

ISSUE BRIEF:

Student Body Organization Board Emergency Meetings, Powers and Actions

Robert E. Griffin

I. Background

Strong transparency laws apply when a student body organization (SBO)¹ governing body or committee meets, deliberates and acts.

For SBOs and the statewide student organization,² detailed meeting requirements and exceptions are found in the Gloria Romero Open Meetings Act of 2000.³

The Romero Act includes some provisions on meeting-by-teleconference⁴ and for declaring and conducting emergency meetings.⁵

All but one⁶ of the CSU SBOs are auxiliary organizations described in the Education Code, as well as nonprofit public benefit corporations chartered under the California Nonprofit Public Benefit Corporation Law⁷ (NPBCL). The NPBCL includes provisions on board teleconferencing, emergency meetings, and action with and without a meeting. How the Romero Act and NPBCL relate is worthy of analysis, particularly under emergency conditions.

¹ Student body organizations (commonly include “Associated Students” in the organization name) are included as auxiliary organization entities under Ed Code § 89901(b), but are excluded under § 89902 if not formed and organized under § 89300 *et seq.* SBOs established as auxiliary organizations are subject to Ed Code §§ 89900 *et seq.* (except §§ 89920-27).

² The “statewide student organization” is the California State Student Association (CSSA). While this organization has been designated an auxiliary organization, it is presently an unincorporated association, not a nonprofit corporation (so the NPBCL does not apply).

³ *Id.* at §§ 89305-89307.4. All other auxiliary organizations are subject to a more general statutory open meetings framework in the “Seymour Act” in Ed Code §§ 89920-27.

⁴ *Id.* at §§ 89305.1(b)(2) and (c-d).

⁵ *Id.* at § 89306.5(c-e).

⁶ The Associated Students of CSU Monterey Bay is considered a student body organization, but not established as an auxiliary organization and not formed as an incorporated entity.

⁷ Corp Code § 5110 *et seq.*

This *Issue Brief*: summarizes key aspects of the Romero Act; explores if and how SBO governing bodies and committees⁸ may meet under emergency conditions; considers what emergency actions may be taken; and offers tips on dealing with emergency meetings and actions.

For auxiliary organizations subject to the Seymour Act, see the *Issue Brief*, “Auxiliary Board Emergency Powers, Meetings and Actions” posted on the AOA resources website.

II. Gloria Romero Act Requirements in Summary

SBOs and CSSA governing bodies and prescribed committees⁹ are required to follow an open meeting regimen in the conduct of its business at which all persons shall be permitted, with exceptions, to attend.¹⁰ For the purpose of this analysis, the term “body” is used for the governing body and prescribed committees.

The term “meeting” is closely defined to include, with exceptions,¹¹ any congregation of a majority of the body at the same time and place to hear, discuss, or deliberate upon a matter within its jurisdiction.¹² Interestingly, the definition for “meeting” does not include taking action upon a matter. But, “action taken” is defined later in Section 89305.4 as a collective decision by a majority of the “sitting” body. Action taken by secret ballot, whether preliminary or final, is prohibited.¹³

An annual schedule or schedules (time and locations) of *regular* meetings must be set by the body.¹⁴ An itemized agenda must be publicly posted at least 72 hours before a *regular* meeting, and shall include the time and location.¹⁵ With exceptions,¹⁶ the body is limited at such meetings to discuss or act only on posted agenda items. If an emergency situation, the body may take action at a *regular* or *special* meeting on business matters not on the posted agenda.¹⁷ See below.

⁸ The term “legislative body” is defined and used in the Romero Act for the SBO and CSSA governing body and committees. More specifically, the term includes the governing body and any committee established by formal governing body action, including standing committees, but excluding advisory committees.

⁹ Ed Code § 89305.1(b)(1)(A)(iii) defines the scope of prescribed committees subject to the Act.

¹⁰ *Id.* at § 89305.1(a).

¹¹ For exceptions, see § 89305.1(b)(1)(B)(i-iv).

¹² *Id.* at § 89305.1(b)(1)(B).

¹³ *Id.* at § 89305.1(e).

¹⁴ *Id.* at § 89305.5(a) allows such regular meeting scheduling by resolution, bylaws or conduct-of-meeting rule.

¹⁵ *Id.* at § 89305.5(b)(1).

¹⁶ *Id.* at § 89305.5(c)(1-3).

¹⁷ *Id.* at § 89305.5(c)(1).

A *special* meeting of a body may be called with prescribed and publicly posted notice at least 24 hours before the meeting. Notice shall include the meeting time and place, plus the business to be transacted or discussed.¹⁸

The agenda for *regular* and *special* meetings must include a public comment period within prescribed limitations.¹⁹

III. Notice and Meeting by Teleconference/Remotely

Romero Act Provisions. Meetings by teleconference for a SBO and CSSA body are authorized under the Romero Act when body members are in different locations, connected by electronic means, through either audio or video, or both.²⁰ Teleconferencing may be used to benefit both the public and the body for meetings, in compliance with the Act and “otherwise applicable law.”²¹ This is the first juncture-point with the NPBCL Provisions. See below.

Distinct call-notice and agenda-posting provisions for teleconferenced meetings come into play. Meeting teleconferencing time and location(s) and each location (not the remote-sites) must be accessible to the public.²² See below for *remote* meetings.

Voting during a teleconferenced meeting is taken by rollcall.²³

NPBCL Provisions. The Romero Act defers to other applicable law relating to teleconferencing beyond what is stated in the Act.²⁴ For SBOs (not CSSA) that means taking a statutory crosswalk to the NPBCL in the California Corporations Code where the use of conference telephone, electronic video screen communication, or electronic communications constitutes participant presence under specified conditions.²⁵ The Act does not appear to contemplate an *all-remote* meeting circumstance. It assumes there will be one or more publicly-posted *teleconference locations* for public access to the meeting,²⁶ while the NPBCL is clear in describing meeting participation by electronic means.²⁷ It is worth keeping these statutory distinctions in mind.

Teleconferenced meeting notice requirements under the Romero Act control (see above), except that if all body members will be teleconferencing for a *remote* meeting (without a physical meeting

¹⁸ *Id.* at 89306.5(a-b).

¹⁹ *Id.* at 89306.

²⁰ *Id.* at §§ 89305.1(b)(2) and 89305.1(c)(2).

²¹ *Id.* at §§ 89305.1(c)(1) and 89305.1(d).

²² *Id.* at § 89305.1(c)(3).

²³ *Id.* at § 89305.1(c)(2).

²⁴ *Id.* at § 89305.1(c)(1).

²⁵ Corp Code § 5211((a)(6).

²⁶ Ed Code § 89305.5(c)(3)

²⁷ See footnote 25 *supra*.

location), then special arrangements must be made to notice *call-notice* recipients and publicly post the *remote meeting* process, and for a connected, public accessible location, or access to the teleconference line or electronic communication mode used for the meeting.

Advance planning for teleconferencing should include the meeting site reservations, public access and security, equipment testing, control connections and settings, access codes, and lines/circuits to be utilized.

Corporations Code § 5211(a)(6) sets out the parameters for valid participation in a meeting-by-teleconference. This is an NPBCL default provision, meaning unless the organization's Articles of Incorporation or Bylaws specifically opts out or limits application, it applies to such a meeting method, subject to the more detailed Romero Act teleconferencing requirements.²⁸

Valid Participation by Conference Telephone or Electronic Video Screen Communication: All participating body members are able to hear one another.

Valid Participation through use of Electronic Transmission by and to the Organization (other than the above): both the following apply:

- Each body member-participant by this method can communicate with all of the other member-participants; and
- Each such body member-participant has been provided the means to engage in all matters before the body, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the organization.

The meeting's presiding official should, when convening the meeting: advise all body member-participants of the applicable valid participant requirements; ascertain by roll-call or other means that each member-participant can fully engage in meeting matters; monitor participation to assure full communications with all member-participants, and take voting-action by roll-call entered in the Minutes.

Minutes of a meeting-by-teleconference should include a brief description of the communication means used by each teleconferencing member-participant, the notice given by the presiding official concerning the participant means being utilized, and a statement confirming whether or not all teleconferencing member-participants were valid over the course of the meeting.

²⁸ It is now common for auxiliary organization Bylaws to include by citation, summary or restatement the provisions of § 5211(a)(6).

IV. NPBCL Corporate Emergency Meetings and Powers

Romero Act provisions deal with SBO and CSSA body emergency meetings.²⁹ In a declared “emergency situation” the body may deal with “matters upon which prompt action is necessary” by holding an emergency meeting without either the 24 call-notice or posting requirement.³⁰

A protracted emergency situation may require the body to alter the *regular* meeting schedule (by expeditious but transparent cancellation or rescheduling action(s) and notices) consistent with the Romero Act and the NPBCL.³¹

The *special meeting* call-notice and agenda requirements apply to emergency meetings, subject to requirement waiver if call-noticing is not functional.³²

Public comment at a *regular* meeting in an emergency situation may address any item taken up by the body not on the agenda.³³

Closed sessions are not permitted during emergency meetings.³⁴

What constitutes an “emergency situation” is defined as either a work stoppage or other activity severely impairing public health, safety, or both, or a crippling disaster impairing public health, safety, or both, *as determined by a majority body vote*.³⁵ This is the second juncture-point with the NPBCL Provisions.

Again, in the absence of detailed provisions in the Romero Act on the subject of emergency meetings and decision-making, the SBO may consider taking a statutory cross-walk over to the NPBCL.

Corporations Code Section 5140(n) is, like the teleconferencing authority, a default feature of the law that the Articles or Bylaws may include, opt out, or limit. A common feature of auxiliary

²⁹ Ed Code § 89306.5(c).

³⁰ *Id.*

³¹ *Id.* at § 89305.4(a) on setting an annual regular meeting schedule, and Corp Code § 5140(n)(4) binding emergency actions taken in good faith.

³² *Id.* at § 89306.5(d)(2-3).

³³ *Id.* at § 89306(a)(1).

³⁴ *Id.* at § 89306.5(e).

³⁵ *Id.* at § 89306.5(d)(1)(A-B).

organization Bylaws is the authority of this provision stated by citation, summary or as a restatement.³⁶

The Section 5140(n) emergency powers framework defines “emergency” in narrow event or circumstance terms that, as a result of and during which, the corporation’s board cannot be readily convened for action.³⁷

- A natural catastrophe, including, but not limited to, a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or regardless of cause, any fire, flood, or explosion;
- An attack on the state or nation by an enemy of the United State of America, or upon receipt by the State of California of a warning from the federal government indicating that an enemy attack is probable or imminent;
- An act of terrorism or other manmade disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government functions, or population, including, but not limited to, mass evacuations; or
- A state of emergency proclaimed by a governor or by the President.

Note that, unlike the Romero Act requirement, the Section 5140(n) framework does not require the body to declare when an “emergency” exists -- only that enumerated emergency events or circumstances themselves prevent or prohibit the body from convening for action.³⁸

The organization’s powers and limitations as a corporate entity in the NPBCL are expressed in Section 5140. Except for any limitations that may be set out in the Articles of Incorporation or Bylaws, the Nonprofit Corporation Law, or any other applicable laws,³⁹ the organization has all of the powers of a natural person, including, without limitation, those enumerated in Section 5140(a) through (n). There is, however, a contrary emergency-action limitation that appears in the Romero Act. Education Code Section 89306.5(c) limits action in an emergency situation to “matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities.” Does this provision prevent the organization from conducting regular business during the emergency? It would be prudent to seek legal counsel to help reconcile this provision with the following NPBCL corporate authority framework:

³⁶ The statutory default provisions should be included in or altered through the Bylaws. See Corp Code § 5151(g).

³⁷ Corp Code § 5140(n)(5)(A-D).

³⁸ *Id.* at § 5140(n)(5) as compared to Ed Code § 89306.5(d)(1)(A-B).

³⁹ Whether Romero Act requirements should be viewed as limitations on the application of § 5140(n) for emergency meetings is a matter best taken up with legal counsel in relation to the restriction obviated.

The NPBCL provides, in summary, that an organization can take either or both of the following actions necessary to conduct ordinary business operations and affairs in *anticipation of or during an emergency*:

- Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency.
- Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

In *anticipation of or during an emergency*, the organization's governing body may not take any action that is not in the course of ordinary business, unless the board (and university, presumably) approval was obtained prior to the emergency. See Section 5140(n)(3).

Section 5140(n)(2) authorizes the organization to take either or both of the following actions *during an emergency* as necessary to conduct ordinary business operations and affairs.⁴⁰

- Give notice to a board director or directors in any practical manner under the circumstances, including, but not limited to, by publication and radio, when a board meeting notice cannot be given in the manner prescribed in the Bylaws (restating the Romero Act requirements).
- Deem that one or more corporate officers present at an emergency meeting is a board director, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum for that meeting.

Section 5140(n)(4) provides that any actions taken in good faith *in anticipation of or during an emergency* under the 5140(n) framework bind the organization and may not be used to impose liability on a corporate director, officer, employee, or agent.

A SBO response *in anticipation of or during an emergency* will necessitate governing body involvement. A governing body takes action as a deliberative body, and even in an emergency situation, how and what the board decides should follow a common pattern: set an agenda and meeting day, time and place; send the meeting call-notices; notify the public; convene and hold the meeting; take any action; document meeting results; and oversee action taken.

V. Emergency Meeting and Action Tips

Setting the Agenda and Meeting Parameters. A simple (and abbreviated) agenda-setting process should either be in place or established between key staff and the board chair. A fast-moving emergency may require that agenda items be expressed in more general terms than usual, and foreclose comprehensive documentation when the agenda is sent with the meeting call-notice.

⁴⁰ Corp Code § 5140(n)(2)(A-B). Organization Bylaws may provide for emergency meeting notice procedures, quorum requirements, and designation of additional or substitute directors (§ 5151(g)).

If appropriate delegated authority is in place and the board is not being asked to take any immediate formal actions, consider one or more written progress reports distributed to board members by the most expeditious means, and/or simply contacting board members individually with the information. Staff should document how such reports were given to the board, and take management actions to notify, as appropriate, organization employees, customers, clients, etc.

Board action may be required to reset officer and committee duties or lines of authority. For example, an Executive Committee's delegated authority during the emergency may need to be expanded (consider such action as a Bylaws provision well before an emergency). Other committee responsibilities may need to be suspended and reorganized under the board or management.

Major operational issues (e.g., election, staffing, budget processes) may require bylaws or policy amendments on an interim basis. Such issues call for close and prompt university consultation and professional counsel.

Meeting Call-Notice Arrangements. Normal meeting call-notices to body members and others may not be practical or permitted in an emergency. Alternative communication methods should be devised, tested if feasible, and used until regular means are available. Call-notices should ask for confirmations (of receipt and attendance). At some reasonable point, document the method(s) used and why they were used. [A pre-planned approach would be Bylaws provisions extending the terms "written" and "in writing" to electronic transmission, and allowing for noticing thereby.]⁴¹

The meeting venue and time details may need to be stated in alternative terms if emergency conditions are apt to change rapidly.

Public Notice Arrangements. Normal physical public posting of an emergency meeting agenda or business items may not be practical or permitted. Physical or any alternative postings should include a statement describing where meeting information can be obtained if normal postings are foreclosed. For example, the organization may set up a special telephone voicemail message, or a high-profile page on the website where all essential information, including meetings, during the emergency is posted.

Meeting Venue. A meeting location can be disrupted by fast-paced emergency conditions. Be prepared to quickly reconvene to a pre-arranged alternative site; or to adjourn to a teleconference or other electronic-platform mode at a determined time, day, and access means. Confirm that a quorum would remain at the alternate schedule. Recording and teleconferencing equipment should be tested beforehand, and technical support to address any electronic or telecommunication difficulties that may arise during the course of the meeting. Each member or other key meeting participant should plan ahead for an alternative participation method.

Convening Emergency Meetings. The meeting's presiding officer should open the meeting on time; verify that recording equipment is on and adjusted; make appropriate convening remarks about the nature of the emergency; arrange reasonable public comment provisions under circumstances at

⁴¹ *Id.* at § 20 and § 5211(a)(2).

hand; have a roll-call taken (and confirm valid participation by any teleconferencing members or others); state for the minutes that a quorum is present; address any agenda changes; and confirm that all members have in hand the distributed agenda material.

Board Emergency Actions. Do not use corporate actions during an emergency to circumvent the law, regulations, or duties/obligations unrelated to the emergency, or to go beyond the business requirements of the organization because of the circumstances.

Actions taken should be well conceived, clearly and concisely stated, and conditioned upon the situation known at the time. Appropriate delegations of authority may be necessary to allow for evolving conditions bearing upon the reasons for the action. Include appropriate follow-up reporting requirements.

In a protracted emergency, the Board may consider the delegation of a range-of-authority to a specified committee and/or CEO, with clear parameters, and a reporting and feedback/challenge process.

Documenting & Announcing Actions. Emergencies take a toll on paperwork. Yet, after-emergency debriefings often rely on contemporary records to aid recollections. If actions will impact employees, customers, clients or the public, have a plan for and carry out prompt announcements of actions taken and why.

Post-Meeting Oversight. The governing board should be specific about who has supervision (and any delegated authority) over emergency actions decided by the board. Oversight may be retained by the board, delegated to an officer, or assigned to a committee.

VI. Governing Body Action Without a Meeting?

What if a grave emergency situation comes to this: the SBO is prevented or prohibited from convening the members as a body – even by teleconference -- to take crucial action(s) in direct response to the situation?

Again, the Romero Act does not address body action without a meeting in an emergency. What is explicit are the broad provisions requiring:

- The conduct of business in public meetings (with exceptions relating to closed sessions);⁴² and
- Itemized agendas be publicly posted with proper meeting call-notices.⁴³

On the action-without-meeting issue, there is a third statutory cross-walk to the NPBCL, but it should be approached with caution and in consultation with legal counsel. The NPBCL provides

⁴² *Id.* at §§ 89305.1(a) and 89307.

⁴³ *Id.* at §§ 89305.5.

that an action required or permitted to be taken by the body⁴⁴ may be taken without a meeting by *written consent* under specific limitations and strict procedures:

- Requires the approval of all board members (individually or collectively);
- The consenting board members must constitute a quorum;⁴⁵
- Consent must be in writing signed by each director;⁴⁶ and
- Consent forms must be filed with the minutes of the proceedings.⁴⁷

A consent means a director is voting to approve the proposed action(s) specified in the consent, and to do so without a meeting.

Action without-a-meeting should be limited to only the most extreme need and situation, and is not a substitute for a regular or special meeting. Don't abuse this emergency recourse.

The board may consider a post-emergency special meeting to revisit the *written consent* action, and to confirm those steps by a formal vote, along with full public notice and comment.

VII. Conclusions

Use of corporate emergency powers to call an urgent board meeting or to act without a meeting requires close scrutiny of the statutory authority and limitations, together with a high degree of prudent judgment and consultation within often short timeframes. Hopefully, much of that can occur before, or at least in anticipation of an emergency, not during an emergency. A comprehensive Bylaws review would be an excellent step to be ready.

Yet, many quick-acting decisions may be required. The corporate interest in transparency and accountability should remain the prominent principals. The organization should take care to give reasonable public notice and provide ways for the board to meet under public scrutiny.

This *Issue Brief* is provided to AOA member-organizations in support of authorized functions as auxiliary organizations in good standing, and is not intended to address the specific circumstances of any particular entity, transaction, relationship, individual, or circumstance. It should not be relied upon as legal advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is sought. 4/25/2020

⁴⁴ Corp Code §§ 5211(b) and (d).

⁴⁵ This requirement does not apply if the consent is for the purpose of filling a board vacancy.

⁴⁶ The consent may be in the form of one or more written documents, including in facsimile, telegraphic or electronic form. See Corporations Code § 5079.

⁴⁷ A required consent-to-act is effective on the date the last signed form is obtained; but effective action date can be a different, even earlier date.