions Requiring a Unanimous Vote of the Membership of the Board**

1. Resolution authorizing and prescribing the terms of a lease of district property for extraction and taking of gas not associated with oil (Education Code 17510, 17511)
2. Authorization of the use of day labor or force account, or waiver of the competitive bid process pursuant to Public Contract Code 20111, when the Board determines that an emergency exists requiring the repair, alteration, work, or improvement to any facility to permit the continuance of existing classes or to avoid danger to life or property, and upon approval of the County Superintendent of Schools (Public Contract Code 20113)

#### **Actions Requiring a Unanimous Vote of the Board Members Present at the Meeting**

1. Private sale of surplus property without advertisement in order to establish that such property is not worth more than \$2,500. Disposal of surplus property or donation to a charitable organization requires the unanimous vote of the Board members present to establish that the value of such property would not defray the cost of arranging its sale. (Education Code 17546)

*(cf. 3270 – Sale Disposal of Books, Equipment and Supplies)*

#### **Actions Required to Occur During a Regular Board Meeting**

1. **Termination of the Superintendent or an assistant superintendent without cause (Education Code 35150)**
2. **Discussion or action regarding the contract, salary, salary schedule, or other compensation of the**

**Superintendent, assistant superintendent, or other management employee as described in Government Code 3511.1 (Government Code 54956)**

**Prohibitions on Certain Board Actions**

1. **Termination of the Superintendent or an assistant superintendent without cause within 30 days after the first convening of the Board after an election at which one or more Board members are elected or recalled (Education Code 35150)**
2. **When the District is disposing of surplus land and has received a notification from the Department of Housing and Community Development pursuant to Government Code 54230.5 with regard to the surplus land, final action to ratify or approve the proposed disposal of surplus land unless the district holds an open and public meeting in compliance with Government Code 54230.7 to review and consider the substance of the notice**

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**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

**State References**

**Description**

Code of Civil Procedure 1245.240	<a href="#">Eminent domain vote requirements</a>
Code of Civil Procedure 1245.245	<a href="#">Eminent domain; resolution adopting different use</a>
Code of Civil Procedure 425.16	<a href="#">Special motion to strike in connection with a public issue</a>
Ed. Code 15266	<a href="#">School construction bonds</a>
Ed. Code 17466	<a href="#">Declaration of intent to sell or lease real property</a>
Ed. Code 17481	<a href="#">Lease of property with residence for nondistrict purposes</a>
Ed. Code 17510-17512	<a href="#">Leasing for production of gas; resolution requiring unanimous vote</a>
Ed. Code 17546	<a href="#">Private sale of personal property</a>
Ed. Code 17556-17561	<a href="#">Dedication of real property</a>
Ed. Code 35140-35149	<a href="#">Meetings</a>
Ed. Code 35150	<a href="#">Prohibition to terminate superintendent or assistant superintendent at specified meetings or times</a>
Ed. Code 35160-35178.4	<a href="#">Powers and duties</a>
Ed. Code 48660-48661	<a href="#">Community day schools; establishment and restrictions</a>
Gov. Code 53090-53097.5	<a href="#">Regulation of local agencies by counties and cities</a>
Gov. Code 53724	<a href="#">Parcel tax resolution requirements</a>
Gov. Code 53790-53792	<a href="#">Exceeding the budget</a>
Gov. Code 53820-53833	<a href="#">Temporary borrowing</a>
Gov. Code 53850-53858	<a href="#">Temporary borrowing</a>
Gov. Code 54230.5	<a href="#">Disposal of surplus land and receipt of notice of violation</a>
Gov. Code 54230.7	<a href="#">Disposal of surplus land and receipt of notice of violation</a>
Gov. Code 54950-54963	<a href="#">The Ralph M. Brown Act</a>
Gov. Code 54952.6	<a href="#">Action taken; definition</a>
Gov. Code 54953	<a href="#">Meetings to be open and public; attendance</a>
Gov. Code 54960-54960.5	<a href="#">Actions to prevent violations</a>
Gov. Code 65352.2	<a href="#">Communicating and coordinating of school sites</a>
Pub. Cont. Code 20110-20118.44	<a href="#">School district contracts</a>
Pub. Cont. Code 20113	<a href="#">Emergencies; award of contracts without bids</a>

Pub. Cont. Code 20114	<a href="#">Repairs, maintenance, and improvements to district facilities by day labor or force account</a>
Pub. Cont. Code 22034	<a href="#">Uniform Public Construction Cost Accounting Act informal bidding ordinance</a>
Pub. Cont. Code 22035	<a href="#">Repair or replacement of facilities in case of emergency</a>
Pub. Cont. Code 22050	<a href="#">Emergency contracting procedures</a>
Pub. Cont. Code 3400	<a href="#">Bid specifications</a>

**Management Resources References**

Attorney General Publication	<a href="#">The Brown Act: Open Meetings for Legislative Bodies, rev. 2003</a>
Court Decision	<a href="#">Bell v. Vista Unified School District (2002) 82 Cal.App.4th 672</a>
Court Decision	<a href="#">Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109</a>
Court Decision	<a href="#">Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors (2003) 112 Cal.App.4th 1313</a>
Court Decision	<a href="#">McKee v. Orange Unified School District (2003) 110 Cal.App.4th 1310</a>
CSBA Publication	<a href="#">The Brown Act: School Boards and Open Meeting Laws, rev. 2019</a>
League of California Cities Publication	<a href="#">Open and Public IV: A Guide to the Ralph M. Brown Act 2nd Edition, rev. July 2010</a>
Website	<a href="#">CSBA District and County Office of Education Legal Services</a>
Website	<a href="#">Institute for Local Government</a>
Website	<a href="#">California Office of the Attorney General</a>
Website	<a href="#">CSBA</a>

**Description**

**Cross References**

3260	<a href="#">Fees And Charges</a>
3260	<a href="#">Fees And Charges</a>
3270	<a href="#">Sale And Disposal Of Books, Equipment And Supplies</a>
3270	<a href="#">Sale And Disposal Of Books, Equipment And Supplies</a>
3280	<a href="#">Sale Or Lease Of District-Owned Real Property</a>
3280	<a href="#">Sale Or Lease Of District-Owned Real Property</a>
3311	<a href="#">Bids</a>
3311	<a href="#">Bids</a>
3311.1	<a href="#">Uniform Public Construction Cost Accounting Procedures</a>
3311.1	<a href="#">Uniform Public Construction Cost Accounting Procedures</a>
3471	<a href="#">Parcel Taxes</a>
7131	<a href="#">Relations With Local Agencies</a>
7150	<a href="#">Site Selection And Development</a>
7150	<a href="#">Site Selection And Development</a>
7160	<a href="#">Charter School Facilities</a>
7160	<a href="#">Charter School Facilities</a>
7213	<a href="#">School Facilities Improvement Districts</a>
7214	<a href="#">General Obligation Bonds</a>
7214	<a href="#">General Obligation Bonds</a>
9000	<a href="#">Role Of The Board</a>

**Description**

9005	<a href="#">Governance Standards</a>
9012	<a href="#">Board Member Electronic Communications</a>
9150	<a href="#">Student Board Members</a>
9200	<a href="#">Limits Of Board Member Authority</a>
9223	<a href="#">Filling Vacancies</a>
9310	<a href="#">Board Policies</a>
9320	<a href="#">Meetings And Notices</a>
9321	<a href="#">Closed Session</a>
9321-E(1)	<a href="#">Closed Session</a>
9321-E(2)	<a href="#">Closed Session</a>
9322	<a href="#">Agenda/Meeting Materials</a>
9323	<a href="#">Meeting Conduct</a>
9324	<a href="#">Minutes And Recordings</a>