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# New Mandates: Analysis of Measures Requiring Reimbursement

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In 2002 and 2003, the Commission on State Mandates determined that 23 sets of state laws impose state-reimbursable mandates on local governments. The commission estimated the state's cost to reimburse local agencies for these mandates is about $400 million.

This report reviews the newly identified mandates, and offers recommendations as to whether each mandate should be repealed, funded, suspended, or modified.

## Acknowledgments

Many analysts in the office contributed to this report. It was coordinated by Marianne O'Malley. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

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# INTRODUCTION

This report, submitted in fulfillment of Chapter 1123, Statutes of 2002 (AB 3000, Budget Committee), reviews 23 sets of state requirements that the Commission on State Mandates (CSM) identified as state-reimbursable "mandates" in their 2002 and 2003 reports to the Legislature. These newly identified mandates are *in addition* to over 100 ongoing state requirements that the CSM (or its predecessor agency) previously determined to be state-reimbursable mandates.

The Legislature's intent in requiring the Legislative Analyst's Office (LAO) to prepare an annual analysis of newly identified mandates was to ensure that it had information regarding each new mandate at the time the Legislature considered the annual mandate "claims bill." Pursuant to Government Code Section 17612, the claims bill (1) usually provides the initial state reimbursement for newly identified mandates and (2) gives the Legislature some opportunity to review commission actions. After a mandate receives its initial reimbursement through the claims bill, the Legislature traditionally funds a mandate's ongoing costs in the annual state budget.

Given the mounting costs of state mandates, the Assembly held hearings to review mandates and the mandate reimbursement process. Because of the state's fiscal difficulties, however, the Legislature:

- Did not introduce a claims bill to reimburse local agencies for newly identified mandates.
- Provided no funding for ongoing mandates in the 2003-04 budget.
- Declared its intent in Chapter 228, Statutes of 2003 (AB 1756, Budget Committee), to continue deferring mandate reimbursements through 2004-05.
- Acted to reduce local agency mandate responsibilities and associated state liabilities by suspending local agency requirements to implement 39 mandates in 2003-04, including eight newly identified mandates.

This report reviews the newly identified mandates and offers recommendations as to whether they should be repealed, funded, suspended, or modified. In addition, in some cases, we recommend the Legislature request the CSM to reconsider its quasi-judicial "Statement of Decision" regarding a mandate, or modify the mandate's reimbursement methodology (referred to as the measure's parameters and guidelines, or "Ps&Gs").

Figure 1 displays the newly identified education and noneductaion mandates that are the subject of this report, along with the CSM's estimate of each mandate's costs. In reviewing Figure 1, readers should note that it includes one mandate (school site councils) listed in the CSM's 2002 report, but subsequently invalidated by the court. Because the state has no responsibility to reimburse school districts for this mandate, its costs are excluded from the figure's revised total. Readers also should note that the CSM reports as *two* mandates any set of state requirements that apply to local agencies *and* K-14 districts. Because four mandates reported by the CSM have such a dual applica-

**Figure 1**

**Mandates Identified by Commission on State Mandates in 2002 and 2003**

*(In Thousands)*

| | Estimated Costs[a] | | |
|---|---|---|---|
| | Education | Non-Education | Total |
| **Mandates in Commission's 2002 Report** | | | |
| Child abuse treatment services authorization and case management | — | $542 | $542 |
| County treasury oversight committees | $95 | 1,539 | 1,634 |
| Elder abuse: Law enforcement training | — | 1,594 | 1,594 |
| Extended commitment—Youth Authority | — | 183 | 183 |
| Financial and compliance audits | 7,890 | — | 7,890 |
| Health benefits for survivors of peace officers and firefighters | — | 745 | 745 |
| Law enforcement sexual harassment training | — | 2,471 | 2,471 |
| Mentally disordered offenders' extended commitment proceedings | — | 11,651 | 11,651 |
| Physical education reports | 48 | — | 48 |
| School site councils[b] | (45,768) | — | (45,768) |
| **Mandates in Commission's 2003 Report** | | | |
| Animal adoption | — | $79,153 | $79,153 |
| Brown Act reform | $3,013 | 5,820 | 8,834 |
| County Office of Education fiscal accountability reporting | 2,129 | — | 2,129 |
| Employee benefits disclosure | 2,328 | — | 2,328 |
| Law enforcement college jurisdiction agreements | 21 | — | 21 |
| Photographic record of evidence | 233 | 2,366 | 2,598 |
| School district fiscal accountability reporting | 13,695 | — | 13,695 |
| Sex crime confidentiality | — | 4,829 | 4,829 |
| Sex offenders: Disclosure by law enforcement officers | 6 | 32,701 | 32,707 |
| Standardized testing and reporting | 184,135 | — | 184,135 |
| **Totals Reported by CSM** | **$259,361** | **$143,595** | **$402,956** |
| **Totals Excluding School Site Councils Mandate** | **$213,593** | **$143,595** | **$357,188** |

[a] Includes prior-year costs for each mandate. Ongoing annual costs would be significantly less.

[b] Mandate decision overturned by California Supreme Court.

tion, the list of *unduplicated* state requirements imposing a mandate totals 19.

Figure 2 categorizes these 19 mandates by their primary policy area, summarizes our recommendations, and denotes whether the 2003-04 budget suspends the state requirement to implement the mandate in the budget year or whether local agencies must carry out the activity with state reimbursement deferred to the future.

**Figure 2**

Newly Identified Mandates—LAO Recommendations

| General Government | Recommendation | 2003-04 Budget |
|---|---|---|
| Animal control | Revise law to reduce local responsibilities | Suspended |
| Brown Act reform | Make future compliance optional | Deferred funding |
| County treasury oversight committees | Make future compliance optional | Suspended |

| Public Safety and Criminal Justice | Recommendation | 2003-04 Budget |
|---|---|---|
| Child abuse treatment services authorization and case management | Suspend mandate, pending review | Suspended |
| Elder abuse: Law enforcement training | Repeal mandate prospectively | Suspended |
| Extended Commitment—Youth Authority | Request commission review its decision | Suspended |
| Health benefits for survivors of peace officers and firefighters | Repeal mandate and modify parameters and guidelines | Deferred funding |
| Law enforcement sexual harassment training | Repeal mandate prospectively | Suspended |
| Mentally disordered offenders' extended commitment proceedings | Fund mandate | Deferred funding |
| Photographic record of evidence | Request commission review its decision | Deferred funding |
| Sex crime confidentiality | Amend Public Records Act and repeal mandate | Suspended |
| Sex offenders: Disclosure by law enforcement officers | Request commission revise its parameters and guidelines | Suspended |

| Education Mandates | Recommendation | 2003-04 Budget |
|---|---|---|
| Employee benefits disclosure | Repeal mandate prospectively | Deferred funding |
| Financial and compliance audits | Fund mandate | Deferred funding |
| Law enforcement college jurisdiction agreements | Request commission review its decision | Deferred funding |
| Physical education reports | Repeal mandate prospectively | Deferred funding |
| School district fiscal accountability reporting | Fund mandate | Deferred funding |
| County Office of Education fiscal accountability reporting | Request commission review its decision | Deferred funding |
| Standardized testing and reporting | Request commission review its decision | Deferred funding |

# GENERAL GOVERNMENT

## ANIMAL CONTROL

*We recommend the Legislature revise current law to reduce local agency obligations regarding animal control because the cost of the resulting mandate greatly exceeds legislative expectations.*

Local government animal control agencies care for stray and surrendered animals in California communities. Such care includes housing, medical care, and vaccinations. These agencies also pursue the successful adoptions of the animals in their care and euthanize those animals that are not placed.

Seeking to reduce the euthanization of adoptable stray animals, the Legislature enacted Chapter 752, Statutes of 1998 (SB 1785, Hayden). Prior law provided that no dog or cat impounded by a public pound or specified shelter could be euthanized before three days after the time of impounding. Chapter 752 requires the following:

- An increase from three days to four to six business days, as specified, in the holding period for stray and abandoned dogs and cats.
- A holding period of four to six business days for other specified animals.
- The verification of the temperament of feral cats.
- The posting of lost and found lists.
- The maintenance of records for impounded animals.
- The release of animals to nonprofit rescue or adoption organizations.
- "Necessary prompt veterinary care" for impounded animals.

In 2001, the commission determined that Chapter 752 imposed a reimbursable mandate by requiring, among other activities, that certain animals be cared for longer than the three days previously required by law.

## Analysis

***Costs Exceed Legislative Expectations.*** The Legislature did not anticipate incurring significant, if any, state-reimbursable mandate costs when it enacted Chapter 752. Instead, the Legislature expected that much, or all, local agency increased costs to care for animals longer than three days would be offset by (1) increased adoption and pet recovery fees and (2) savings from avoided euthanizations. As we discuss more fully in the *2003-04 Analysis* (see page F-133), however, the commission determined that Chapter 752 imposed a broad mandate and local agency claims for mandate reimbursements likely will total $10 million annually.

***Parameters and Guidelines Lack Clarity.*** Both our office's and the Bureau of State Audits' (BSA) review of this mandate's Ps&Gs found areas of ambiguity that allow local agencies to claim some costs that appear to exceed the range of activities mandated by Chapter 752. For example, the BSA reviews notes that the Ps&Gs allow local agencies to receive reimbursement for capital costs not associated with Chapter 752. In addition, our review found that the Ps&Gs are not sufficiently explicit regarding the requirement that offsetting savings and revenues be deducted from reimbursement claims.

## Recommendation

Because the measure's costs greatly exceed the Legislature's expectations, we recommend that the Legislature reconsider Chapter 752 and make modifications as necessary to reduce the scope of the requirements imposed upon local agencies. While we acknowledge the importance of the humane treatment of animals, such a reconsideration of Chapter 752 is appropriate given the mandate's higher-than-anticipated costs and the fiscal constraints of the state. Accordingly, we recommend that the Legislature

revise Chapter 752 to reduce the overall requirements imposed on local agencies and the associated state mandate costs. Until such a revision is enacted, we recommend that the Legislature continue to suspend this mandate in the annual budget bill.

In the alternative, should the Legislature wish to maintain all the requirements of Chapter 752, we recommend the Legislature direct the commission to revise the Ps&Gs to make changes to address the issues identified in the BSA's report and the *2003-04 Analysis*. The following language, included in a future claims bill or other legislation, would provide the commission this direction:

> The Commission on State Mandates shall review the parameters and guidelines for the Animal Control mandate and make revisions consistent with the findings of the Bureau of State Audits and the *2003-04 Analysis* by the Legislative Analyst's Office.

## Brown Act Reform

***We recommend the Legislature change certain requirements of the Brown Act imposed in 1993 (requiring agenda postings by local advisory bodies and disclosure of matters discussed in executive sessions) into advisory guidelines, because detailed rules governing advisory bodies do not necessitate a statewide mandate. Should the Legislature, in the alternative, wish to maintain these requirements, we recommend that the Legislature direct the commission to reconsider its mandate determination in light of a recent California Supreme Court decision.***

In 1953, the Legislature enacted the Brown Act, declaring, "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." Since 1953, the Brown Act has been amended many times to expand or clarify its requirements—and to delineate the legislative bodies to which the act applies.

Article XIII B of the California Constitution generally requires the state to reimburse local governments for the cost of complying with "new programs" or "higher levels of service." Article XIII B specifies, however, that the state need not reimburse local governments for costs to comply with state mandates enacted *before* 1975. The original requirements of the Brown Act, and its pre-1975 amendments, therefore are *not* state-reimbursable mandates.

Chapter 641, Statutes of 1986 (AB 2674, Connelly), modified the Brown Act to require local agencies to prepare and post agendas for public meetings at least 72 hours before the meeting. In 1988, the commission found that local costs to implement this Chapter 641 requirement constituted a state-reimbursable mandate. Since this date, local agencies have been reimbursed for agenda preparation and posting, at a rate of about $100 per agenda. This mandate is commonly referred to as the "Open Meetings Act" mandate.

In 1993, the Legislature enacted measures to further clarify and modify Brown Act requirements (Chapter 1136, Statutes of 1993—AB 1426, Burton; Chapter 1137, Statutes of 1993—SB 36, Kopp.) Local agencies, in turn, filed a test claim with the CSM, contending that these changes constituted a state-reimbursable mandate. On April 27, 2000, the commission ruled that the Legislature created a state-reimbursable mandate by enacting these two measures because they (1) subject some *additional*

legislative bodies to the Brown Act (specifically, local bodies created by state or federal statute and committees with less than a quorum of legislative members) and (2) place new requirements on local agencies regarding the disclosure of matters discussed during executive sessions. These additional Brown Act requirements are commonly referred to as the "Brown Act Reform" mandate.

Earlier this year, the commission reported to the Legislature that reimbursing noneducation local agencies for the Brown Act Reform mandate would total $8.8 million, with annual ongoing costs of about $1 million. Because the commission's cost estimate is based on information reported by fewer than *half* of the local agencies eligible for claiming reimbursement, the actual ongoing costs of this mandate may be considerably greater than the commission's estimate.

### Analysis and Recommendation

The public policy goals of the Brown Act are indisputable. Representative government depends on an informed and involved electorate and open meetings are a vital part of this process. The key question for the Legislature regarding the Brown Act Reform mandate, however, is not whether the state should require local agencies to hold open governing board meetings. Rather, this mandate raises the issue of whether the state should detail all the rules regarding all public hearings—or whether some matters could be determined locally. In our view, the manner in which local agencies provide for public participation in local *advisory body* hearings and the disclosure of matters discussed in executive session do not reach the level of importance necessitating a statewide mandate. Moreover, we observe that there is significant local interest in open hearings and matters discussed in executive sessions and thus, even in the absence of a mandate, local agencies would continue to perceive pressure from their constituencies to follow these procedures. Accordingly, we recommend that the Legislature revise the Brown Act Reform Act to make these requirements advisory guidelines.

### Alternative Recommendation

The California Supreme Court's recent decision in *Department of Finance versus Commission on State Mandates* suggests that the commission's findings regarding the Brown Act Reform mandate were overly broad in their interpretation as to the types of legislative bodies eligible for mandate reimbursement. Should the Legislature wish to *maintain* the Brown Act Reform mandate, we recommend the Legislature direct the commission to reconsider its Brown Act Reform mandate Statement of Decision in light of the California Supreme Court's decision. The following language, included in a future claims bill or other legislation, would give the commission the authority and responsibility to complete such a review:

> The Commission on State Mandates shall review its Statement of Decision regarding the Brown Act Reform test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court 2002 decision in *Department of Finance versus Commission on State Mandates.*

## County Treasury Oversight Committee

***Because the oversight committee's responsibilities are largely duplicative of the responsibilities of county boards of supervisors, we recommend the Legislature enact legislation making these advisory committees optional.***

Chapter 784, Statutes of 1995 (SB 866, Craven), requires counties that invest surplus funds to establish a County Treasury Oversight Committee to review and monitor the investment policies of the county treasurer. The commission estimates the cost of this mandate to be $1,634,000 (prior-year and 2002-03 claims) and $299,000 annually thereafter.

The provisions creating these oversight committees were part of numerous legislative reforms enacted in the aftermath of the Orange County bankruptcy to (1) increase accountability for local officials involved in investment decisionmaking, (2) restrict the types and maturities of financial instruments that local governments use for investment purposes, and (3) increase reporting regarding local investment policies and holdings. In addition to these legislative reforms, counties experienced increased requirements from the financial community—involving new accounting and financial reporting standards for funds held in county investment pools.

The public and private reforms enacted in the mid-1990s have created multiple safeguards against the kind of errors that led to the Orange County bankruptcy. Taken together, these reforms have increased standards governing local government investment practices. In view of these increased standards, we believe it is appropriate for the Legislature to consider whether *this* mandate—dictating the specific form of local investment oversight committee—is needed to serve a statewide interest.

### Findings and Recommendation

Our review indicates that the advisory oversight committee's functions are largely duplicative of the more stringent requirements imposed on county boards of supervisors. For example, the advisory committee is required only to "review and monitor" the treasurer's annual investment policy, whereas the county boards of supervisors (1) must approve or reject proposed changes to the treasurer's investment policy, (2) receive quarterly investment reports, and (3) face legal and fiduciary responsibilities relating to the safekeeping and management of public funds. While it may well be in the interest of a local board of supervisors to maintain their advisory oversight committee to assist them in monitoring county investments, we believe that such a decision regarding the form of an advisory committee could be left to counties without materially affecting the level of oversight or public scrutiny of treasurer's investments.

Accordingly, we recommend the Legislature adopt legislation to make the mandate optional, for an annual savings of about $300,000.

# PUBLIC SAFETY AND CRIMINAL JUSTICE

## Child Abuse Treatment Services Authorization and Case Management

***We recommend that the Legislature suspend the requirement that counties "approve" treatment facilities attended by child abuse probationers, pending a review of the efficacy of such treatment services.***

Chapter 1090, Statutes of 1996 (AB 3215, Hawkins), requires that certain individuals convicted of child abuse enroll in a one-year counseling program as a condition of their probation. The probationer is required to pay for the counseling. The county probation offices are required to approve the treatment facilities and review progress reports provided by the facilities for individuals in treatment. The commission found that county costs to approve the treatment programs and provide case management for individuals in treatment constitutes a reimbursable mandate, estimated to cost $542,000 through the 2002-03 year.

Our review found that fewer than ten counties have submitted reimbursement claims for carrying out this new requirement. Discussions with both claiming and nonclaiming counties revealed that the difference between the two groups centered on their interpretations of "a counseling program approved by the probation department." Contacted counties that had not submitted claims interpreted the requirement to approve counseling facilities to mean that they needed to provide a list of acceptable facilities to the clients. Accordingly, these counties did not incur costs that they considered significant enough to warrant reimbursement. Those few counties that have claimed costs appear to have interpreted "approve" to mean that the county probation office needed to visit the programs in their county, review their treatment protocols, and certify that those were acceptable facilities. In other words, these claiming counties believed they faced a mandate to "certify" treatment facilities, rather than simply make referrals, as is the case in the nonclaiming counties we contacted.

### Recommendation

We recommend that the Legislature suspend this mandate and direct the Department of Social Services to conduct a study of the efficacy of this program. The purpose of the study is to determine whether this treatment reduces incidents of re-abuse. If the treatment is not having the desired effect, the Legislature should eliminate both the requirement for treatment and associated case management requirements. Conversely, if the treatment is deemed effective, then the Legislature should consider retaining the child abuse treatment requirement for probationers and clarifying that "approved" in this context means "referral" rather than "certification." This would substantially limit future mandate claims.

## Elder Abuse: Law Enforcement Training

***We recommend approval of $1,594,000 proposed for this mandate because the costs appear consistent with the Commission on State Mandates' determination. We further recommend repeal of the mandate since the***

***statutory date for completion of the training (January 1999) has passed.***

Chapter 444, Statutes of 1997 (AB 870, Hertzberg), required every city police officer or deputy sheriff at a supervisory level and below to complete, before January 1, 1999, an elder abuse training course certified by the Commission on Peace Officer Standards and Training (POST).

The commission found that the statute imposed a reimbursable mandate when this training occurred:

- During the employee's regular working hours.
- When the local agency had entered into a contracted obligation to provide for employee continuing education training.

### Recommendation

We recommend the Legislature approve the proposed funding for this mandate because the costs of $1,594,000 appear consistent with CSM's determination of the mandate and its costs. We further recommend repeal of the mandate. This is because the statutory date for completion of the training for then existing law enforcement officers has passed (January 1999). In addition, such training for new officers is likely to continue even in the absence of the mandate because it has become part of the ongoing training of peace officers.

## Extended Commitment—Youth Authority

***We recommend the Legislature request the commission review its Statement of Decision for the Youth Authority Extended Commitment mandate, because the commission's decision does not clearly identify a state-reimbursable mandate.***

Chapter 546, Statutes of 1984 (AB 2760, Areias), directs the Youthful Offender Parole Board (YOPB) to *request* the prosecuting county district attorney to petition the committing court for an extension of a ward's stay at the Youth Authority for an additional two years if the ward is determined to be physically dangerous to the community. The commission found that the costs incurred by district attorneys during these proceedings constitute a state-reimbursable mandate. The commission estimates the mandate costs to be $183,000 (prior years and 2002-03 claims), and $24,000 annually thereafter.

### Findings and Recommendation

The commission's decision does not identify any provision of Chapter 546 that increases a district attorney's obligation, responsibility, or authority regarding these extended commitments. Instead, the record and the decision indicate that prosecuting district attorneys have had the authority to petition the court in these civil cases since the process to extend the commitment of wards was instituted in 1963 (Welfare and Institutions Code Section 1800). Throughout this period, counties have used this authority to fulfill their duty to protect local public safety. The commission's decision does not identify any provision of Chapter 546 that changes county district attorney discretion or responsibility regarding these cases. Thus, the commission's decision fails in its responsibility to identify a mandate necessitating legislative appropriation.

Accordingly, we recommend the Legislature request the commission to reconsider its Statement of Decision and make any changes neces-

sary to clarify which, if any, activities impose a state-reimbursable mandate. We suggest the following language:

> The commission shall reconsider its Statement of Decision regarding the Youth Authority Extended Commitment mandate and make any changes necessary to clarify which, if any, activities relating to petitioning for an extension of a ward's stay at the Youth Authority impose a state-reimbursable mandate.

## Health Benefits for Survivors of Peace Officers and Firefighters

***We recommend the Legislature enact legislation to repeal the requirement to provide health benefits for survivors of local public safety personnel because providing this benefit is more appropriately determined through the local collective bargaining process. We further recommend the Legislature request the commission to review its Statement of Decision to consider whether the administrative costs related to collective bargaining for survivor health benefits constitute a state-reimbursable mandate.***

Chapter 1120, Statutes of 1996 (AB 3478, Aguiar), and Chapter 193, Statutes of 1997 (SB 563, Brulte), require local governments to continue providing health benefits to the survivors of firefighters and peace officers killed in the line of duty. Chapter 1120 also removed the provision exempting survivor benefits (including pension, health, and dental benefits) from local collective bargaining. The commission found that the costs of survivor health benefits and the administrative costs related to negotiating survivor health benefits constitute a state-reimbursable mandate. The commission estimates the mandate costs to be about $745,000 (1997-98 through 2002-03) and about $150,000 annually thereafter.

Our review indicates that the requirement that local agencies pay for survivor's health benefits is an issue related to the terms of employment and working conditions. As such, the benefit is a matter for local collective bargaining.

In addition, our review indicates that Chapter 1120's removal of the statutory provision exempting survivor benefits from local collective bargaining does not appear to constitute a new governmental program or higher level of service that requires state reimbursement. Instead, Chapter 1120 simply aligns local public sector collective bargaining duties more closely with collective bargaining duties in the private sector. As we discuss more extensively in the *2002-03 Analysis* (please see page E-33), in two landmark California Supreme Court rulings, the court found that state laws that make local government employer obligations comparable to private employer obligations do not constitute a mandate.

### Recommendation

Based on the above, we recommend the Legislature enact legislation to repeal the requirement to provide health benefits to survivors of local public safety personnel. This repeal would reduce future state costs by $150,000 annually. We further recommend that the Legislature request that the commission review its decision to determine whether collective bargaining costs constitute a state-reimbursable activity. The following language, included in a future claims bill or other legislation, would give the commission the authority and responsibility to complete such a review:

The commission shall review its Statement of Decision for Chapter 1120, Statutes of 1996 (AB 3478, Aguiar), and Chapter 193, Statutes of 1997 (SB 563, Brulte)—Health Benefits for Survivors of Peace Officers and Firefighters—and make any modifications necessary to clarify whether collective bargaining duties constitute a state reimbursable mandate or whether these duties simply reflect broad-based collective bargaining duties of employers in general.

## Law Enforcement Sexual Harassment Training

***We recommend approval of $2,471,000 proposed for this mandate because the costs appear to reasonably reflect the Commission on State Mandates' determination. We further recommend repeal of the underlying law because the statutory date for completion of the training (January 1997) has passed.***

Chapter 126, Statutes of 1993 (SB 459, Boatwright), required the commission on Peace Officer Standards and Training (POST) to develop complaint guidelines for peace officers who are victims of sexual harassment in the workplace and to include instruction on sexual harassment in the basic training for peace officers. Additionally, all peace officers who had received their basic training before January 1, 1995 were to receive supplementary training by January 1, 1997.

At the time the Legislature enacted Chapter 126, it expected that any peace officer training costs would be absorbable by POST. The Legislature did not anticipate that the statute imposed a reimbursable mandate. In reviewing this mandate, however, the commission found that the following local agency expenses constitute a mandate:

- Developing a local law enforcement sexual harassment policy.
- Training employees regarding the policy when the required training occurred during regular employee working hours or when the local agency had entered into a contractual agreement requiring it to pay the cost of continuing education.

### Recommendation

We recommend the Legislature fund this mandate because its costs of $2,471,000 appear to reasonably reflect the CSM determination of the mandate and its costs. We further recommend repeal of the mandate. This is because the statutory date for completion of the training for the existing law enforcement officers has passed (January 1999). In addition, such training for new officers is likely to continue, even in the absence of the mandate, because it has become part of the ongoing training of the peace officers.

## Mentally Disordered Offenders' Extended Commitment Proceedings

***We recommend the Legislature approve funds to reimburse counties for the cost of recommitting mentally disordered offenders to a state hospital because the mandated activities are necessary to ensure public safety.***

Chapter 1418, Statutes of 1985 (SB 1418, Lockyer), and subsequent related statutory changes, modified the procedures for the commitment by the courts of criminal offenders nearing their release from state prison to inpa-

tient treatment in state mental hospitals. These statutes also established for the first time procedures for the *recommitment* of so-called Mentally Disordered Offenders (MDOs) who had been placed in state hospitals but who, after a initial period of commitment to a state hospital, required a further period of treatment. State law specified that the recommitment process could include civil trials to determine whether individual offenders continued to meet the criteria for an MDO commitment. This legal process by law involves activities by district attorneys, indigent defense counsel, and other county government officials.

Our review indicates that the Legislature recognized it was potentially creating a reimbursable mandate for counties when it enacted the MDO statutes. Chapter 1418 specified that any claims for reimbursement of mandated costs should be reimbursed through the customary process established in state law for this purpose.

Our review also indicates that payment of these claims is necessary to ensure the continued safety of the public. Absent the performance of the legal procedures mandated by this state law, it is unlikely the courts would permit the involuntary recommitment of MDOs to state hospitals for continued treatment. The release of such individuals without further treatment could pose a risk to public safety.

### Recommendation

We recommend the Legislature approve the amount proposed in the claims bill, which includes reimbursement to counties for these activities over a six-year period, because the Legislature recognized it was potentially creating a reimbursable mandate when it enacted the MDO statutes and because the mandated activities are necessary to ensure public safety.

## Photographic Record of Evidence

***We recommend the Legislature request the commission to review its Statement of Decision regarding the Photographic Record of Evidence mandate and make any changes necessary to ensure that its decision is consistent with the Court of Appeal's ruling in* City of San Jose versus State of California *and Government Code Section 17556(e).***

In 1985, a time when *counties* were responsible for most trial court operation and facility costs, the County Clerk's Association sponsored legislation (Chapter 875, Statutes of 1985, [AB 556, Frazee]), to establish alternate procedures for handling and storing dangerous or bulky court exhibits. Specifically, Chapter 875 required local law enforcement agencies to:

- Provide a photographic record for evidence that the court determined poses a health, safety, security, or storage problem.
- Provide a certified chemical analysis of evidence that poses a health hazard.
- Store certain evidence that poses a health or safety risk.

In 1986 and 1990, apparently at the request of the County Clerk's Association, the Legislature enacted modest changes to these alternate exhibit-handling procedures.

In the late 1990s, the Legislature began a process of transferring responsibility for trial court costs from counties to the state. Specifically, in 1997, the Legislature placed a cap on county expenditures for trial court operations, effectively making the state responsible for increases in trial court costs. In 2000, the Legis-

lature established a new trial court employee personnel system, transferring responsibility for court employment from counties to the courts. Finally, in 2002, the Legislature created a process for transferring trial court facilities from counties to the state.

In 1998, one year after the Legislature imposed a cap on county trial court costs, the City of Los Angeles' Police Department filed a claim with the commission alleging that Chapter 875 and its later amendments (Chapter 734, Statutes of 1986 [AB 2715, Frazee] and Chapter 382, Statutes of 1990 [AB 3408, Frazee]) imposed a state-reimbursable mandate. In 2000, the commission agreed with the test claimant and found that city, county, special district, and school law enforcement costs associated with the alternate court exhibit procedures constituted a state-reimbursable mandate.

### Analysis

We recognize that determining whether the state has imposed a mandate is exceedingly difficult when state-local duties change over time. We also recognize that details regarding trial court funding restructuring were not required to be placed into the record because the claimants did not allege that these funding shifts affected their claim. Nevertheless, when state-local duties regarding a program change over time, a review of the history of state and local program duties is vital to accurately determine whether the state has imposed a new program or higher level of service on local government.

Our review of the commission's Statement of Decision indicates that the commission did not consider the subject legislation in its historic context and thus may have erred in its mandate determination. Specifically, we note that the commission did not examine two critical factors regarding the subject legislation at the time of its enactment.

- Did the Legislature simply shift costs and duties associated with handling exhibits from one local agency (courts) to another (local law enforcement agencies)? Under the Court of Appeal's ruling in *City of San Jose versus State of California*, such cost shifts among local agencies are not state-reimbursable mandates.

- Was the subject legislation "cost neutral" to counties, as suggested by the testimony of the County Clerk's association? Under Government Code Section 17556(e), a measure that does not impose *net* costs is not a mandate on that group of local governments.

### Recommendation

Given the shortcomings in the commission's mandate determination, we recommend the Legislature request the commission to review its Statement of Decision regarding the Photographic Record of Evidence mandate and make any changes necessary to ensure that the decision is consistent with the *City of San Jose versus State of California* case and Government Code Section 17556(e).

The following language, included in a future claims bill or other legislation, would give the commission the authority and responsibility to complete such a review.

> The commission shall review its Statement of Decision regarding the Photographic Record of Evidence test claim and make any modifications necessary to this decision to clarify

whether the subject legislation imposed a mandate consistent with the Court of Appeal's ruling in *City of San Jose versus State of California* and Government Code Section 17556(e).

## Sex Crime Confidentiality

***We recommend the Legislature amend the California Public Records Act to prohibit the release by local law enforcement of information on victims of sex crimes.***

Under the California Public Records Act, records of state and local law enforcement agencies generally are required to be open to public inspection. However, the law requires that the addresses of victims of certain sex crimes remain confidential and therefore not be released by law enforcement. While the Public Records Act also allows law enforcement agencies to withhold the name(s) of victims of certain sex crimes at the request of the victim, or his or her parent or guardian, it does not require law enforcement to notify such individuals of this fact.

In an effort to further protect the privacy of victims of sex crimes, Chapter 502, Statutes of 1992 (SB 296, Torres), was enacted. It requires any law enforcement agency employee, who receives a report from a person alleging that he or she was the victim of specified sex crimes, to inform the person that his or her name will become a matter of public record unless he or she requests confidentiality. Statute also requires that the person's response be included in any written report of the alleged sex offense. Finally, if the person has requested confidentiality, the law enforcement agency may not disclose the person's name or address except to specified persons.

In June 1999, the City of Hayward filed a claim with the CSM. The commission adopted the statement of decision on September 28, 2001, affirming that Penal Code Section 293 imposed new activities on local law enforcement, requiring a higher level of service, and that such activities are reimbursable under the State Constitution. Based on information provided by the State Controller's Office (SCO), the commission adopted a statewide cost estimate of $4.8 million. This includes $4.1 million for prior fiscal years 1997-98 through 2002-03, and about $700,000 for 2003-04. The ongoing cost of the program is estimated to be approximately $700,000.

### Findings and Recommendations

The objective of Chapter 502 was to protect the privacy of victims of certain sex crimes, thereby allowing such individuals to avoid the public humiliation and stigma that is often associated with such crimes. Our discussions with law enforcement officers, as well as with representatives of victim organizations, suggest that the law effectively accomplishes that goal. However, in light of the fiscal impact of the commission's ruling, we recommend that the Legislature repeal the underlying law (Penal Code Sections 293 and 293.5), but amend the Public Records Act to prohibit release of the names of victims of sex crimes. This would achieve the objective of the current law—to protect the privacy of victims of sex crimes—without imposing additional duties on local law enforcement, and at no cost to the state.

## Sex Offenders: Disclosure by Law Enforcement Officers

***We recommend that the Legislature request the commission to review the parameters and guidelines of the sex offender disclosure mandate to ensure that state reimbursement for the development of internal policies, procedures, and manuals is limited to only those aspects of the program determined by the commission to represent state-reimbursable activities.***

### Background

***Federal Law.*** Since 1947, certain types of offenders, including sex offenders, have been required upon release from probation, jail, or prison, to register with the local law enforcement agency in the jurisdiction to which they are released. The federal Megan's Law, enacted in 1996, required states, and authorized local entities, to release sex offender registration information to the public. Chapter 908 (AB 1562, Alby) and Chapter 909 (SB 1378, Peace), Statutes of 1996, as well as several other laws were enacted to implement Megan's Law in California.

Under the law, information collected by local law enforcement as part of the registration of sex offenders is forwarded to the state Department of Justice (DOJ), and compiled centrally in the Violent Crime Information Network. Information on registered sex offenders is disclosed to the public either through a proactive notification by local law enforcement (reserved for high-risk sex offenders), or by way of dedicated computer terminals available through local law enforcement. In order to access the information through local computer terminals, an individual must provide specified personal information, which is retained for five years.

***Commission Decision.*** In 1999, Tuolumne County filed a claim with the commission alleging that many of the state-enacted local requirements relating to registration of sex offenders and disclosure were state-reimbursable mandates. In July 2001, the commission approved part of the claim, affirming that some of the activities required of local law enforcement do in fact constitute a state-reimbursable mandate. For the most part, the activities determined to be reimbursable were those that the commission found went beyond the requirements of the federal Megan's Law. Figure 3 (see next page) shows the provisions determined by the commission to be a state mandate.

***Potential Statewide Cost.*** Based on unaudited claims for prior years filed with the SCO by cities and counties, the commission adopted a statewide cost of $32.7 million. Of this amount, approximately $28 million is for prior fiscal year 1996-97 through 2002-03. The remaining $5 million is the projected cost in 2003-04. The projected ongoing cost of the mandate is approximately $5 million. It should be noted that several relatively large local jurisdictions have not yet submitted claims, including the City of San Diego, the City and County of San Francisco, and the Counties of San Bernardino and San Diego. As such, the estimate may understate the statewide cost of the mandate.

### Findings and Recommendations

***Direct the Commission to Modify the Ps&Gs.*** In its statement of decision, the commission ruled that some of the activities related to the test claim were *federally* mandated and therefore not state reimbursable. For the most part, the activities determined to be reimburs-

**Figure 3**

**Megan's Law Provisions Found To Be Reimbursable Mandates**

**Submit Data to DOJ**
Requires local law enforcement to submit registration information and annual changes directly to the DOJ Violent Crime Information Network.

**Removal of Registration for Decriminalized Conduct**
Requires local law enforcement agencies to remove from list of sex offenders those individuals who are no longer classified as such due to decriminalization of act.

**Preregister**
Requires local law enforcement to preregister the individual before incarceration or release to probation.

**Contents of Registration**
Requires additional information to be collected, such as proof of residence, name and address of employer, and vehicle license plate number of any vehicle regularly driven by the individual.

**Notice of Reduction of Registration Period**
Requires local law enforcement agencies to notify sex offenders of the change in the registration period from 14 days to 5 days.

**High-Risk Sex Offenders**
Permits individuals classified as high-risk to be reevaluated by the DOJ and removed from this classification. Local agencies provide individuals with the evaluation form.

**CD-ROM**
Requires municipalities with more than 200,000 residents to make information available through CD-ROM or some other form of electronic medium.

**Records Retention**
Requires law enforcement to retain information on persons requesting to view the CD-ROM for a minimum of five years.

able were those that the commission found went beyond the requirements of the federal Megan's Law. The Ps&Gs, which provide guidance to local governments on state-reimbursable activities, are largely consistent with the ruling in that most activities required of the federal Megan's Law are excluded.

However, based upon our review, one provision of the Ps&Gs appears to be inconsistent with the statement of decision. Specifically, the Ps&Gs would allow local law enforcement agencies to claim state reimbursement for "the development of internal policies, procedures, and manuals to implement Megan's Law." This provision appears to allow localities to seek state reimbursement for *all* policies, procedures, and manuals related to Megan's Law, including those which relate to federally mandated aspects of the state law. For this reason, we recommend the Legislature request the commission to review the Ps&Gs to ensure that local governments seek reimbursement for only the development of the internal policies, procedures, and manuals that relate to state-reimbursable activities. The following language, inserted in a future claims bill or other legislation would require this review:

> The Commission on State Mandates shall review the parameters and guidelines for the Sex Offenders: Disclosure by Law Enforcement Officers mandate and make all modifications necessary to ensure that local governments seek reimbursement for only the development of internal policies, procedures, and manuals mandated by the state.

# EDUCATION

## EMPLOYEE BENEFITS DISCLOSURE

***We recommend the Legislature eliminate the requirement that districts assess and report on future liabilities for retiree health benefits. This recommendation assumes that the national Governmental Accounting Standards Board adopts a new accounting requirement within a year regarding the accounting of retiree health benefits.***

In this mandate decision, the commission considered several compensation-related mandated local programs that were enacted at different times in the mid-1990s. Specifically, the mandates under review require districts and County Offices of Education (COEs) to disclose current and future liabilities for specific programs, as follows:

- ***Health and Welfare Benefits for School District and COE Retirees.*** Statutes require local educational agencies (LEAs) that provide these benefits to retirees to conduct specific activities to estimate current and future costs of these benefits and ensure that the Superintendent of Public Instruction, county superintendent, local governing boards, and interested members of the public are aware of these costs.

- ***Changes in Collective Bargaining Agreements.*** Districts must report to county superintendents budget revisions that occur during the school year as a result of adopting a collective bargaining agreement.

The commission estimates local costs for these mandates of $2.5 million for the period from 1994-95 through 2002-03. Costs for 2003-04 are estimated at about $500,000.

***Need for State-Mandated Actuarial Reports.*** Under this mandate, school districts that provide health benefits to retirees must produce every three years an actuarial report of the future costs of those benefits. This report must be completed by an actuary with membership in the American Academy of Actuaries. Periodically revising the cost of retiree benefits is good accounting and financial policy. The cost of these benefits changes over time as current employees retire and the cost of health care coverage escalates. To adequately assess a district's multiyear fiscal condition, the costs of retiree benefits must be included in the district's planning estimates.

In fact, the federal Governmental Accounting Standards Board (GASB) is currently considering whether to require all government agencies to recognize future liabilities for employee health costs in their financial statements. The GASB establishes standards of accounting and financial reporting used by state and local governments.

The GASB proposal would go further than the Education Code by requiring districts each year to treat retiree health benefits in a manner similar to pension benefits. That is, districts would be required to identify and include retiree costs as an annual cost of employment—one that must be covered by specific current revenues. In essence, each year districts would have to place in a separate account the amount of revenues needed to pay for retiree benefits of

each existing employee when he or she retires. As proposed, larger school districts would have to implement this policy beginning in 2006-07, with smaller districts implementing during the succeeding two years.

### Recommendation

A representative of GASB advises that the board will likely approve the policy on postretirement benefits within a year. We believe this policy will eliminate the need for the mandated actuarial reports on retiree health benefits. Under the GASB proposal, actuarial reports would be required every two or three years. The proposal goes further by requiring districts to *set aside funds for these costs each year*. In addition, the GASB policy requires districts to follow generally accepted actuarial practices. Therefore, if GASB approves the new policy, we recommend the Legislature eliminate the requirement that districts assess and report on future liabilities for retiree health benefits.

## Financial and Compliance Audits

***We recommend the Legislature approve funds to reimburse LEAs for additional audit requirements because the costs appear reasonable and consistent with the Legislature's intent.***

In a series of legislation enacted between 1977 and 1995, the Legislature imposed new requirements on LEAs related to financial and compliance audits. In addition, revisions to the SCO audit guide imposed new duties on LEAs. These requirements include such duties as changing language in audit contracts and responding to inquiries regarding prior corrective action plans. The commission found that the costs to comply with these new requirements constitute a state-reimbursable mandate. The commission estimates the mandate costs to be $7.9 million (prior-year and 2002-03 claims), and $900,000 annually thereafter.

Our review indicates that the requirements of this mandate serve a statewide interest because they help to assure fiscal oversight and district solvency. The Legislature anticipated this level of mandated costs when it enacted the requirements.

### Recommendation

We recommend the Legislature approve the proposed funding because the mandate helps strengthen fiscal oversight of district solvency and the costs are consistent with the Legislature's expectations.

## Law Enforcement College Jurisdiction Agreements

***We recommend the Legislature request the commission to review its Statement of Decision regarding the Law Enforcement College Jurisdiction Agreements mandate in light of a recent California Supreme Court decision.***

In 1990, the Legislature enacted Chapter 1638 (AB 3918, Nolan), which required that the governing boards of all community college districts (as well as the boards of the University of California, California State University, and Hastings College of the Law) do the following: (1) compile records of crimes reported on campus; (2) make these records available at the request of any applicant, student, or employee; and (3) develop and distribute a campus safety plan, as defined. Chapter 1638 exempted community colleges from this provision unless

and until the Legislature provides funding for this purpose.

In 1998, the Legislature enacted Chapter 284 (SB 1729, Thompson), known as the "Kristin Smart Campus Safety Act." The act requires community college district governing boards (and others) to adopt rules requiring local and campus law enforcement agencies to: (1) enter into written agreements that define respective areas of authority; (2) make the agreements available for public viewing by July, 1, 1999; and (3) transmit them to the LAO by September 1, 1999.

In June 1999, the Contra Costa Community College District filed a test claim on both laws, alleging that they imposed a state-reimbursable mandate. In April 2001, the commission rejected the claim on Chapter 1638, citing the exemption for community colleges. However, as regards Chapter 284, the commission agreed that costs of preparing, reviewing, modifying, promulgating, and transmitting the jurisdiction agreements are reimbursable. The commission denied the test claim concerning record keeping and investigation because these activities were already required by prior law.

### Findings and Recommendation

The California Supreme Court's May 2003 decision in *Department of Finance versus Commission on State Mandates* held that the costs of certain activities related to education programs were not reimbursable if those programs were voluntarily established. We believe this opinion may have application to the issue of jurisdiction agreements. Specifically, such agreements are required only in cases where colleges have voluntarily chosen to establish campus police departments. (Education Code Section 72330(a) permits, but does not require, community college districts to establish their own police departments.) We recommend, therefore, that the Legislature direct the commission to reconsider its Law Enforcement College Jurisdiction Agreement mandate Statement of Decision in light of the California Supreme Court's Decision in *Department of Finance versus Commission on State Mandates*. The following language, included in a future claims bill or other legislation would give the commission the authority and responsibility to complete such a review:

> The Commission on State Mandates shall review its Statement of Decision regarding the Law Enforcement College Jurisdiction Agreement test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court decision in *Department of Finance versus Commission on State Mandates*.

## Physical Education Reports

***We recommend the Legislature enact legislation to repeal the physical education reporting and compliance requirements as the state already receives similar information as part of an existing mandate.***

Chapter 640, Statutes of 1997 (AB 727, Martinez), stated the Legislature's intent that all children have access to high-quality physical education programs. It also added new reporting and compliance requirements to help determine whether elementary and middle schools are providing the statutory minimum of 200 minutes of physical education every ten school days for students in grades 1 through 8. The commission found that the costs to comply

with these new duties constitute a mandate, with state-reimbursable costs of $40,000 (prior-year and 2002-03 claims), and $8,000 annually thereafter.

Our review indicates that the costs of this mandate will be higher than the commission's estimate. Actual claims data from the SCO show state-reimbursable costs of over $100,000 for the prior years. Moreover, these claims represent a small fraction of the school districts potentially eligible for reimbursement, indicating that the ongoing costs of this mandate also will be higher than estimated.

Our review indicates that school districts are already eligible to receive reimbursement under another mandate for physical fitness reports. Chapter 975, Statutes of 1995 (AB 265, Alpert), requires school districts to annually administer to each student in grades 5, 7, and 9 a physical performance test. Upon request by the Superintendent of Public Instruction, districts are required to submit the test results every two years to the Department of Education. The annual budget act provides approximately $1.2 million for this purpose. The testing and reports required by Chapter 975 provide the Legislature with outcome information regarding the physical fitness of pupils in the three grades, making the additional physical education reports of Chapter 640 somewhat duplicative.

### Recommendation

We recommend the Legislature enact legislation to repeal the reporting requirements of this mandate because the state already receives information on physical education that serves a similar purpose to this mandate.

## School District and County Office of Education Fiscal Accountability Reporting

***We recommend the Legislature fund the School District Fiscal Accountability mandate because its costs appear reasonable. We recommend the Legislature direct the commission to revisit its Statement of Decision regarding the County Office mandate and include in this decision a discussion of the extent to which revenues appropriated in the annual budget for this purpose should offset county offices of education mandate costs.***

After the bankruptcy of the Richmond Unified School District in 1992, the Legislature passed and the Governor signed Chapter 1213 (AB 1200, Eastin). The bill strengthened the existing school district budgeting process and county office of education oversight of that process. In two mandate decisions, the commission reviewed the AB 1200 process as well as other Education Code statutes that affect (1) district budgeting practices and (2) county office oversight responsibilities.

The commission identified the following school district and county office activities as reimbursable state mandates:

***School Districts***

- Providing the county superintendent of schools with various fiscal reports each year.
- Altering the timing of the budget process and making the final budget available to the public within certain timelines.
- Certifying the district's budget condition each year. Districts that are unable or may be unable to meet financial obliga-

tions in the current or future budget years are required to submit additional reports to the county superintendent.

***County Office of Education***

- Altering the timing of the budget process and providing the state Superintendent of Public Instruction with various reports on districts' fiscal condition each year.
- Verifying the accuracy of district financial statements and notifying the appropriate district official when the county superintendent will not approve warrants issued by a district.
- Taking various actions when a district—or the county superintendent—determines that a district is unable or may be unable to meet financial obligations in the current or future budget years.

The commission estimates the cost of the mandates on school districts at $11.7 million from 1996-97 through 2002-03. The ongoing cost is estimated at $2 million annually beginning in 2003-04. For the county office mandates, the commission estimates prior-year costs of $1.8 million (1996-97 through 2002-03) and ongoing costs of $300,000 annually beginning in 2003-04.

## Findings and Recommendation

The school district costs appear reasonable. The fact there are any mandated local costs claimed by county offices of education, however, is surprising given that the Legislature makes an annual appropriation to counties to cover their AB 1200 costs. The *1996-97 Budget Act*, for instance, contained $1.65 million for COE oversight and interim reporting activities. This appropriation has increased over the years, with a 2003-04 appropriation of $6.1 million for these activities. The commission's Statement of Decision does not address the issue of these appropriations nor do the Ps&Gs require county offices to reduce claims in recognition of available funding. According to the SCO, county office claims used by the commission to develop the statewide cost estimate appear to be "gross" costs—that is, they represent the total costs of complying with the mandated activities and are not reduced to reflect the budget act funds.

In this case, the Legislature has attempted to pay for county office costs in a direct manner by providing funds in the annual budget act. In fact, it has provided significantly more funding to county offices than the estimated cost of the mandated activities. The commission's statement of decision makes no acknowledgement of this appropriation. Therefore, we recommend the Legislature direct the commission to reconsider its Statement of Decision and determine whether county offices of education mandate claims should be offset by revenues appropriated in the annual budget act. The following language, included in a future claims bill or other legislation, would accomplish our recommendation.

> The commission shall review its Statement of Decision regarding the *County Office Oversight* mandate and make any modifications necessary to clarify the extent to which budget act appropriations to county offices of education should be considered offsetting revenues to any state-mandated local costs of the program.

## STANDARDIZED TESTING AND REPORTING (STAR)

***We recommend the Legislature request the commission to review its Statement of Decision regarding the STAR program mandate and make any changes necessary to ensure that its decision reflects federal mandates in place at the time the program was enacted.***

In 1997, Chapter 828 (SB 376, Alpert), created the STAR program. This program requires districts to test every student in grades 2 through 11 using a test selected by the State Board of Education. In addition, the program requires districts to test specified English Learner (EL) students (students whose primary language is not English and who are not yet proficient in English) in mathematics and language skills in their primary language. The board selected the Stanford-9 (SAT-9) test as the assessment taken by all students and the Spanish Assessment of Basic Education (SABE) as the test for Spanish-speaking EL students. Similar tests in other languages were not available.

***Costs of the STAR Mandate.*** The commission determined that the STAR program imposed a wide array of local-mandated activities on school districts and county offices of education. Activities approved for reimbursement include:

- ***Test Materials, Supplies, and Equipment.*** In the first two years of the program, state law required districts to purchase the SAT-9 and SABE from the publishers using a standard contract developed by the state. The costs of these contracts and of negotiating the contracts are reimbursable.
- ***Administration of the Test.*** Costs associated with duties required of the district and school testing coordinator and other costs created by administering the tests are reimbursable. Time spent by classroom teachers during normal school hours, however, is not reimbursable.
- ***Reporting and Record Keeping.*** Maintaining STAR scores in pupils' records and notifying parents, the school district governing board, and the state Department of Education of STAR results are reimbursable activities.
- ***Developing Policies and Procedures, Training.*** Costs of training district staff and developing district policies and procedures needed to implement the STAR tests are reimbursable. Time spent by classroom teachers during normal work hours is not reimbursable, although costs of substitute teachers to permit the training of teachers taking place during the school day are reimbursable.

The commission estimates costs of $152.3 million over the period from 1997-98 through 2002-03. Annual costs beginning in 2003-04 are estimated at $31.8 million, or about $6.75 per student tested.

### Analysis

***Estimate Based on Faulty District Claims.*** The statewide estimates are based on district-mandated cost claims as submitted to the SCO. As with all new mandate claims, they were not subject to a thorough review or audit *before* the development of the statewide estimate. Our review of five district STAR claims revealed

significant problems with the claims. Most significantly, districts often failed to recognize state apportionments for local STAR costs. Since the beginning of the program, SDE provided a per-student payment to districts to pay for local STAR costs. In 1997-98, for instance, the state board approved $6.65 per student for local costs—$4.10 to pay for printing, shipping, and scoring of the SAT-9 tests, and $2.55 for local administrative costs. Four of the five districts we reviewed failed, in full or in part, to recognize these apportionments as an offsetting revenue. If these five districts are representative of all K-12 districts, the statewide estimate greatly overstates actual net costs experienced by districts.

In part, this problem may have been caused by the commission's Ps&Gs, which, in our view, inappropriately narrow the activities against which state funds should apply as offsetting revenues. Most glaringly, the guidelines omit the cost of printing, shipping, and scoring the tests from the list of costs that districts must offset with state funds.

***Federal Testing Mandates.*** The Government Code provisions guiding the mandate process direct the commission to deny reimbursement when the state creates local mandates in implementing a federal law—unless the state law exceeds the federal requirements. The state's decision to enact the STAR program was, at least in part, designed to bring California into compliance with the federal Title 1 program requirements under the Improving America's Schools Act (IASA) of 1994. In the act, the federal government requires statewide systems of assessment and accountability for schools and districts participating in the Title 1 program.

Assessment requirements contained in the IASA that could affect STAR mandates include:

- ***Grades Assessed.*** Tests must be administered to all students in one grade in each of three grade spans (grades 3 through 5, 6 through 9, and 10 through 12). This assessment must be administered to *all students*, not just students attending Title 1 schools. Assessments must cover at least mathematics and reading/language arts.

- ***Special Education.*** Reasonable adaptations and accommodations for students with special learning needs must be provided. This includes special education students.

- ***Parental Notification.*** Federal law required certain Title 1 schools (known as "schoolwide" Title 1 schools) to provide individual student assessment results to parents.

In 2002, the federal No Child Left Behind (NCLB) Act replaced the IASA. The assessment requirements contained in the new law mirror the STAR requirements even more closely. Under NCLB, annual testing in mathematics and reading is required in grades 3 through 8 and once in grades 9 through 12. In addition, the state must begin to assess students in science beginning in 2005-06 (although not as frequently as in mathematics and reading/language arts).

***Commission Fails to Recognize Federal Mandates.*** The commission uses several tests to determine whether local costs are due to a federal mandate. First, federal law must require the action. State courts have interpreted this to mean that, without state conformity, significant

consequences to the state would occur (such as a significant loss of federal funds). In addition, if specific funding is provided by the federal government in support of the requirement, the mandate is not reimbursable.

The commission's approval of the STAR mandate makes no mention of the IASA testing requirements. According to commission staff, IASA requirements were never discussed as a factor in determining the STAR mandate. Commission staff advises that issues of federal mandates are normally raised by the Department of Finance (DOF). The record shows that DOF identified mandates contained in federal *special education* statutes that it believed would reduce STAR mandates for testing special education students. The DOF did not raise IASA mandates, however, and the commission found that the federal special education statutes did not constitute a federal mandate.

### Findings and Recommendation

Our review suggests the federal assessment mandates contained in IASA and NCLB should render a significant portion of the STAR mandate costs ineligible for reimbursement. Because the three IASA-mandated tests constitute about one-third of the state-mandated STAR tests, mandated costs should fall by at least that proportion. We would expect the proportion to be higher than that, however, because a number of the activities identified as reimbursable must be done by local agencies regardless of the number of grades tested. For instance, each district would need a test coordinator regardless of whether three grades or ten grades were tested.

Our review also indicates that some costs identified by the commission as state reimbursable, such as testing procedures for special education students and providing student test results to parents in certain Title 1 schools, are the result of federal requirements and therefore not state reimbursable. In addition, because NCLB testing mandates more closely mirror the STAR program, the number of reimbursable activities related to STAR mandates would be even fewer.

The Government Code establishes a three-year time limit for parties involved in the test claim to challenge the commission's Statement of Decision. This three-year period expired on August 24, 2003, without the DOF commencing a challenge to the mandate determination. As a result, the Legislature's only recourse is to request the commission revisit the issue of federal mandates for student assessment and modify the mandate's Statement of Decision as appropriate to reflect the requirements of federal law. To accomplish this, we recommend the Legislature adopt the following language in a future claims bill or other legislation:

> The commission shall review its Statement of Decision regarding the *Standardized Testing and Reporting* test claim and make any modifications necessary to this decision to clarify whether federal testing requirements in place at the time the program was enacted should reduce the scope of the state-mandat ed costs.

While the commission is revisiting this issue, we also suggest it review the directions to districts regarding offsetting revenues that are contained in the Ps&Gs to ensure that all STAR activities are offset by state per-pupil apportionments.

| SENATE RULES COMMITTEE | AB 2851 |
|---|---|
| Office of Senate Floor Analyses | |
| 1020 N Street, Suite 524 | |
| (916) 445-6614 Fax: (916) | |
| 327-4478 | |


THIRD READING

Bill No: AB 2851
Author: Laird (D)
Amended: 4/29/04 in Assembly
Vote: 27 - Urgency

SENATE LOCAL GOVERNMENT COMMITTEE : 5-1, 6/23/04
AYES: Torlakson, Margett, Ackerman, Hollingsworth, Soto
NOES: Machado
NO VOTE RECORDED: Perata

SENATE APPROPRIATIONS COMMITTEE : 8-2, 8/4/04
AYES: Alpert, Battin, Aanestad, Ashburn, Karnette, Murray, Poochigian, Speier
NOES: Bowen, Machado
NO VOTE RECORDED: Burton, Escutia, Johnson

ASSEMBLY FLOOR : 74-0, 5/17/04 (Passed on Consent) - See last page for vote

SUBJECT : State mandated local programs

SOURCE : Author

DIGEST : This bill suspends operation of the mandate that requires school districts to submit investment reports if funding is not appropriated; requires the Commission on State Mandates to review certain mandates to determine if they are reimbursable; and identifies certain mandates that have been repealed.

ANALYSIS : In 1979, the voters amended the California

CONTINUED

Constitution, requiring the state to reimburse local governments for the cost of new programs or higher levels of service mandated by the Legislature or any state agency. In 1984, the Legislature created the Commission on State Mandates. The commission is a quasi-judicial body which decides test claims alleging that the Legislature or a state agency imposed a reimbursable state-mandated local program. If the commission identifies a state-mandated program, it adopts parameters and guidelines defining what activities will be reimbursed, and adopts statewide cost estimates.

Before the commission adopts the parameters and guidelines, state agencies and interested parties may comment on the claimant's proposal. Once the commission adopts the parameters and guidelines, a state agency or interested party may ask the commission for amendments. If no one asks for amendments, the commission can't initiate them, even if the code section that originally imposed the mandate is repealed.

The Legislature has suspended reimbursable mandates by specifically identifying them in the Budget Act with a $0 appropriation. However, when the Budget Act includes a $1,000 appropriation for a mandate, reimbursement is deferred, not suspended. The Legislature can also suspend school district mandates relating to school bus safety and school crimes reporting.

In 2003, then Assembly Speaker Wesson established a Special Committee on State Mandates to review all reimbursable state mandates, particularly those that have been suspended or deferred, and to recommend reforms to the reimbursement system. The committee has met weekly for almost a year to evaluate reimbursable mandates. The bipartisan decisions made by the committee appear in five bills, three of which are before the Senate Local Government Committee on June 15.

This bill implements changes recommended by the Assembly Special Committee on State Mandates. Specifically, this bill:

1. Expands the list of mandates that school districts don't



have to perform in any year that the Legislature does not provide funding, to include investment reports and

obligations to county treasury oversight committees.

2. Declares that the Mineral Resources mandate is no longer a reimbursable mandate because local agencies now have the ability to charge fees.

3. Requires the Commission on State Mandates, by January 1, 2006, to reconsider whether four programs still constitute reimbursable mandates in light of later federal statutes, and federal and state court decisions:

   A. Sex offender disclosure by law enforcement officers.

   B. Extended commitments in the California Youth Authority.

   C. Brown Act reforms.

   D. Photographic evidence.

1. Declares that the Democratic Party presidential delegates mandate and the Short-Doyle case management, Short-Doyle audits, and residential care services are no longer reimbursable mandates because the statutes were repealed.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: No

According to Senate Appropriations Committee:

Fiscal Impact (in thousands)

| Major Provisions | 2004-05 | 2005-06 | 2006-07 | Fund |
|---|---|---|---|---|
| COSM | unknown costs, probably less than $100k | | | General |
| Mandate review | unknown, potentially substantial, savings | | | General |



SUPPORT : (Verified 8/5/04)

- - -

OPPOSITION : (Verified 8/5/04)

State Treasurer's Office

ARGUMENTS IN SUPPORT : According to Senate Local Government Committee analysis, the Assembly Special Committee on State Mandates spent almost a year on the deliberate and painstaking process of reviewing reimbursable mandates. Part of the committee's continuing effort is to clean house on repealed and otherwise obsolete mandates. This bill implements the recommendations of the Special Committee on State Mandates regarding several mandates that have been repealed, trumped by federal law, or given other funding.

ARGUMENTS IN OPPOSITION : The State Treasurer, in his opposition argument states, "this bill makes school district investment policy or portfolio reports to their legislative bodies optional if mandates are suspended by the Legislature in the Budget Act.

"I am concerned that removing mandated reporting requirements would compromise the availability of information on local agency investment practices, making it harder for those with fiduciary responsibility, as well as the general public, to assess the safety and liquidity of the investments of these public entities. The potential consequences of removing reporting requirements are clear. Both Orange County and the City of San Jose experienced significant investment losses following periods where the investment policy and portfolio reporting requirements were not in effect. Although more stringent investment restrictions are now in place, state law is still flexible enough that similar investment debacles could occur without proper oversight."

ASSEMBLY FLOOR :
AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton,



Dymally, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wyland, Yee, Nunez
NO VOTE RECORDED: Chavez, Firebaugh, Koretz, Montanez, Oropeza, Wolk

LB:sl 8/5/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

# THE BROWN ACT

## OPEN MEETINGS FOR LOCAL LEGISLATIVE BODIES

2003

CALIFORNIA ATTORNEY
GENERAL'S OFFICE

# THE BROWN ACT

## OPEN MEETINGS FOR LOCAL LEGISLATIVE BODIES

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State of California

# Office of the Attorney General

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Throughout California's history, local legislative bodies have played a vital role in bringing participatory democracy to the citizens of the state. Local legislative bodies - such as boards, councils and commissions - are created in recognition of the fact that several minds are better than one, and that through debate and discussion, the best ideas will emerge. The law which guarantees the public's right to attend and participate in meetings of local legislative bodies is the Ralph M. Brown Act.

While local legislative bodies generally are required to hold meetings in open forum, the Brown Act recognizes the need, under limited circumstances, for these bodies to meet in private in order to carry out their responsibilities in the best interests of the public. For example, the law contains a personnel exception based on notions of personal privacy, and a pending litigation exception based upon the precept that government agencies should not be disadvantaged in planning litigation strategy. Although the principle of open meetings initially seems simple, application of the law to real life situations can prove to be quite complex.

The purpose of this pamphlet is to provide a brief description of the Brown Act, along with a discussion of court decisions and opinions of this office that add to our understanding by applying it in specific factual contexts. We hope this pamphlet will assist both public officials and those who monitor the performance of local legislative bodies to minimize and resolve disputes over interpretations of the Brown Act. In recent years, both the California Supreme Court and the courts of appeal have recognized the benefit of pamphlets issued by our office. This recognition by the courts, along with many favorable comments from members of the public, strengthens our resolve to continue producing reliable informational materials on the Brown Act and other California laws. Publication of these materials constitutes a tradition of service that we value greatly.

Ideas and suggestions for future editions of this pamphlet are welcomed and should be addressed to the editor.

Sincerely,

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Attorney General

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## INTRODUCTION

This pamphlet concerns the provisions of the Ralph M. Brown Act, which govern open meetings for local government bodies. The Brown Act is contained in section 54950 et seq. of the Government Code. Accordingly, all statutory references in this pamphlet are to the Government Code unless otherwise noted. The pamphlet contains a table of contents, which may also serve as a topical outline for the reader. The pamphlet also includes a brief summary of the main provisions of the Brown Act, along with references to the appropriate Government Code sections and chapters of the text. The text includes a discussion of the law along with tips on how the law should be applied in particular situations. Numerous references are made to legal authorities throughout the text. A copy of the Brown Act in its entirety is set forth in the appendix to the pamphlet. Lastly, the pamphlet contains a table of authorities so that the reader can determine all of the places in the text where references are made to a particular authority.

In preparing this pamphlet, we relied on a variety of legal resources. Appellate court cases were consulted and are cited throughout the pamphlet. While most of the more significant cases are discussed, this pamphlet is not intended to be a compendium of all court cases in this area. In addition, we drew upon published opinions and unpublished letter opinions issued by this office. Attorney General opinions, unlike appellate court decisions, are advisory only and do not constitute the law of the state. However, with respect to the Brown Act, the courts have frequently adopted the analysis of Attorney General opinions, and have commented favorably on the service afforded by those opinions and this pamphlet. (*Bell* v. *Vista Unified School Dist.* (2000) 82 Cal.App.4th 672; *Freedom Newspapers* v. *Orange County Employees Retirement System* (1993) 6 Cal. 4th 821, 829.)

Published opinions are cited by volume and page number (e.g., 32 Ops.Cal.Atty.Gen. 240 (1958)). Unpublished letter opinions are cited as indexed letters by year and page number (e.g., Cal.Atty.Gen., Indexed Letter, No. IL 76-201 (October 20, 1976).) Published opinions are available through law libraries and some attorneys' offices. As a general rule, indexed letters are available only in the Office of the Attorney General. Copies may be obtained by a request to the Public Inquiry Unit of the Office of the Attorney General.

If you have specific questions or problems, the statutes, cases and opinions should be consulted. You also may wish to refer the matter to the attorney for the agency in question, a private attorney or the district attorney.

The pamphlet is current through January 2003 with respect to statutes, case law, and Attorney General opinions.

## SUMMARY OF KEY BROWN ACT PROVISIONS

### COVERAGE

PREAMBLE:

| | | |
|---|---|---|
| Public commissions, boards, councils and other legislative bodies of local government agencies exist to aid in the conduct of the people's business. The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created. | 54950 | Ch. I |

GOVERNING BODIES:

| | | |
|---|---|---|
| Includes city councils, boards of supervisors, and district boards. Also covered are other legislative bodies of local government agencies created by state or federal law. | 54952(a) | Ch. I & II |

SUBSIDIARY BODIES:

| | | |
|---|---|---|
| Includes boards or commissions of a local government agency as well as standing committees of a legislative body. A standing committee has continuing subject matter jurisdiction or a meeting schedule set by its parent body. Less-than-a-quorum advisory committees, other than standing committees, are exempt. | 54952(b) | Ch. II |

PRIVATE OR NONPROFIT CORPORATIONS OR ENTITIES:

Covered only if:

| | | | |
|---|---|---|---|
| a. | A legislative body delegates some of its functions to a private corporation or entity; or | 54952(c)(1)(A) | Ch. II |
| b. | If a legislative body provides some funding to a private corporation or entity and appoints one of its members to serve as a voting member of entity's board of directors. | 54952(c)(1)(B) | |

## MEETING DEFINED

INCLUDES:

| | | |
|---|---|---|
| Any gathering of a quorum of a legislative body to discuss or transact business under the body's jurisdiction; serial meetings are prohibited. | 54952.2 | Ch. III |

EXEMPTS:

| | | | |
|---|---|---|---|
| (1) | Individual contacts between board members and others which do not constitute serial meetings; | 54952.2(c)(1) | Ch. III |
| (2) | Attendance at conferences and other gatherings which are open to public so long as members of legislative bodies do not discuss among themselves business of a specific nature under the body's jurisdiction; | 54952.2(c)(2), (3) and (4) | |
| (3) | Attendance at social or ceremonial events where no business of the body is discussed. | 54952.2(c)(5) | |

LOCATIONS OF MEETINGS:

| | | |
|---|---|---|
| A body must conduct its meetings within the boundaries of its jurisdiction unless it qualifies for a specific exemption. | 54954 | Ch. IV |

TELECONFERENCE MEETINGS:

| | | |
|---|---|---|
| Teleconference meetings may be held under carefully defined conditions. The meeting notice must specifically identify all teleconference locations, and each such location must be fully accessible to members of the public. | 54953 | Ch. III |

## PUBLIC RIGHTS

PUBLIC TESTIMONY:

| | | |
|---|---|---|
| Public may comment on agenda items before or during consideration by legislative body. Time must be set aside for public to comment on any other matters under the body's jurisdiction. | 54954.3 | Ch. IV & V |

| | | |
|---|---|---|
| NON-DISCRIMINATORY FACILITIES: | | |
| Meetings may not be conducted in a facility that excludes persons on the basis of their race, religion, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. | 54953.2; 54961 | Ch. V |
| COPY OF RECORDING: | | |
| Public may obtain a copy, at cost, of an existing tape recording made by the legislative body of its public sessions, and to listen to or view the body's original tape on a tape recorder or viewing device provided by the agency. | 54953.5 | Ch. V |
| PUBLIC VOTE: | | |
| All votes, except for those cast in permissible closed session, must be cast in public. No secret ballots, whether preliminary or final, are permitted. | 54953(c) | Ch. VI |
| CLOSED MEETING ACTIONS/DOCUMENTS: | | |
| At an open session following a closed session, the body must report on final action taken in closed session under specified circumstances. Where final action is taken with respect to contracts, settlement agreements and other specified records, the public may receive copies of such records upon request. | 54957.1 | Ch. IV, V & VI |
| TAPING OR BROADCASTING: | | |
| Meetings may be broadcast, audio-recorded or video-recorded so long as the activity does not constitute a disruption of the proceeding. | 54953.5; 54953.6 | Ch. V |
| CONDITIONS TO ATTENDANCE: | | |
| Public may not be asked to register or identify themselves or to pay fees in order to attend public meetings. | 54953.3; 54961 | Ch. V |
| PUBLIC RECORDS: | | |
| Materials provided to a majority of a body which are not exempt from disclosure under the Public Records Act must be provided, upon request, to members of the public without delay. | 54957.5 | Ch. V |

## REQUIRED NOTICES AND AGENDAS

| | | |
|---|---|---|
| REGULAR MEETINGS: | | |
| Agenda containing brief general description (approximately twenty words in length) of each matter to be considered or discussed must be posted at least 72 hours prior to meeting. | 54954.2 | Ch. IV |
| SPECIAL MEETINGS: | | |
| Twenty-four hour notice must be provided to members of legislative body and media outlets including brief general description of matters to be considered or discussed. | 54956 | Ch. IV |
| EMERGENCY MEETINGS: | | |
| One hour notice in case of work stoppage or crippling activity, except in the case of a dire emergency. | 54956.5 | Ch. IV |
| CLOSED SESSION AGENDAS: | | |
| All items to be considered in closed session must be described in the notice or agenda for the meeting. A model format for closed-session agendas appears in section 54954.5. Prior to each closed session, the body must orally announce the subject matter of the closed session. If final action is taken in closed session, the body generally must report the action at the conclusion of the closed session. | 54954.2; 54954.5; 54957.1 and 54957.7 | Ch. IV |
| AGENDA EXCEPTION: | | |
| Special procedures permit a body to proceed without an agenda in the case of emergency circumstances, or where a need for immediate action came to the attention of the body after posting of the agenda. | 54954.2(b) | Ch. IV |

## CLOSED-SESSION MEETINGS

| | | |
|---|---|---|
| PERSONNEL EXEMPTION: | | |
| The body may conduct a closed session to consider appointment, employment, evaluation of performance, discipline or dismissal of an employee. With respect to complaints or charges against an employee brought by another person or another employee, the employee must be notified, at least 24 hours in advance, of his or her right to have the hearing conducted in public. | 54957 | Ch. VI |
| PUBLIC SECURITY: | | |
| A body may meet with law enforcement or security personnel concerning the security of public buildings and services. | 54957 | Ch. VI |
| PENDING LITIGATION: | | |
| A body may meet in closed session to receive advice from its legal counsel concerning existing litigation, initiating litigation, or situations involving a significant exposure to litigation. The circumstances which constitute significant exposure to litigation are expressly defined in section 54956.9(b)(3). | 54956.9 | Ch. VI |
| LABOR NEGOTIATIONS: | | |
| A body may meet in closed session with its negotiator to consider labor negotiations with represented and unrepresented employees. Issues related to budgets and available funds may be considered in closed session, although final decisions concerning salaries of unrepresented employees must be made in public. | 54957.6 | Ch. VI |
| REAL PROPERTY NEGOTIATIONS: | | |
| A body may meet in closed session with its negotiator to consider price and terms of payment in connection with the purchase, sale, exchange or lease of real property. | 54956.8 | Ch. VI |

## REMEDIES AND SANCTIONS

CIVIL REMEDIES:

| | | |
|---|---|---|
| Individuals or the district attorney may file civil lawsuits for injunctive, mandatory or declaratory relief, or to void action taken in violation of the Act. | 54960; 54960.1 | Ch. VII |
| Attorneys' fees are available to prevailing plaintiffs. | 54960.5 | |

CRIMINAL SANCTIONS:

| | | |
|---|---|---|
| The district attorney may seek misdemeanor penalties against a member of a body who attends a meeting where action is taken in violation of the Act, and where the member intended to deprive the public of information which the member knew or has reason to know the public was entitled to receive. | 54959 | Ch. VII |

Return to Main Body

# CHAPTER I.

## PURPOSE AND SCOPE

The Ralph M. Brown Act (Gov. Code, § 54950[1] et seq., hereinafter "the Brown Act," or "the Act") governs meetings conducted by local legislative bodies, such as boards of supervisors, city councils and school boards. The Act represents the Legislature's determination of how the balance should be struck between public access to meetings of multi-member public bodies on the one hand and the need for confidential candor, debate, and information gathering on the other. As the rest of this pamphlet will indicate, the Legislature has established a presumption in favor of public access. As the courts have stated, the purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies. (*Cohan* v. *City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.) To these ends, the Brown Act imposes an "open meeting" requirement on local legislative bodies. (§ 54953 (a); *Boyle* v. *City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116.)

However, the Act also contains specific exceptions from the open meeting requirements where government has a demonstrated need for confidentiality. These exceptions have been construed narrowly; thus if a specific statutory exception authorizing a closed session cannot be found, the matter must be conducted in public regardless of its sensitivity. (§ 54962; *Rowen* v. *Santa Clara Unified School District* (1981) 121 Cal.App.3d 231; 234; 68 Ops.Cal.Atty.Gen. 34, 41-42 (1985).)

Where matters are not subject to a closed meeting exception, the Act has been interpreted to mean that all of the deliberative processes by legislative bodies, including discussion, debate and the acquisition of information, be open and available for public scrutiny. (*Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41; 42 Ops.Cal.Atty.Gen. 61, 63 (1963); 32 Ops.Cal.Atty.Gen. 240 (1958).) The Act only applies to multi-member bodies such as councils, boards, commissions and committees since, unlike individual decision makers, such bodies are created for the purpose of reaching collaborative decisions through public discussion and debate.

A host of provisions combine to provide public access to the meetings of legislative bodies. For example, the times and dates of all meetings must be noticed and an agenda must be prepared providing a brief general description of all matters to be discussed or considered at the meeting. (§§ 54954, 54954.2.) As a precondition to attending the meeting, members of the public may not be asked to provide their names. (§ 54953.3.) While in attendance, members of the public may make video or audio recordings of the meeting. (§ 54953.5.) As a general rule, information given to a majority of the members of the legislative body in connection with an open meeting must be equally available to members of the public. (§ 54957.5.) Before or during consideration of each agenda item, the public must be given an opportunity to comment on the item. (§ 54954.3(a).)

---

[1] All statutory references are to the Government Code except as otherwise indicated.

While the Act creates broad public access rights to the meetings of legislative bodies, it also recognizes the legitimate needs of government to conduct some of its meetings outside of the public eye. Closed-session meetings are specifically defined and are limited in scope. They primarily involve personnel issues, pending litigation, labor negotiations and real property acquisitions. (§§ 54956.8, 54956.9, 54957, 54957.6.) Each closed-session meeting must be preceded by a public agenda and by an oral announcement. (§§ 54954.2, 54957.7.) When final action is taken in closed session, the legislative body may be required to report on such action. (§ 54957.1.)

The following chapters contain a more detailed discussion of the persons governed by the Act, the notice and agenda requirements, access rights of the public, limitations on closed sessions and available remedies for violation of the Act.

## CHAPTER II.

## BODIES SUBJECT TO THE BROWN ACT

The Brown Act applies to the "legislative bodies" of all local agencies in California, e.g., councils, boards, commissions and committees. (§§ 54951, 54952.) In addition, any person elected to serve as a member of a legislative body who has not assumed the duties of office shall conform his or her conduct to the requirements of the Act, and shall be treated for purposes of enforcement of the Act as if he or she had already assumed office. (§ 54952.1; see, 216 *Sutter Bay Associates* v. *County of Sutter* (1997) 58 Cal.App.4th 860.)

The Act does not apply to individual decision makers who are not elected or appointed members of legislative bodies such as agency or department heads when they meet with advisors, staff, colleagues or anyone else. Similarly, the Act does not apply to multi-member bodies which are created by an individual decision maker. (75 Ops.Cal.Atty.Gen. 263, 269 (1992); 56 Ops.Cal.Atty.Gen. 14, 17 (1973).) However, where a body directs or authorizes a single individual to appoint a body, it would probably be subject to the Act. (*Frazer* v. *Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793; *International Longshoremen's & Warehousemen's Union* v. *Los Angeles Expert Terminal, Inc.* (1999) 69 Cal.App.4th 287, 297.) Boards and commissions that are created by statute or ordinance are subject to the Act even if they are under the jurisdiction of an individual department head.

A single individual acting on behalf of an agency is not a "legislative body" since the definition of that term connotes a group of individuals. Thus, a hearing officer, functioning by himself or herself in an employee disciplinary hearing, is not a legislative body (*Wilson* v. *San Francisco Mun. Ry.* (1973) 29 Cal.App.3d 870, 878-879), nor is an individual city councilmember screening candidates for a vacant city office. (Cal.Atty.Gen., Indexed Letter, No. IL 76-181 (September 13, 1976).)

The Act applies to the meetings of "legislative bodies" of "local agencies." An understanding of each of these terms is necessary in order to properly apply the provisions of the Act to individual situations. These terms will be discussed in the following sections.

## 1. Local Agencies

Local agencies include all cities, counties, school districts, municipal corporations, special districts, and all other local public entities. (§ 54951.) The first determination one must make in assessing the applicability of the Act is whether the agency is local in nature. If the agency is essentially local in character, it is probably subject to the Act. (§ 54951.) If, however, the agency is a multi-member state body, the Bagley-Keene Act applies. (§ 11120 et seq.) The fact that an agency is created by state or federal law, rather than local ordinance, does not mean that the agency is not essentially local in character. (§ 54952(a).) Factors in assessing the local versus state character of a body may include: the geographical coverage of the agency, the duties of the agency, provisions concerning membership and appointment, or the existence of an oversight agency.

The issue of whether an agency is local or state in character was addressed in *Torres* v. *Board of Commissioners* (1979) 89 Cal.App.3d 545, in the context of determining whether a housing authority was subject to the Act. The court stated:

> "While a housing authority may be a state agency for some purposes . . . if it is within the Brown Act's definition of a local agency, it is simply not included within the State Act. We hold that a housing authority created by Health and Safety Code section 34200 et seq. is included within the statutory definition of a local agency under the Brown Act in that it is either an 'other local public agency' or a 'municipal corporation' or both, as those terms are used in Government Code section 54951.... The term 'municipal corporation' is broader than the term 'city,' particularly when the term 'city' already appears in the applicable statute. . . . In order to give meaning to the term 'municipal corporation' in Government Code section 54951 we hold that such term is not restricted to its technical sense of a 'city,' general law or charter, but rather includes such entities as housing authorities. . . . In addition, a housing authority is local in scope and character, restricted geographically in its area of operation, and does not have statewide power or jurisdiction even though it is created by, and is an agent of, the state rather than of the city or county in which it functions. . . .
>
> "Furthermore, as perceptively noted by the trial court, the placement of Government Code section 11120 and its history is some persuasive indication that the State Act was meant to cover executive departments of the state government and was not meant to cover local agencies merely because they were created by state law. A housing authority is no more a state agency under

> these acts than is a city or a county. The fact that such entities from time to time administer matters of state concern may make them state agents for such purposes but not state agencies under the open meeting acts." [Citations omitted.] (*Torres* v. *Board of Commissioners* (1979) 89 Cal.App.3d 545, 549-550.)

The Act has also been found to apply to an air pollution control district (71 Ops.Cal.Atty.Gen. 96 (1988)), a regional open space district (73 Ops.Cal.Atty.Gen. 1 (1990), and to such other local bodies as area and local voluntary health planning agencies (Cal.Atty.Gen., Indexed Letter, No. IL 72-79 (April 4, 1979).) The Act is a matter of statewide concern and, therefore, applies equally to charter and general law cities. (*San Diego Union* v. *City Council* (1983) 146 Cal.App.3d 947, 957.)

The Act does not apply to the judicial branch of government or boards and commissions which are an adjunct to the judiciary. (See Cal.Atty.Gen., Indexed Letter, No. IL 75-109 (June 3, 1975); Cal.Atty.Gen., Indexed Letter, No. IL 62-46 (May 15, 1962); Cal.Atty.Gen., Indexed Letter, No. IL 60-16 (February 14, 1960).) This office has also concluded the Act is not applicable to county central committees of a political party because they are neither public entities nor are they included in any of the special statutory provisions of the Act. (59 Ops.Cal.Atty.Gen. 162, 164 (1976).)

**2. Legislative Bodies**

Having concluded that the Act applies to bodies that are "local" in character, we turn now to a discussion of the requirement that such local bodies qualify as "legislative bodies" within the meaning of the Act. The term "legislative body" is not used in its technical sense in the Act. (§ 54952.) The Act's application is not limited to boards and commissions insofar as they perform "legislative" functions. Bodies that perform actions which are primarily executive or quasi-judicial in nature are also subject to the Act as well. (61 Ops.Cal.Atty.Gen. 220 (1978); 57 Ops.Cal.Atty.Gen. 189 (1974).)

In the past, the different types of bodies covered by the Act were set forth in several Government Code sections. This approach led to confusion with respect to the interrelationship between these sections and exemptions contained within them. (*Freedom Newspapers* v. *Orange County Employees Retirement System* (1993) 6 Cal.4th 821.) In 1994, the Legislature amended the Act to consolidate, into a single section, all of the provisions defining those bodies that are subject to the Act's requirements. (§ 54952.) By so doing, the Legislature hoped to clarify the definitions and the exemptions contained in them.

Below is a discussion of the various types of bodies that are defined as "legislative bodies" for purposes of the Act.

## A. Governing Bodies

The governing bodies of local government agencies are the most basic type of body subject to the Act's requirements. These include the board of supervisors of a county, the city council of a city or the governing board of a district. (§ 54952(a).) In addition, the Act expressly applies to local bodies created by state or federal statute. (§54952(a).) The board of directors for a joint powers authority would be covered as a governing body of a local agency; joint powers authorities are also covered because they are created according to a procedure established by state law. (§ 6500 et seq.)

## B. Subsidiary Bodies

Any board, commission, committee or other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body is itself a legislative body. (§ 54952(b).) Generally, this is the case regardless of whether the body is permanent or temporary, advisory or decisionmaking. However, there is a specific exemption for an advisory committee which is comprised solely of less than a quorum of the members of the legislative body that created the advisory body. (§ 54952(b).) This exception does not apply if the advisory committee is a standing committee. (§ 54952(b).) A standing committee is a committee which has continuing jurisdiction over a particular subject matter (e.g., budget, finance, legislation) or if the committee's meeting schedule is fixed by charter, ordinance, resolution or other formal action of the legislative body that created it. (See examples, *infra,* p. 6.)

The term "formal action" is used twice in section 54952(b) in connection with advisory committees and standing committees. The term "formal action of a legislative body" appears to be a term intended to distinguish between the official actions of the body and the informal actions of particular board members. For example, in *Joiner* v. *City of Sebastopol* (1981) 125 Cal.App.3d 799, 805, the court concluded that the city council had taken formal action by designating two of its members to sit on an advisory committee and establish the committee's agenda, even though the council did not act by formal resolution. Similarly, in *Frazer* v. *Dixon Unified School District* (1993) 18 Cal.App.4th 781, 792-793, the court indicated that a school board's authorization to the superintendent to appoint a committee under specified circumstances constituted a creation of an advisory committee by formal action of the board. "Formal action of a legislative body" is not limited to a formal resolution or a formal vote by the body.

When a legislative body designates less than a quorum of its members that does not constitute a standing committee to meet with representatives of another legislative body to exchange information and report back to their respective bodies, a meeting between the representatives would be exempt from the Act. (*Joiner* v. *City of Sebastopol* (1981) 125 Cal.App.3d 799, 805.) However, if a legislative body designates less than a quorum of its members to meet with representatives of another legislative body to

perform a task, such as the making of a recommendation, an advisory committee consisting of the representatives from both bodies would be created. Such a committee would be subject to the open meeting and notice provisions of the Act. (*Joiner* v. *City of Sebastopol* (1981) 125 Cal.App.3d 799, 805.) The fact that the advisory committee was contingent upon the second body's compliance does not detract from the conclusion that the creation of the committee must be attributed to the first body's action. (*Joiner* v. *City of Sebastopol* (1981) 125 Cal.App.3d 799, 805.)

The following illustrates how section 54952(b) operates. A city council creates four bodies to address various city problems.

- Commission comprised of councilmembers, the city manager and interested citizens: This committee is covered by the Act because there is no exemption for it regardless of whether it is decisionmaking or advisory in nature.

- Advisory committee comprised of two councilmembers for the purpose of reviewing all issues related to parks and recreation in the city on an ongoing basis: This committee is a standing committee which is subject to the Act's requirements because it has continuing jurisdiction over issues related to parks and recreation in the city.

- Advisory committee comprised of two city councilmembers for the purpose of producing a report in six months on downtown traffic congestion: This committee is an exempt advisory committee because it is comprised solely of less than a quorum of the members of the city council. It is not a standing committee because it is charged with accomplishing a specific task in a short period of time, i.e., it is a limited term ad hoc committee.

- Advisory committee comprised of two councilmembers to meet on the second Monday of each month pursuant to city council resolution: This committee is subject to the Act as a standing committee because its meeting schedule is fixed by the city council.

## C. Private or Nonprofit Corporations and Other Entities

Under specified circumstances, meetings of boards, commissions, committees or other multi-member bodies that govern private corporations, limited liability companies or other entities may become subject to the open meeting requirements of the Act. Ordinarily, these private corporations or other entities will be nonprofit corporations. In some instances, they are created by the governmental entity to support the efforts of the governmental entity. Other times they are privately created and, to some degree, may partner with a governmental entity to accomplish a common goal. (See Ed. Code, § 47604(a) [concerning possible application to charter schools].) The circumstances

that determine whether nonprofit corporations or other entities are governed by the Brown Act are set forth in section 54952(c).

The Act expressly applies to private corporations, limited liability companies and other entities that are created by the legislative body for the purpose of exercising authority which can be lawfully delegated to them. (§ 54952(c)(1); *Epstein* v. *Hollywood Entertainment District II Business Improvement District* (2000) 85 Cal.App.4th 152 [Property Owners Association covered because it received money from taxes on property and businesses within the Business Improvement District, and it was structured to assume certain administrative functions ordinarily performed by the city]; 85 Ops.Cal.Atty.Gen. 55 (2002) [Act covered private nonprofit corporation formed for the purpose of providing programming for a cable television channel set aside for educational use by a cable operator pursuant to its franchise agreement with a city and subsequently designated by the city to provide the programming services]; 81 Ops.Cal.Atty.Gen. 281, 290 (1998) [community redevelopment agency created nonprofit entity and delegated authority to it].) Typically, the entities subject to this subdivision will be nonprofit corporations established jointly by various government entities for the purpose of constructing, operating or maintaining a public works project or public facility. (*International Longshoremen's & Warehousemen's Union* v. *Los Angeles Expert Terminal, Inc.* (1999) 69 Cal.App.4th 287, 294.)

The Act also applies to the meetings of entities which receive funds from a local agency where the legislative body for the local agency appoints one of its members to the governing board of the entity as a voting member of the board. (§ 54952(c)(2).) The Act does not apply to boards of a nonprofit corporation or other entity where the legislative body appoints someone other than one of its own members to the governing body of such entity. It continues to be the law that the mere receipt of public funds by a nonprofit corporation or other entity does not subject it to the requirements of the Act.

## D. Hospital Lessees

The Act expressly applies to the meetings of lessees of hospitals pursuant to Health and Safety Code section 32121, subdivision (p), where the hospital or any part of it was first leased after January 1, 1994, where the lessee exercises any delegated authority of a local government agency, whether or not the lessee was organized and operated by the local government agency or a delegated authority. (§ 54952(d).)

## CHAPTER III.

## MEETING DEFINED

The term "meeting" is defined in section 54952.2 and expressly discusses several types of meeting formats. First, the term "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 matter which is under the subject matter jurisdiction of the agency. (§ 54952.2(a).) Under this definition, face to face gatherings of a legislative body in which issues under the subject matter jurisdiction of the body are discussed, decided or voted upon are meetings subject to the Brown Act. Informal gatherings such as lunches or social gatherings also would constitute meetings if issues under the subject matter jurisdiction of the body are discussed or decided by the member of the body. Second, the Act specifically prohibits 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. (§ 54952.2(b).) Most often this type of meeting is conducted through a series of communications by individual members or less-than-a-quorum groups, ultimately involving a majority of the body's members. These meetings are called serial meetings. The Act also expressly excludes specified gatherings from its definition of a meeting. (§ 54952.2(c).)

Specific issues relating to these meeting formats are discussed below.

### 1. Face to Face Meetings

The definition of the term "meeting" contained in section 54952.2(a) includes any congregation of a majority of the members of a body at the same time and place to hear, discuss or deliberate on any issue under the subject matter jurisdiction of the body. This definition makes it clear that the body need not take any action in order for a gathering to be defined as a meeting. A gathering is a meeting if a majority of the members of the body merely receive information or discuss their views on an issue. A meeting also covers a body's deliberations, including the consideration, analysis or debate of an issue, and any vote which may ultimately be taken. Under this construction, any gathering of a majority of the members of a body to receive information, hear a proposal, discuss an issue or take any action on an issue under the subject matter jurisdiction of the body is a meeting subject to the notice and open meeting requirements of the Act.

Under section 54952.2, as well as prior case law, a gathering need not be formally convened in order to be covered by the Act. In *Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, the court held that a luncheon gathering which included five county supervisors, the county counsel, a variety of county officers, and representatives of a union to discuss a strike which was under way against the county was a meeting within

the meaning of the Act. Therefore, the meeting should have been noticed and members of the media and public should have been admitted to witness the meeting. In reaching its conclusion, the court stated:

> "An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. The Elks Club luncheon, attended by the Sacramento County Board of Supervisors, was such a meeting." (*Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, 50-51; see also 42 Ops.Cal.Atty.Gen. 61 (1963) ["informal," "study," "discussion," "informational," "factfinding," or "precouncil" gatherings of a quorum of the members of a board are within the scope of the Act as meetings].)

The Act contains the following specific exemptions.

## A. Conferences and Retreats

The Act exempts conferences and similar gatherings, which are open to the public, that involve issues of interest to the public or to public agencies of the type represented by the legislative body in question, so long as the majority of the members of the legislative body do not discuss among themselves, other than as part of the scheduled program, any issues of a specific nature which are within the subject matter jurisdiction of the legislative body. (§ 54952.2(c)(2).) However, the conference need not necessarily be a conference of public agencies to fall within the exemption; rather, the gathering could be a conference of media outlets, environmental organizations, health care entities, social welfare organizations so long as the subject of the conference is related to the body's jurisdiction. The exemption for conferences does contain two limitations. First, a majority of the members of the legislative body in attendance at the conference may not caucus or discuss among themselves business of a specific nature within the body's jurisdiction. However, members may enter into discussions on issues or business affecting their local agency in a public forum as part of the scheduled program of the conference. Second, the conference must be open to the public, although the exemption specifically provides that a member of the public need not be provided with free admission where others are charged a fee.

Agency retreats, unlike conferences, do not involve a number of public agencies and interested individuals apart from the legislative body itself. Therefore, retreats continue to be subject to the open meeting and notice requirements of the Act.

## B. Other Public Meetings

When a majority of a legislative body attends an open and publicized meeting held by a person or organization, other than the local agency on a matter of local interest, the legislative body is not deemed to be conducting a meeting, so long as the members in attendance do not discuss among themselves, other than as part of the scheduled program, issues of a specific nature related to the subject matter jurisdiction of the body. (§ 54952.2(c)(3).) This exception applies to attendance at a meeting conducted by a private individual, or private organization, so long as the meeting concerns issues of local interest and is open to the public and well publicized in advance. Under the terms of the exception, members of a legislative body who attend a meeting conducted by another person or organization may not caucus or discuss among themselves specific business within the body's jurisdiction. However, a member of the legislative body may discuss issues related to the purpose of the meeting during public testimony. Candidate debates including incumbents and challengers would be permitted under this exception.

## C. Meetings of Other Legislative Bodies

When a majority of the legislative body attends an open and noticed meeting of another legislative body of the same or a different local agency, the legislative body is not deemed to be conducting a meeting, so long as the members in attendance do not discuss, among themselves, other than as part of the scheduled meeting, issues of a specific nature related to the subject matter jurisdiction of the body. (§ 54952.2(c)(4).) Thus, when a majority of a planning commission attends a meeting of the city council for the same city, it need not treat such attendance as a meeting of the planning commission for purposes of the Act. Similarly, when a majority of the members of a city council attend a meeting of the county board of supervisors, the city council is not conducting a meeting within the meaning of the Act. However, if two bodies conduct a joint meeting, each body should notice the meeting as a joint meeting of the two bodies. This exception, which is contained in section 54952.2(c)(4), does not apply when a majority of the members of a parent legislative body attend a meeting of a standing committee of the parent body. However, section 54952.2(c)(6) specifically addresses this issue. It provides that a majority of the parent body may attend an open and noticed meeting of a standing committee so long as the members who are not members of the standing committee and which cause a majority of the parent body to be present, attend only as observers. In 81 Ops.Cal.Atty.Gen. 156, 158 (1998), this office concluded that persons who attended solely as observers could not address the

committee by testifying, asking questions or providing information. In addition, the opinion concluded that observers could not sit at the dias.

### D. Social or Ceremonial Occasions

Attendance by a majority of the members of the legislative body at a purely social or ceremonial occasion is not deemed to be a meeting, so long as the members do not discuss among themselves specific business within the jurisdiction of the body. (§ 54952.2(c)(5).) This has long been the law in California. (*Sacramento Newspaper Guild* v. *Sacramento County Bd.* of *Suprs.* (1968) 263 Cal.App.2d 41; 43 Ops.Cal.Atty.Gen. 36, 38 (1964).) In practice, this prohibition may sometimes be difficult to observe since persons attending social or ceremonial occasions frequently wish to discuss specific issues with their governmental officials. However, where a majority of a legislative body is present, the members must not discuss specific business within the jurisdiction of the body to avoid violating the Act.

## 2. Serial Meetings

The issue of serial meetings stands at the vortex of two significant public policies: first, the constitutional right of citizens to address grievances and communicate with their elected representatives; and second, the Act's policy favoring public deliberation by multi-member boards, commissions and councils. The purpose of the serial meeting prohibition is not to prevent citizens from communicating with their elected representatives, but rather to prevent public bodies from circumventing the requirement for open and public deliberation of issues.

The Act expressly prohibits serial meetings that are conducted through direct communications, personal intermediaries or technological devices for the purpose of developing a concurrence as to action to be taken. (§ 54952.2(b); *Stockton Newspapers, Inc.* v. *Redevelopment Agency* (1985) 171 Cal.App.3d 95, 103.) This provision raises two questions: first, what is a serial meeting for purposes of this definition; and second, what does it mean to develop a concurrence as to action to be taken.

Typically, a serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members. For example, a chain of communications involving contact from member A to member B who then communicates with member C would constitute a serial meeting in the case of a five-person body. Similarly, when a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred. In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues. For example, when a representative of member A meets with representatives of members B and C to discuss an agenda item, the members have conducted a serial meeting through their representatives as intermediaries. The statutory definition also applies to situations in which technological devices are used to connect people at the same time

who are in different locations (but see the discussion below concerning the exception for teleconference meetings).

Once serial communications are found to exist, it must be determined whether the communications were used to develop a concurrence as to action to be taken. If the serial communications were not used to develop a concurrence as to action to be taken, the serial communications do not constitute a meeting and the Act is not applicable. In construing these terms, one should be mindful of the ultimate purposes of the Act -- to provide the public with an opportunity to monitor and participate in the decision-making processes of boards and commissions. As such, substantive conversations among members concerning an agenda item prior to a public meeting probably would be viewed as contributing to the development of a concurrence as to the ultimate action to be taken. Conversations which advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members, or advance the ultimate resolution of an issue, are all examples of communications which contribute to the development of a concurrence as to action to be taken by the legislative body. Accordingly, with respect to items that have been placed on an agenda or that are likely to be placed upon an agenda, members of legislative bodies should avoid serial communications of a substantive nature concerning such items.

Problems arise when systematic communications begin to occur which involve members of the board acquiring substantive information for an upcoming meeting or engaging in debate, discussion, lobbying or any other aspect of the deliberative process either among themselves or with staff. For example, executive officers may wish to brief their members on policy decisions and background events concerning proposed agenda items. This office believes that a court could determine that such communications violate the Act, because such discussions are part of the deliberative process. If these communications are permitted to occur in private, a large part of the process by which members reach their decisions may have occurred outside the public eye. Under these circumstances, the public would be able only to witness a shorthand version of the deliberative process, and its ability to monitor and contribute to the decision-making process would be curtailed. Therefore, we recommend that when the executive director is faced with this situation, he or she prepare a memorandum outlining the issues for all of the members of the board as well as the public. In this way, the serial meeting violation may be avoided and everyone will have the benefit of reacting to the same information.

However, this office does not think that the prohibition against serial meetings would prevent an executive officer from planning upcoming meetings by discussing times, dates, and placement of matters on the agenda. It also appears that an executive officer may receive spontaneous input from any of the board members with respect to these or other matters so long as a quorum is not involved.

The express language of the statute concerning serial meetings largely codifies case law developed by the courts and the opinions issued by this office in the past. In *Frazer* v. *Dixon Unified School District* (1993) 18 Cal.App.4th 781, 796-798, the court concluded that the Act applies equally to the deliberations of a body and its decision to take action. If a collective commitment were a necessary component of every meeting, the body could conduct most or all of its deliberation behind closed doors so long as the body did not actually reach agreement prior to consideration in public session. Accordingly, the court concluded that the collective acquisition of information constituted a meeting. The court cited briefing sessions as examples of deliberative meetings which are subject to the Act's requirements, and contrasted these sessions with activities that fall outside the purview of the Act, such as the passive receipt of an individual's mail or the solitary review of a memorandum by an individual board member.

In *Stockton Newspapers, Inc.* v. *Redevelopment Agency* (1985) 171 Cal.App.3d 95, 105, the court concluded that a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting. In that case, the attorney individually polled the members of the body for their approval on a real estate transaction. The court concluded that even though the meeting was conducted in a serial fashion, it nevertheless was a meeting for the purposes of the Act. (See also, 65 Ops.Cal.Atty.Gen. 63, 66 (1982); 63 Ops.Cal.Atty.Gen. 820, 828-829 (1980).)

### 3. Individual Contacts Between Members of the Public and Board Members

The prohibition against serial meetings must be reconciled with the exemption for individual contacts and communications contained in section 54952.2(c)(1). Individual contacts or communications between a member of a legislative body and any other person are specifically exempt from the definition of a meeting. (§ 54952.2(c)(1).) The purpose of this exception appears to be to protect the constitutional rights of individuals to contact their government representatives regarding issues which concern them. To harmonize this exemption with the serial meeting prohibition, the term "any other person" is construed to mean any person other than a board member or agency employee. Thus, while this provision exempts from the Act's coverage conversations between board members and members of the public, it does not exempt conversations among board members, or between board members and their staff.

By using the words "individual contacts or conversations" it appears that the Legislature was attempting to ensure that individual contacts would not be defined as a meeting, while still preventing the members of a body from orchestrating contacts between a private party and a quorum of the body. Accordingly, if a member of the public requests a conversation with an individual member of the board, who then acts independently of the board and its other members in deciding whether to talk with the member of the public, no meeting will have occurred even if the member of the public ultimately meets with a quorum of the body.

## 4. Teleconference Meetings

The prohibition against serial meetings specifically exempts teleconference meetings conducted according to the procedures set forth in section 54953(b). All other teleconference meetings are prohibited. (§ 54952.2(b).)

A teleconference meeting is a meeting in which one or more members of the body attend the meeting from a remote location via electronic means, transmitting audio or audio/video. A meeting is not subject to the teleconference meeting requirements where only the staff members or other persons retained to advise the body appear from remote locations via audio or audio/visual transmission, where it is in the public interest to do so. A local agency may, at its discretion, permit the public to attend its meetings from additional remote locations.

Section 54953(b) authorizes the conduct of meetings by legislative bodies through teleconferencing under specified circumstances. Teleconferencing may be used for all purposes in conjunction with any meeting within the subject matter jurisdiction of the body. However, at least a quorum of the members of the body must participate from locations that are within the boundaries over which the body exercises jurisdiction. All votes taken during a teleconference meeting must be conducted by rollcall.

The biggest issue surrounding the use of teleconference meetings concerns the public's access to the meeting. The Act requires that each teleconference location must be fully accessible to members of the public. This means that members of the body who choose to utilize their homes or offices as teleconference locations must open these locations to the public and accommodate any member of the public who wishes to attend the meeting at that location. Moreover, members of the public must be able to hear the meeting and testify from each location. Finally, the teleconference location must be accessible to the disabled. Because of these requirements, most agencies choose to utilize official or public meeting facilities for their remote teleconference sites.

When a body elects to use teleconferencing, it must post an agenda at each teleconference location and list each teleconference location in the notice and agenda. Each teleconference meeting must be conducted in such a manner so as to protect the statutory and constitutional rights of the public. Each teleconference meeting agenda must ensure the public's right to testify at each teleconference location in accordance with section 54954.3.

In 84 Ops.Cal.Atty.Gen. 181 (2001), a disabled boardmember asked if, under the federal Americans with Disabilities Act, a body were required to utilize the teleconference meeting provisions to permit him to participate in a meeting where his disability prevented him from attending. In this situation, the public would not receive notice of the teleconference meeting location nor would they have access to the remote site from where the disabled member would attend. Under these circumstances, this office concluded that the teleconference provisions were not available because the public would not have access to the remote site.

### 5. Writings as Meetings

Historically, meetings have not commonly occurred through written instruments; however, the court found that circulation of a proposal among board members for their review and signature was found to be a meeting in violation of the Act when a majority of the members of a legislative body signed the document. (*Common Cause* v. *Stirling* (1983) 147 Cal.App.3d 518, 523-524.) However, the emergence of e-mail as a simple and effective means of communication has raised this issue in a fresh context. In 84 Ops.Cal.Atty.Gen. 30 (2001), this office concluded that a majority of a body would violate the Act if they e-mailed each other regarding current issues under the body's jurisdiction even if the e-mails were also sent to the secretary and chairperson of the agency, the e-mails were posted on the agency's Internet Web site, and a printed version of each e-mail was reported at the next public meeting of the body. The opinion concluded that these safeguards were not sufficient to satisfy either the express wording of the Act or some of its purposes. Specifically, such e-mail communications would not be available to persons who do not have Internet access. Even if a person had Internet access, the deliberations on a particular issue could be completed before an interested person had an opportunity to become involved.

In the case of *Roberts* v. *City of Palmdale* (1993) 5 Cal.4th 363, 381, the California Supreme Court stated that a memorandum from a body's attorney to the members of the body did not constitute a meeting under the Act. The court concluded that this one-way memorandum, which represented a confidential attorney-client communication exempt from disclosure under the California Public Records Act, was outside the coverage of the Act. Under the California Public Records Act, the memorandum was expressly exempt from disclosure pursuant to section 6254(k). Had the members of the body sought to meet and discuss the memorandum, such a meeting would have been subject to the Act and could have been conducted in closed session only if it qualified under the pending litigation exception contained in section 54956.9. Any other conversations between the members of the body and the attorney concerning the exempt memorandum would be subject to the serial meeting restrictions discussed previously.

## CHAPTER IV.

## NOTICE AND AGENDA REQUIREMENTS

The Brown Act provides for three different types of meetings. Regular meetings occur at a time and location generally set by ordinance, resolution, or by-laws. At least 72 hours prior to a regular meeting, an agenda must be posted which contains a brief general description of each item to be transacted or discussed at the meeting. Special meetings may be called at any time but notice must be received at least 24 hours prior to the meeting by all members of the body and by all media outlets that have requested notice in writing. Emergency meetings, which are extraordinarily rare, may be called upon one-hour notice to media outlets that have requested notice in writing.

In addition to the pre-meeting notices and agendas discussed above, the Act requires two other types of disclosures. First, prior to meeting in closed session, a representative of the body must orally announce the items to be discussed in closed session. (§ 54957.7(a).) Generally, this requirement may be satisfied by referring to the numbered item on the agenda which describes the closed session in question. However, when the agency is meeting in closed session because of significant exposure to pending litigation as described in section 54956.9(b), the statement may need to include additional information as set forth in that section. (See discussion of pending litigation *infra.)*

Second, at the conclusion of each closed session, the agency must reconvene into open session. If any final decisions have been made in the closed-session meeting, a report may be required. (§ 54957.1.)

The Act also contains specific requirements with respect to adjourning or continuing meetings. (§§ 54955; 54955.1.) Lastly, unless specifically exempted, all meetings must be conducted within the geographical boundaries of the body's jurisdiction. (§ 54954(b).)

## 1. Regular Meetings

Each legislative body, except for advisory bodies and standing committees, shall provide for the time and place for regular meetings by ordinance, resolution, or by-laws. (§ 54954(a).) If a body calls a meeting at a time or place other than the time or place specified for regular meetings, it is either a special or emergency meeting. Accordingly, the body must satisfy the appropriate notice requirement, and should indicate the type of meeting on the notice. Even where it is not required, the body may wish to provide additional notice in the form of the type of notice and agenda provided for a regular meeting.

Meetings of advisory bodies and standing committees for which 72-hour notice is provided, pursuant to section 54954.2, are considered regular meetings. (§ 54954(a).)

### A. Agenda Requirement

At least 72 hours prior to a regular meeting, the body must post an agenda containing a brief general description of each item to be discussed or transacted at the meeting, including items to be discussed in closed session. (§ 54954.2(a).) The Act makes it clear that discussion items must be placed on the agenda, as well as items which may be the subject of action by the body.

The purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body. In *Carlson* v. *Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, the court interpreted the agenda requirements

set forth in section 966 of the Education Code. That section required ". . . [a] list of items that will constitute the agenda for all regular meetings shall be posted. . . ." (*Carlson* v. *Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, 199.) In interpreting this section, the court stated:

> "In the instant case, the school board's agenda contained as one item the language 'Continuation school site change.' This was entirely inadequate notice to a citizenry which may have been concerned over a school *closure*.
>
> "On this point alone, we think the trial court was correct because the agenda item, though not deceitful, was entirely misleading and inadequate to show the whole scope of the board's intended plans. It would have taken relatively little effort to add to the agenda that this 'school site change' also included the discontinuance of elementary education at Canyon View and the transfer of those students to Ponderosa School." (*Carlson* v. *Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, 200, original emphasis; see also 67 Ops.Cal.Atty.Gen. 84, 87 (1984).)

However, the Legislature in section 54954.2 placed an important gloss on the requirement to provide a brief general description. That section expressly provides that the brief general description generally need not exceed 20 words in length. Thus, absent special circumstances, the legislative body may use a short description of less than 20 words to provide essential information about the item to members of the public. Where necessary, legislative bodies are free to provide a more detailed description, but as a general rule, they need not feel any obligation to do so (for more information about closed-session agenda description, see discussion *infra*).

In 78 Ops.Cal.Atty.Gen. 327, 331-332 (1995), this office concluded that the 72-hour notice requirement mandates local agencies to post their notices in locations which are accessible 24 hours a day for the 72 hours prior to the meeting. Accordingly, notices cannot be placed in buildings which are locked for some portion of the 72 hours immediately prior to the meeting.

The agenda requirement does not apply when certain unnoticed topics are discussed at a noticed meeting. For example, there is an exception for when a member of the body or a member of its staff, on his or her own initiative, or in response to a question from the public, asks a question for clarification, makes a brief announcement or makes a brief report on his or her own activities. (§ 54954.2(a).) In addition, any member of the body or the body as a whole, 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. (§ 54954.2(a).)

Section 54954.2 also contains specific procedures by which the agenda requirement may be avoided in other specified circumstances as well. (§ 54954.2(b).)

## B. Exceptions to Agenda Requirements

The Act identifies three situations in which a body is permitted to discuss or take action on a matter at a regular meeting where the matter was not first described on a duly noticed agenda. (§ 54954.2(b).) Prior to discussing a matter which was not previously placed on an agenda, the item must be publicly identified so that interested members of the public can monitor or participate in the consideration of the item in question.

The body may discuss a nonagenda item at a regular meeting if, by majority vote, the body determines that the matter in question constitutes an emergency pursuant to section 54956.5. (§ 54954.2(b)(1).) Any discussion held pursuant to this exception must be conducted in open session, since emergency meetings held pursuant to section 54956.5 cannot be conducted in closed session.

The body may discuss an item which was not previously placed upon an agenda at a regular meeting, when the body determines that there is a need for immediate action which cannot reasonably wait for the next regularly scheduled meeting. (§ 54954.2(b)(2).) However, the Act specifies that in order to take advantage of this agenda exception, the need for immediate action must have come to the attention of the local "agency" after the agenda had already been posted. (§ 54954.2(b)(2).) The Legislature's choice of the term "agency" rather than "body" seems calculated to limit use of this exception by prohibiting its usage if the local agency, i.e. staff, and not merely the body, had knowledge of the situation requiring action prior to the posting of the agenda. Lastly, the determination that a need for immediate action exists must be made by two-thirds of the members present or, if two-thirds of the body is not present, by a unanimous vote of those remaining. (§ 54954.2(b)(2).)

Finally, where an item has been posted on an agenda for a prior meeting, the item may be continued to a subsequent meeting that is held within five days of the meeting for which the item was properly posted. Under these circumstances, the items need not be posted for the subsequent meeting. (§ 54954.2(b)(3); see also, §§ 54955-55.1 [concerning adjournment and continuances], *infra* at p. 25.)

## C. Public Testimony

Every agenda for a regular meeting shall provide an opportunity for members of the public to directly address the legislative body on any item under the subject matter

jurisdiction of the body. With respect to any item which is already on the agenda, or in connection with any item which the body will consider pursuant to the exceptions contained in section 54954.2(b), the public must be given the opportunity to comment before or during the legislative body's consideration of the item. (§ 54954.3(a).) The public testimony requirement appears to apply to closed sessions as well as open meetings, but see section 11125.7(d) of the Bagley-Keene Act, concerning state bodies, which was added in 1993 to expressly provide otherwise. Accordingly, this office believes that it would be prudent for legislative bodies to afford the public an opportunity to comment on closed-session items prior to the body's adjournment into closed session. The only exception to the public testimony requirement is where a committee comprised solely of members of the legislative body has previously considered the item at a public meeting in which all members of the public were afforded the opportunity to comment on the item before or during the committee's consideration of it, so long as the item has not substantially changed since the committee's hearing. (§ 54954.3(a).)

Where a member of the public raises an issue which has not yet come before the legislative body, the item may be briefly discussed but no action may be taken at that meeting. (§ 54954.3(a).) The purpose of the discussion is to permit a member of the public to raise an issue or problem with the legislative body or to permit the legislative body to provide information to the public, provide direction to its staff, or schedule the matter for a future meeting. (§ 54954.2(a).)

The Act specifically authorizes the legislative body to adopt regulations to assist in processing comments from the public. The body may establish procedures for public comment as well as specifying reasonable time limitations on particular topics or individual speakers. So long as the body acts fairly with respect to the interest of the public and competing factions, it has great discretion in regulating the time and manner, as distinguished from the content, of testimony by interested members of the public. (§ 54954.3(b).)

When a member of the public testifies before a legislative body, the body may not prohibit the individual from criticizing the policies, procedures, programs or services of the agency or the acts or omissions of the legislative body. (§ 54954.3(c).) This provision does not confer on members of the public any privilege or protection not otherwise provided by law.

Public meetings of governmental bodies have been found to be limited public fora. As such, members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body. Any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. Specifically, the courts found that policies that prohibited members of the public from criticizing school district employees were unconstitutional. (*Leventhal* v.

*Vista Unified School Dist.* (1997) 973 F.Supp. 951; *Baca* v. *Moreno Valley Unified School Dist.* (1996) 936 F.Supp. 719.) These decisions found that prohibiting critical comments was a form of viewpoint discrimination, and that such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue.

In 78 Ops.Cal.Atty.Gen. 224, 230 (1995), this office opined that the body could prohibit a speaker from making comments that were outside the body's jurisdiction. However, when applying this opinion, the body must take into account the court's broad decisions as discussed above.

## 2. Special Meetings

Under the Act, the presiding officer or a majority of the body may call a special meeting. So long as substantive consideration of agenda items does not occur, a majority may meet without providing notice to the public in order to call the meeting and prepare the agenda. (*216 Sutter Bay Associates* v. *County of Sutter* (1997) 58 Cal.App.4th 860, 881-882.) Notice of a special meeting must be provided 24 hours in advance of the meeting to all of the legislative body members and to all media outlets who have requested notification. (§ 54956; 53 Ops.Cal.Atty.Gen. 245, 246 (1970).) The notice also must be posted at least 24 hours prior to the meeting in a location freely accessible to the public. The notice should indicate that the meeting is being called as a special meeting, and shall state the time, place, and business to be transacted at the meeting. No other business shall be considered at the special meeting. Notice is required even if the meeting is conducted in closed session, and, even if no action is taken. A member of the local body may waive failure to receive notice of the meeting by filing a written waiver prior to the meeting or by being present at the meeting.

At every special meeting, the legislative body shall provide the public with an opportunity to address the body on any item described in the notice before or during consideration of that item. (§ 54954.3(a).) The special meeting notice shall describe the public's rights to so comment. (§ 54954.3(a).)

## 3. Emergency Meetings

When a majority of the legislative body determines that an emergency situation exists, it may call an emergency meeting. (§ 54956.5.) The Act defines an emergency as a crippling activity, work stoppage or other activity which severely impairs public health, safety or both. (§ 54956.5(a)(1).) Absent a dire emergency, telephonic notice must be provided to all media outlets that have requested that they receive notice of any special meetings called pursuant to section 54956 at least one hour prior to the meeting. (§ 54956.5(b).) In the case of a dire emergency, notice need only be provided at or near the time that notice is provided to the members of the body. (§ 54956.5(b).) A dire emergency is a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and

significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body. (§ 54956.5(a)(2).)

In the event telephone services are not working, the notice requirements are waived, but a report must be given to media outlets as soon as possible after the meeting. Except for the 24-hour notice requirement, the provisions of section 54956 relating to special meetings apply to the conduct of emergency meetings. (§ 54956.5(d).) At the conclusion of the meeting, the minutes of the meeting, a list of persons who the legislative body notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible. (§ 54956.5(e).)

As a general rule, emergency meetings may not be held in closed session. However, a legislative body may meet in closed session for purposes of consulting with law enforcement or security officials under section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present. (§ 54956.5(c).)

## 4. Closed Sessions

There are three types of "notice" obligations that accompany the conduct of a closed-session as a part of a duly noticed meeting. First, each item to be transacted or discussed in a closed session must be briefly described on an agenda for the meeting. (§ 54954.2(a).) Second, prior to adjourning into closed session, a representative of the legislative body must orally announce the items to be discussed in closed session. (§ 54957.7(a).) This requirement may be satisfied by merely referring to the relevant portion of the written agenda for the meeting. However, the Act contains specific additional requirements for closed sessions regarding pending litigation where the body believes it is subject to a significant exposure to potential litigation. (§ 54956.9(b)(3).) Third, once the closed session has been completed, the agency must reconvene in open session, where it may be required to report votes and actions taken in closed session. (§ 54957.1.) These requirements are discussed in detail below.

### A. Agenda Requirement

At least 72 hours prior to each regular meeting, legislative bodies must prepare an agenda containing a brief general description of each item to be transacted or discussed, including items which will be handled in closed session. (§ 54954.2(a).) A description of each item generally need not exceed 20 words, although the description must be sufficient to provide interested persons with an understanding of the subject matter which will be considered. *(Carlson* v. *Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, 200.) In the case of pending litigation, the legislative body must make reference in the agenda or publicly announce the specific subsection of section 54956.9 under which the closed session is being held. (§ 54956.9(c).)

In order to assist legislative bodies in preparing agendas for closed-session meetings, the Legislature enacted section 54954.5 which establishes a model format for closed-session agendas. Use of the model format is strictly voluntary on the part of the body. However, substantial compliance with the model format assures the legislative body that it will not be found in violation of the agenda requirements of section 54954.2. Substantial compliance with the model format in section 54954.5, therefore, provides a "safe harbor" from liability under the Act's agenda requirements. Substantial compliance is satisfied by including the information contained in the model format, irrespective of the form in which it is ultimately presented. (§ 54954.5.)

The model format, which comprises the safe harbor provisions, adopts a fill-in-the-blank approach. The format is well suited to placement on a personal computer where descriptive information concerning specific agenda items can be inserted as appropriate. The safe harbor provisions concerning real property negotiations are set forth below and are illustrative of the format. (All of the safe harbor provisions are contained in the appendix in § 54954.5.)

> (b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:
>
> CONFERENCE WITH REAL PROPERTY NEGOTIATORS
>
> Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)
>
> Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)
>
> Negotiating parties: (Specify name of party (not agent))
>
> Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

It is noteworthy that the closed-session provisions concerning negotiations specifically require the body to identify the individuals who will be attending the closed session as negotiators. (§§ 54956.8; 54957.6)

The safe harbor provisions concerning litigation and personnel have been tailored to protect the confidentiality interests of the agency, and employees who potentially are the subject of discipline. Thus, the safe harbor provisions require less specificity when the agenda deals with such matters.

Although the safe harbor provisions are primarily designed to fulfill the agenda requirements for regular meetings, the provisions also can be used in connection with closed sessions at special meetings called pursuant to section 54956. (§ 54954.5.)

## B. Oral Announcement Prior to Closed Sessions

In addition to the agenda requirement for regular and special meetings, the Act requires a representative of the legislative body to orally announce the items to be discussed in closed session prior to any closed-session meeting. (§ 54957.7(a).) This requirement may be satisfied by referring to the item by number as it appears on the agenda.

However, such a referral usually would not be sufficient in the case of a closed session concerning significant exposure to litigation.

Pursuant to section 54956.9, a closed session may be conducted in order to permit an agency to receive advice from its legal counsel. When the impetus for such a closed session is the agency's exposure to potential litigation, the Act carefully regulates the circumstances under which a closed session may be called, and the types of announcement which must accompany such a meeting. (§ 54956.9(b)(3).) These required disclosures may be made as a part of the written agenda or as a part of the oral announcement made prior to any closed session. These requirements do not mandate disclosure of privileged communications exempt from disclosure under the Public Records Act. (§ 54956.9(b)(3)(F).) A summary of the disclosure requirements surrounding closed sessions based on an agency's exposure to potential litigation is set forth below.

- Where the agency believes that facts creating significant exposure to litigation are not known to potential plaintiffs, the facts need not be disclosed. (§ 54956.9(b)(3)(A).)

- Where facts (e.g., an accident, disaster, incident, or transaction) creating significant exposure to litigation are known to potential plaintiffs, the facts must be publicly stated on the agenda or announced. (§ 54956.9(b)(3)(B).)

- Where the agency receives a claim or other written communication threatening litigation, reference to the claim or communication must be publicly stated on the agenda or announced, and the claim or

communication must be available for public inspection pursuant to section 54957.5. (§ 54956.9(b)(3)(C).)

- Where a person makes a statement in an open and public meeting threatening litigation, reference to the statement must be publicly stated on the agenda or announced. (§ 54956.9(b)(3)(D).)

- Where a person makes a statement outside of an open and public meeting threatening litigation, the agency may not conduct a closed session unless an agency official having knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting. Reference to the statement must be publicly stated on the agenda or announced, and the record must be available for public inspection pursuant to section 54957.5. However, the record, or the disclosable part thereof, need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making a threat on their behalf, or identify a public employee who is the alleged perpetrator of any such conduct, unless the identity of the person has been publicly disclosed. (§ 54956.9(b)(3)(E).)

## C. Report at the Conclusion of Closed Sessions

Once a closed session has been completed, the legislative body must convene in open session. (§ 54957.7(b).) If the legislative body took final action in the closed session, the body may be required to make a report of the action taken and the vote thereon to the public at the open session. (§ 54957.1(a).) The report may be made either orally or in writing. (§ 54957.1(b).) In the case of a contract or settlement of a lawsuit, copies of the document also must be disclosed as soon as possible. (§ 54957.1(b) and (c).) If final action is contingent upon another party, the legislative body is under no obligation to release a report about the closed session. Once the other party has acted, making the decision final, the legislative body is under an obligation to respond to inquiries for information by providing a report of the action. (§ 54957.1(a).)

With respect to litigation, approval given to the body's legal counsel to defend, to seek or refrain from seeking appellate review, or to appear as amicus curiae in any case resulting from a closed-session meeting held pursuant to section 54956.9 shall be reported in open session. (§ 54957.1(a)(2).) The report shall identify the adverse parties and the substance of the litigation. Where the body has decided to initiate litigation or intervene in an existing case, the report shall indicate that fact but need not identify the action, the parties, or other particulars. The report shall specify that once the litigation or intervention has been formally commenced, the body must, upon inquiry, disclose such information, unless to do so would jeopardize service of process or existing settlement negotiations. (§ 54957.1(a)(2).)

With respect to a personnel decision, any action taken to appoint or employ an individual must be reported at the meeting. Such a report would ordinarily include the name of the individual, but the Act specifically requires that the name of the position be reported. (§ 54957.1(a)(5).) In *Gillespie* v. *San Francisco Pub. Library Comm'n* (1998) 67 Cal.App.4th 1165, a library commission met in closed session to nominate three candidates for consideration by the mayor for appointment as city librarian. Plaintiff contended that the commission was required to announce the names of the nominees at the conclusion of the closed session. The court held that the requirement to announce appointments was not applicable because the commission had merely made a recommendation, not an appointment.

With respect to a dismissal or a refusal to renew an employment contract, the report shall be deferred until the first public meeting after the exhaustion of administrative remedies.

With respect to labor negotiations conducted pursuant to section 54957.6, the approval of an agreement concluding labor negotiations shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties. (§ 54957.1(a)(6).)

No action for injury to a reputational, liberty, or other personal interest may be commenced by an employee or former employee based upon the report made by the legislative body in an attempt to comply with section 54957.1. (§ 54957.1(e).)

## 5. Adjournments and Continuances

Regular and special meetings may be adjourned to a future date. (§ 54955.) If the subsequent meeting is conducted within five (5) days of the original meeting, matters properly placed on the agenda for the original meeting may be considered at the subsequent meeting. (§ 54954.2(b)(3).) If the subsequent meeting is more than five (5) days from the original meeting, a new agenda must be prepared and posted pursuant to section 54954.2. Hearings continued pursuant to section 54955.1 are subject to the same procedures.

When a meeting is adjourned to a subsequent date, notice of the adjournment must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment. When less than a quorum of a body appears at a noticed meeting, the body may either meet as a committee of the parent body or adjourn to a future date pursuant to the provisions of sections 54955 or 54954.2(b)(3). If no members of the legislative body appear at a noticed meeting, the clerk may adjourn the meeting to a future date and provide notice to members of the legislative body and to the media in accordance with the special meeting notice provisions set forth in section 54956.

## 6. Location of Meetings

As a general rule, regular and special meetings shall be held within the boundaries of the territory over which the legislative body has jurisdiction. (§ 54954(b).) Accordingly, a city council must meet within the city; a county board of supervisors must meet within the county; and boards of directors for special districts must meet within the special district. Gatherings which are not meetings, as set forth in section 54952.2(c) (e.g., conferences, social activities, and attendance at open and public meetings held by others) are not subject to the Act, and therefore are not covered by the boundary restriction. In addition, the Act contains a number of specific exemptions from the boundary requirement. (§ 54954.) The fact that a meeting is exempt from the boundary requirement does not exempt the legislative body from the notice and open meeting requirements of the Act. A summary of the boundary exemptions is set forth below.

A legislative body must meet within its boundaries except to do any of the following:

- Comply with state or federal law or any court order. (§ 54954(b)(1).)
- Inspect real property located outside the jurisdiction or personal property which would be inconvenient to bring inside the jurisdiction. (§ 54954(b)(2).)
- Participate in meetings or discussions of multiagency significance so long as the meetings are held in the jurisdiction of one of the agencies and proper notice is provided by all bodies subject to the Act. (§ 54954(b)(3).)
- Meet in the nearest available facility if the legislative body has no meeting facility within the jurisdiction, or at the principal office of the legislative body if they are located outside the jurisdiction. (§ 54954(b)(4).)
- Meet with federal or California officials on a legislative or regulatory issue affecting the local agency and over which the state or federal officials have jurisdiction. (§ 54954(b)(5).)
- Meet in or nearby a facility owned by the local agency so long as the topic of the meeting is directly related to the facility itself. (§ 54954(b)(6).)
- Visit the office of the body's legal counsel for a closed session held on pending litigation held pursuant to section 54956.9, when to do so would reduce legal fees or costs. (§ 54954(b)(7).)

In addition to the foregoing, governing boards of school districts have the following exemptions from the requirement to meet within their boundaries:

- Attend a conference on nonadversarial collective bargaining techniques. (§ 54954(c)(1).)

- Interview a potential employee from another district or interview the public from another district about the employment of a superintendent from that district. (§ 54954(c)(2) and (c)(3).)

Joint powers agencies must meet within the jurisdiction of one of its member agencies unless an exemption contained in section 54954(b) is applicable. (§ 54954(d).) A joint powers agency with members throughout the state may meet anywhere in the state.

Where a meeting place is unsafe because of emergency circumstances, the presiding officer of the legislative body shall designate the meeting place pursuant to specified notice requirements. (§ 54954(e).)

### 7. Special Procedures Regarding Taxes and Assessments

Section 54954.6 establishes a series of procedures which must be followed when a legislative body proposes new or increased taxes or assessments. These procedures are in addition to the notice and open meeting requirements contained elsewhere in the Act.

## CHAPTER V.

## RIGHTS OF THE PUBLIC

Under the Brown Act, a member of the public can attend a meeting of a legislative body without having to register or give other information as a condition of attendance. (§ 54953.3; see also 27 Ops.Cal.Atty.Gen. 123 (1956).) If a register, questionnaire or similar document is posted or circulated at a meeting, it must clearly state that completion of the document is voluntary and not a precondition for attendance. (§ 54953.3.) A legislative body may not prohibit any person attending an open meeting from video recording, audio recording or broadcasting the proceedings, absent a reasonable finding that such activity would constitute a disruption of the proceedings. (§§ 54953.5, 54953.6; *Nevens* v. *City of Chino* (1965) 233 Cal.App.2d 775, 779; see also § 6091.)

Under the Act, the public is guaranteed the right to provide testimony at any regular or special meeting on any subject which will be considered by the legislative body before or during its consideration of the item. (§ 54954.3(a).) In 80 Ops.Cal.Atty.Gen. 247, 248-252 (1997), this office concluded under a similar provision in the Bagley-Keene Act that the public's right to comment on all agenda items

applied to quasi-judicial proceedings as well as quasi-legislative proceedings. In addition, the public has the right at every regular meeting to provide testimony on any matter under the legislative body's jurisdiction. (§ 54954.3(a).) However, this office concluded that a body could prohibit a member of the public from speaking on a matter that was outside the jurisdiction of the body. (78 Ops.Cal.Atty.Gen. 224, 230 (1995).)

The Act specifically authorizes the legislative body to adopt regulations to assist in processing comments from the public. The body may establish general procedures for public comment as well as specifying reasonable time limitations on particular topics or individual speakers. So long as the body acts fairly with respect to the interest of the public and competing factions, it has great discretion in regulating the time and manner, as distinguished from the content, of testimony by interested members of the public. (§ 54954.3(b).)

The Act provides that the legislative body shall not prohibit a member of the public from criticizing the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. (§ 54954.3(c).) Public meetings of governmental bodies have been found to be limited public fora. As such, members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body. Any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. Specifically, the courts found that policies that prohibited members of the public from criticizing school district employees were unconstitutional. (*Leventhal* v. *Vista Unified School Dist.* (1997) 973 F.Supp. 951; *Baca* v. *Moreno Valley Unified School Dist.* (1996) 936 F.Supp. 719.) These decisions found that prohibiting critical comments was a form of viewpoint discrimination, and that such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue.

Despite the public's rights to attend meetings as discussed above, a legislative body may exclude all persons who willfully cause a disruption of a meeting so that it cannot be conducted in an orderly fashion. Where removal of the disruptive persons is not sufficient to restore order, the body may clear the room of all persons. (§ 54957.9.) However, in such situations, media personnel not involved in the disturbance must be permitted to attend the session as continued. (§ 54957.9.)

Agendas or any other writings, except for records exempt from disclosure under section 6254 of the Public Records Act, distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public upon request, and shall be made available without delay to members of the public in accordance with the provisions of section 54957.5. If materials are provided prior to a meeting, the materials should, upon request and without delay, be made available to the public upon request at the time of distribution to the body. (§ 54957.5(a).) If the materials are distributed to the members of the body by the agency at the meeting, the materials should be available to the public at that time as well. Materials provided at the meeting by a person, who is not a member of the body or employee of the local agency, must be made available by the body to the public at the conclusion of the meeting. (§ 54957.5(b).)

Members of the public who make written requests for documents which were finally approved in a closed session generally may receive copies of such documents at the conclusion of the meeting. (§ 54957.1(b).) This right to obtain documents does not include documents which are exempt from disclosure pursuant to section 6254 of the Public Records Act. (*Roberts* v. *City of Palmdale* (1993) 5 Cal.4th 363, 370-373; Cal.Atty.Gen., Indexed Letter, No. IL 77-67 (April 28, 1977).) Pursuant to section 6253(c), a fee equal to the direct cost of duplication may be charged to any person requesting a copy of a public record. (§ 54957.5(c)); *North County Parents Organization for Children with Special Needs* v. *California Department of Education* (1994) 23 Cal.App.4th 144, 147-148.) In the *North County* case, the court indicated that a pro rata share of equipment and conceivably personnel expenses directly involved in actually duplicating a record could be included in calculating the fee. However, research and retrieval costs may not be included in the fee. Thus, the direct cost of actually photocopying a record may be recovered, but associated costs such as the cost of research, redaction and retrieval may not be recovered.

In addition, members of the public may request in writing that the agenda or all of the documents comprising the meeting packet be mailed to them for a cost not to exceed the actual cost of providing the service. (§ 54954.1.) Upon receipt of such a written request, the agency shall mail the requested documents, provided that they are not exempt from disclosure pursuant to section 6254, to the requester at the time the agenda is posted or when the documents are provided to a majority of the members of the legislative body, whichever occurs first. The request must be renewed annually and failure of the requester to receive such documents does not invalidate any action which was the subject of the records.

If an agency records an open meeting either on video or audio tapes, the tapes and a tape recorder must be made available to the public if a request is made. (§ 54953.5(b).) The agency is not required to prepare a transcript, but if one were prepared, the public generally would have the right to receive copies upon request. (64 Ops.Cal.Atty.Gen. 317, 321 (1981).) If the agency wishes to destroy the tapes after 30 days, it may do so without regard to the limitations imposed by section 34090. (§ 54953.5(b).)

Except as specifically authorized by the Act, the legislative body may not impose fees to defray its costs in carrying out the provisions of the Act. (§ 54956.6.)

A legislative body may not conduct any meeting or function in any facility where racial or other discrimination is practiced, or which is inaccessible to disabled persons, or where members of the public must pay to attend the meeting. (§ 54961.) A facility is accessible if it fully satisfies the accessibility requirements of Government Code section 4450 et seq. or Health and Safety Code section 19955 et seq., as well as the federal Americans with Disabilities Act of 1990. (§ 54953.2) If a meeting facility is inaccessible, the meeting must be moved to an accessible facility.

The Act requires that agendas, agenda packets, and other writings distributed to members of a legislative body be made available in appropriate alternative formats to persons with a disability and that the agendas include information on the availability of disability-related aids or services to enable

the person to participate in the public meeting consistent with the Americans with Disabilities Act. (§§ 54954.1, 54954.2, 54957.5.) Legislative bodies may go beyond the minimal requirements of the Act and provide greater public access to their meetings. (§ 54953.7.) Elected legislative bodies may impose greater access requirements on agencies under their jurisdiction. (§ 54953.7.)

# CHAPTER VI.

# PERMISSIBLE CLOSED SESSIONS

## 1. Introduction

### A. Narrow Construction

Under the Brown Act, closed sessions must be expressly authorized by explicit statutory provisions. Prior to the enactment of section 54962, the courts and this office had recognized impliedly authorized justifications for closed sessions. *(Sutter Sensible Planning, Inc.* v. *Board of Supervisors* (1981) 122 Cal.App.3d 813; *Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41.) However, that legislation made it clear that closed sessions cannot be conducted unless they are expressly authorized by statute. Although confidential communication privileges continue to exist in other statutes such as the Public Records Act and Evidence Code section 1040, these provisions no longer can impliedly authorize a closed session.

Since closed sessions are an exception to open meeting requirements, the authority for such sessions has been narrowly construed. The law evinces a strong bias in favor of open meetings, and court decisions and opinions of this office have buttressed that legislative intent. (§ 54950.) The fact that material may be sensitive, embarrassing or controversial does not justify application of a closed session unless it is authorized by some specific exception. *(Rowen* v. *Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 235.) Rather, in many circumstances these characteristics may be further evidence of the need for public scrutiny and participation in discussing such matters. (See Civ. Code, § 47(b) [regarding privileged publication of defamatory remarks in a legislative proceeding].)

In 61 Ops.Cal.Atty.Gen. 220, 226 (1978), we concluded that meetings of the Board of Police Commissioners could not, as a general proposition, be held in closed session, even though the matters to be discussed were sensitive and the commission considered their disclosure contrary to the public interest.

The Act does not contain a general exemption for quasi-judicial deliberations, and this office concluded that such an exemption was not generally authorized by implication. In 71 Ops.Cal.Atty.Gen. 96, 106 (1988), this office concluded that the deliberations of a hearing board of an air pollution control district, after it has conducted a public hearing on a variance, order of abatement or permit appeal, must be conducted in public. The opinion further stated that the board was prohibited from conducting such deliberations in a closed session with the board's counsel or the board's attorney member. Similarly, in 57 Ops.Cal.Atty.Gen. 189, 192 (1974), this office opined that county boards of education could not meet in closed session to deliberate when deciding appeals from decisions of local school boards refusing to enter into interdistrict attendance agreements.

## B. Semi-Closed Meetings

In 46 Ops.Cal.Atty.Gen. 34, 35 (1965), this office also concluded that meetings could not be semi-closed. Thus, certain interested members of the public may not be admitted to a closed session while the remainder of the public is excluded. Nor would it be proper for an investigative committee of a grand jury performing its duties of investigating the county's business to be admitted to a closed session. (Cal.Atty.Gen., Indexed Letter, No. IL 70-184 (October 9, 1970).) As a general rule, closed sessions may involve only the membership of the body in question plus any additional support staff which may be required (e.g., attorney required to provide legal advice; supervisor or witnesses may be required in connection with disciplinary proceeding; labor negotiator required for consultation). Persons without an official role in the meeting should not be present.

## C. Secret Ballots

Secret ballots are expressly prohibited by section 54953(c). This office has long disapproved secret ballot voting in open meetings and the casting of mail ballots. Thus, items under consideration which are not subject to a specific closed meeting exception must be conducted in a fully open forum. (68 Ops.Cal.Atty.Gen. 65 (1985).) One aspect of the public's right to scrutinize and participate in public hearings is their right to witness the decision-making process. If votes are secretly cast, the public is deprived of a portion of its right. (See also 59 Ops.Cal.Atty.Gen. 619, 621-622 (1976).) However, it is the view of this office that members of a body may cast their ballots either orally or in writing so long as the written ballots are marked and tallied in open session and the ballots are disclosable public records.

## D. Confidentiality of Closed Session

Section 54963 provides that a person may not disclose confidential information that has been acquired by attending a proper closed session to a person not entitled to receive it, unless the disclosure is authorized by the legislative body.

For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body to meet lawfully in closed session.

If this prohibition is violated, it may be enforced by relying upon current available legal remedies including the following:

- Injunctive relief to prevent the disclosure of confidential information.
- Disciplinary action against an employee who has willfully disclosed confidential information in violation of this prohibition. Such disciplinary action must be first preceded by training or notice of the prohibition.
- Referral of a member of a legislative body who has willfully disclosed confidential information to the grand jury.

However, section 54963 provides that no action may be taken against a person for any of the following:

- Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts that are necessary to establish the illegality of an action taken by a legislative body or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were ultimately to be taken by the legislative body.
- Expressing an opinion concerning the propriety or legality of actions taken by a legislative body in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.
- Disclosing information acquired by being present in a closed session that is not confidential information.
- Disclosing information under the whistle blower statutes contained in Labor Code section 1102.5 or Government Code section 53296.

(See *Kleitman* v. *Superior Court* (1999) 74 Cal.App.4th 324, 335, fn. 9 [where the court found that the contents of a closed session were privileged information and applied Evidence Code 1040(b)(1), which provides an absolute privilege for confidential government information to prevent compelled disclosure in a civil proceeding]; 76 Ops.Cal.Atty.Gen. 289, 290-291 (1993); 80 Ops.Cal.Atty.Gen. 231, 235 (1997).)

## 2. Authorized Exceptions

All closed sessions must be conducted pursuant to expressly authorized statutory exceptions. (§ 54962.) As stated previously, the closed session exception to open meeting laws has been narrowly construed by the courts.

### A. Personnel Exception

The purpose of the personnel exception is to avoid undue publicity or embarrassment for public employees and to allow full and candid discussion of such employees by the body in question. (*Fischer* v. *Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 96; *San Diego Union* v. *City Council* (1983) 146 Cal.App.3d 947, 955; 61 Ops.Cal.Atty.Gen. 283, 291 (1978).) Accordingly, the Act provides for closed sessions regarding the appointment, employment, evaluation of performance, discipline or dismissal of a public employee. (§ 54957.)

In *Gillespie* v. *San Francisco Pub. Library Comm'n* (1998) 67 Cal.App.4th 1165, the Library Commission conducted a closed-session meeting to consider appointment of a new city librarian. Although the mayor actually makes the appointment, the city charter requires the Library Commission to participate in the appointment process. The court held that the Commission's closed-session meeting under the personnel exception for the purpose of nominating three candidates for consideration by the mayor was proper.

In 80 Ops.Cal.Atty.Gen. 308, 311 (1997), this office concluded that the personnel exception could be utilized by an advisory committee created by a school district to provide it with recommendations on the employment of a new superintendent after conducting interviews and deliberations on the applicants. However, a body may not conduct a closed session where it is not assigned responsibility in connection with the decision. Accordingly, this office concluded that a county board of education may not conduct a closed session on a personnel decision where that decision rested solely with the superintendent, and not with the board. (85 Ops.Cal.Atty.Gen. 77 (2002).)

Under the Act, an employee may request and require a public hearing where the purpose of the closed session is to discuss specific charges or complaints against the employee. Under the Act, the employee must be given at least 24-hour written notice

of any meeting to hear specific charges or complaints against the employee, or any action taken at the meeting will be null and void. (§ 54957.)

In *Fischer* v. *Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 100, the court determined that an employee had the right to receive the 24-hour notice only when the body was considering complaints and charges brought by a third person or an employee. The court specifically distinguished these hearings concerning complaints or charges from closed-session meetings to consider the appointment, employment, evaluation of performance, discipline or dismissal of an employee. In these latter instances, the court indicated that the body need not provide 24-hour notice to the individuals in question. Thus, when complaints or charges are not pending, this office opined that the Act permits the holding of a closed session to discuss an employee's job performance irrespective of the employee's desires. (61 Ops.Cal.Atty.Gen. 283, 291(1978).) In *Duval* v. *Board of Trustees* (2001) 93 Cal.App.4th 902, 909-910, the court found that an employee evaluation could – be comprehensive or focus on specific instances of conduct; include consideration of the process to be followed in conducting the evaluation; provide feedback to the employee; and, establish goals for future performance.

In *Fischer* v. *Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 101-102, the court concluded that charges or complaints brought against a person generally involve something in the nature of an accusation. An evaluation of performance conducted in the normal course of the employer's business usually does not involve communications resembling an accusation. Thus, a review of a probationary employee to determine whether permanent status will be conferred does not involve complaints or charges since no cause need be shown, no reason given and no appeal granted. Under these circumstances, the employee has no right to be present in a closed session to consider whether to grant permanent status. (See also 78 Ops.Cal.Atty.Gen. 218 (1995) [review of evaluation and denial of tenure]; *Furtado* v. *Sierra Community College* (1998) 68 Cal.App.4th 876 [review of evaluation and dismissal of nontenured employee].) These reviews of probationary teachers retain their evaluative nature even though allegations of misconduct may be a part of the evaluation. These citations are in contrast to *Bell* v. *Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, where the school superintendent brought a complaint against a teacher before the school board in a context unrelated to a performance evaluation. In that case, the court found that the 24-hour notice was required.

In *Bollinger* v. *San Diego Civil Service Comm.* (1999) 71 Cal.App.4th 568, an employee was demoted. The demotion was appealed and a hearing officer conducted a hearing and prepared a report for the full reviewing body to consider in closed session. The employee contended that he should have been provided with 24-hour notice of the hearing officer's report and his right to make the hearing public. The court concluded that the body was not hearing complaints or charges, but was merely

deliberating after a proper evidentiary proceeding had been conducted by the hearing officer. The court found that the employee had the opportunity to contest or present any information during the hearing, and therefore, neither due process nor the Brown Act required that he receive notice prior to the closed session. The court found that, as a general matter, the language of the Act and the legislative history supported the conclusion that a body may deliberate in closed session after a public hearing to hear charges and complaints.

Care must be exercised to analyze the status of the individual involved in a closed session subject to the personnel exception. If the person is not an "employee," all action must be taken in public session. The Act defines the term "employee" to include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body or other independent contractors. (§ 54957.) Thus, the personnel exception not only applies to civil service employees or their equivalent, it includes department heads and other high-ranking local officers. The exception applies to such officials irrespective of whether they are appointed to an office or merely serve by contract (e.g., contract city attorney). The key issue is whether the individual functions under the normal supervision and reporting requirements for an officer or employee, as opposed to that of an independent contractor who performs a task free of such day to day constraints. Accordingly, an independent contractor who performs a study or constructs a building or project must be selected in an open session of the legislative body. (See, e.g., *Rowen* v. *Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 233 [which concluded under prior law that discussions regarding the qualifications of an independent contractor to sell surplus land for the district should have been conducted in public].)

In no case does the term "employee" include elected officers or persons appointed to fill a vacancy of an elected office. Elected officers who are separately appointed to preside over their boards are not employees within the meaning of the Act. Therefore, complaints against such presiding officers may not be discussed in a closed session. (See also 61 Ops.Cal.Atty.Gen. 10 (1978).)

The courts and this office have consistently maintained that the personnel exception must be used in connection with the consideration of a particular employee. The exemption is not available for across-the-board decisions or evaluations of employees, classifications and salary structures. In *Santa Clara Federation of Teachers* v. *Governing Board* (1981) 116 Cal.App.3d 831, 846, the court concluded that a board's consideration of a hearing officer's decision concerning teacher layoff policy must be conducted in open session.

In 63 Ops.Cal.Atty.Gen. 153 (1980), we concluded that abstract discussions concerning the creation of a new administrative position and the workload of existing positions

were inappropriate for a closed session. However, had the workload discussions involved the evaluation of the performance of specific employees, a closed session would have been proper for that portion of the discussion.

In *Lucas* v. *Board of Trustees* (1971) 18 Cal.App.3d 988, 990, the court determined that a decision not to rehire a district superintendent of a high school district was properly made in closed session. Also, in 59 Ops.Cal.Atty.Gen. 532, 536 (1976), we concluded that the use of a closed session by a school district governing board to discuss and evaluate the performance of its superintendent was appropriate. In both situations, the superintendent was found to be an "employee."

In *San Diego Union* v. *City Council* (1983) 146 Cal.App.3d 947, the court broke new ground in delineating the subjects which are appropriate for consideration in closed sessions under the personnel exception. There, the court considered whether the city council could meet in closed session to discuss the job performances and salary levels of certain employees. The court concluded that a closed session was appropriate for the purpose of reviewing an employee's job performance and making the threshold decision of whether any salary increase should be granted. However, all discussions concerning the amount of any salary increase should be held in public session.

The court specifically rejected the argument that the terms "employment" or "performance" as used in section 54957 should be interpreted to include salary level determinations. The court stated, "Salaries and other terms of compensation constitute municipal budgetary matters of substantial public interest warranting open discussion and eventual electoral public ratification." (*San Diego Union* v. *City Council* (1983) 146 Cal.App.3d 947, 955.) The court stated that although an individual's job performance could be considered in closed session, there were a variety of other factors that must be considered in determining the appropriate salary level (e.g., availability of funds; other funding priorities; relative compensation of similar positions elsewhere, both inside and outside of the jurisdiction).

The *San Diego Union* decision has now been codified in section 54957, which states, "[C]losed sessions held pursuant to this section shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline." Although the amount of any proposed increase in an employee's compensation may not be considered in closed session, the employee's job performance may be discussed in closed session, including the threshold decision of whether the employee should receive a raise.

To the extent there are bona fide negotiations between a legislative body and an unrepresented individual who is a current or prospective employee of the body, the body may meet with its representative to provide instructions on how to conduct the negotiations. (§ 54957.6.) However, if the board is merely setting the salary without

entering into bona fide negotiations, this section is inapplicable. The instructions to the negotiator may include consideration of an agency's available funds and funding priorities, insofar as such discussions relate to providing instructions to the local agency's negotiator. However, closed sessions under section 54957.6 may not include a final decision concerning an unrepresented employee's compensation.

## B. Pending Litigation and the Attorney-Client Privilege

### (1) Historical Background

In 1953, the Legislature enacted the Act but did not make any provisions for closed sessions in connection with litigation or the attorney-client privilege. In 1968, the court, in *Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, 57, reasoned that the Act was not intended to impliedly repeal preexisting and well-established laws relating to privileges and confidentiality. Accordingly, the attorney-client privilege impliedly authorized closed sessions for legislative bodies to confer with their attorneys.

In 1984, the Legislature enacted SB 2216, chapter 1126, which added section 54956.9 to the Act. That section expressly authorized closed sessions in connection with pending litigation and created specific procedures and definitions for implementing these closed sessions.

In 1987, the Legislature enacted SB 200, chapter 1320, to provide that the expressly authorized exemption regarding pending litigation is the exclusive expression of the attorney-client privilege for purposes of conducting closed-session meetings. The legislation also provided that no closed session may be held unless it is expressly authorized by statute. (§ 54962.) This provision means that other confidentiality privileges may not be relied upon as implicit authorization for closed sessions.

### (2) Pending Litigation Exception

The codified pending litigation exception relating to local bodies is contained in section 54956.9. This section authorizes bodies to conduct closed sessions with their legal counsel to discuss pending litigation when discussion in open session would prejudice the agency in that litigation. "Litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body, hearing officer or arbitrator. For the purpose of this section, litigation is pending when any of the following occurs: litigation to which the agency is a party has been initiated formally (§ 54956.9(a); 69 Ops.Cal.Atty.Gen. 232, 240 (1986) [issuance of tentative cease and desist order initiates an adjudicatory proceeding]; the agency has decided or is meeting to

decide whether to initiate litigation (§ 54956.9(c); or in the opinion of the legislative body on advice of its legal counsel, there is a significant exposure to litigation if matters related to specific facts and circumstances are discussed in open session (§ 54956.9(b)(1). Agencies are also authorized to meet in closed session to consider whether a significant exposure to litigation exists, based on specific facts and circumstances. (§ 54956.9(b)(2); see 71 Ops.Cal.Atty.Gen. 96, 105 (1988) [mere possibility of judicial review does not constitute significant exposure to litigation based on existing facts and circumstances].) For purposes of section 54956.9(b)(1) and (b)(2), "existing facts and circumstances" are specifically defined in section 54956.9(b)(3), along with the requirement to disclose certain information regarding the facts and circumstances prior to the holding of a closed session. (See Chapter IV, part 4(B) of this pamphlet for a description of the disclosure requirements.)

Existing facts and circumstances which create a significant exposure to litigation consist only of the following:

- The agency believes that facts creating significant exposure to litigation are not known to potential plaintiffs. (§ 54956.9(b)(3)(A).

- Facts (e.g., an accident, disaster, incident, or transaction) creating significant exposure to litigation are known to potential plaintiffs. (§ 54956.9(b)(3)(B).)

- A claim or other written communication threatening litigation is received by the agency. (§ 54956.9(b)(3)(C).)

- A person makes a statement in an open and public meeting threatening litigation. (§ 54956.9(b)(3)(D).)

- A person makes a statement outside of an open and public meeting threatening litigation, and an agency official having knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting. (§ 54956.9(b)(3)(E).)

Prior to conducting a closed session under the pending litigation exception, the body must state on the agenda or publicly announce the subdivision of section 54956.9 which authorizes the session. If litigation has already been initiated, the body must state the title of the litigation unless to do so would jeopardize service of process or settlement negotiations. (§ 54956.9(c).)

In 75 Ops.Cal.Atty.Gen. 14, 20 (1992), this office concluded that the pending litigation exception could be invoked by a body to deliberate upon or take

action concerning the settlement of litigation. The court, in *Sacramento Newspaper Guild,* stated:

> "In settlement advice, the attorney's professional task is to provide his client a frank appraisal of strength and weakness, gains and risks, hopes and fears." *(Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, 56.)

Elaborating on this reasoning, this office's opinion concluded:

> "Unless section 54956.9 were given a strained and unnatural construction, the wording of the statute permits individual members of a legislative body not only to deliberate and exchange opinions *with counsel* but also *among themselves* in the presence of counsel. As we noted in 69 Ops.Cal.Atty.Gen. 232, 239, *supra,* the pending litigation exception fills the need to discuss confidentially with counsel 'the strength and weaknesses of the local' agency's position in the litigation. And as articulated by the court in *Sacramento Newspaper Guild, Inc., supra,* with respect to both 'settlement and avoidance of litigation,' these are 'particularly sensitive activities, whose conduct would be grossly confounded, often made impossible, by undiscriminating insistence on open lawyer-client conferences.' (263 Cal.App.2d at p. 56.)" (75 Ops.Cal.Atty.Gen. 14, 18-19 (1992).) (Original emphasis.)

The opinion went on to state that a body:

> ". . . must be able to confer with its attorney and then decide in private such matters as the upper and lower limits with respect to settlement, whether to accept a settlement or make a counter offer, or even whether to settle at all. These are matters which will depend upon the strength and weakness of the individual case as developed from conferring with counsel. A local agency of necessity must be able to decide and instruct its counsel with respect to these matters in private." (75 Ops.Cal.Atty.Gen. 14, 19-20 (1992).)

This interpretation is supported by section 54957.1(a)(3), which requires the body to disclose settlements where the body accepts a signed settlement agreement in closed session unless the agreement must be approved by another party or the court. Under the pending litigation exception, it appears that a

body generally must be a party or a potential party to litigation in order to meet in closed session with its attorney. In addition, it is possible that a legislative body may receive advice from its legal counsel concerning the body's participation in litigation as an amicus curiae, even though the language of section 54956.9 does not clearly authorize a closed session in such circumstances. (§ 54957.1.) When a government entity such as a city or a county is sued, or when government officials such as a city council or a board of supervisors are sued in their official capacities, questions may arise concerning what other city or county entities or officials may be considered parties for purposes of the pending litigation exception. 67 Ops.Cal.Atty.Gen. 111, 116-117 (1984), which was issued prior to the enactment of section 54956.9, suggests that when the county is a party to a lawsuit, an advisory body to the board of supervisors on the general subject matter of the lawsuit also may be a party or a potential party for the purposes of conducting a closed-session meeting to receive advice from its attorney.

In 69 Ops.Cal.Atty.Gen. 232 (1986), this office considered the circumstances in which a decision by one city body to meet in public on matters related to pending litigation waived the right of all other bodies of that city to conduct closed sessions concerning the same pending litigation. Our opinion concluded that one city body's decision to meet in public session regarding pending litigation is not necessarily a bar to other city bodies who wish to exercise their right to confer with their attorney in closed session. Specifically, we concluded that the city public works board did not and could not waive the city council's right to meet with its attorney in closed session.

Lastly, it should be emphasized that the purpose of the pending litigation exception is to permit a body to meet with its attorney under certain defined circumstances. If the attorney is not present (either in person or by teleconference means), the closed session may not be conducted. It should also be emphasized that the purpose of the exception is to permit the body to receive legal advice and make litigation decisions only; it is not to be used as a subterfuge to reach nonlitigation oriented policy decisions. (71 Ops.Cal.Atty.Gen. 96, 104-105 (1988).)

Since the purpose of the pending litigation exception is to protect confidential attorney-client communications, our opinion in 62 Ops.Cal.Atty.Gen. 150 (1979) continues to be applicable insofar as it concluded that nonconfidential communications between an attorney and his or her client are not protected. In that opinion, two boards which were adversaries in a lawsuit, along with their counsel, sought to meet in closed session for purposes of negotiating a settlement to that lawsuit. Thus, it was the negotiations, rather than confidential communications between the lawyer and the client, which the

bodies sought to protect. Accordingly, we concluded that a closed session was not appropriate for these negotiations.

This office also concluded that Evidence Code section 1152 (which renders inadmissible for the purpose of proving liability, evidence of the conduct or statements of a litigant during settlement negotiations) does not authorize the holding of a joint closed session between two legislative bodies, engaged in litigation against each other, for the purpose of conducting settlement negotiations. Section 1152 has as its purpose the fostering of settlements of disputes rather than the protection of confidential communications. (62 Ops.Cal.Atty.Gen. 150, 154-155 (1979).)

Settlement negotiations, however, may be conducted by the attorneys for the respective litigating bodies, and a closed session, pursuant to the pending litigation exception, may be held by each body to consult with its attorney about the settlement. (62 Ops.Cal.Atty.Gen. 150, 154-155 (1979).)

It is important to remember that the requirements of the pending litigation exception only apply to communications in the context of a meeting. Written one way confidential attorney-client advice is not a meeting, and therefore, is not subject to the Brown Act. (*Roberts* v. *City of Palmdale* (1993) 5 Cal.4th 363; see page 15 of this pamphlet.) Also, negotiations conducted by a limited term ad hoc advisory committee comprised solely of less than a quorum of the body is not subject to the Act. (See page 5 of this pamphlet.) To the extent that either of these avenues is pursued one must be careful to avoid serial communications that would constitute a violation of the Act. (See page 11 of this pamphlet.)

## C. Real Property Negotiations Exception

The Act contains provisions concerning the circumstances under which a body may meet in closed session to grant authority to its negotiator concerning the price and terms of payment in real property negotiations. (§ 54956.8.) Since the Act requires the body to report, at the conclusion of the closed session, the approval of an agreement concluding real property negotiations where the body's action renders the agreement final, the body's power to grant authority to its negotiator also includes the power to finalize any agreement so negotiated. (§§ 54956.8 and 54957.1.)

The exception for real property negotiations permits the body to meet in closed session to advise its negotiator concerning the "price" and "terms of payment" in connection with the purchase, sale, lease or exchange of property by or for the agency. In *Kleitman* v. *Superior Court* (1999) 74 Cal.App.4th 324, the court indicated that the purpose for the exception arises out of the realities of the commercial market place and the need

to prevent the person with whom the local government is negotiating from sitting in on the session at which the negotiating terms are developed. (*Kleitman* v. *Superior Court* (1999) 74 Cal.App.4th 324, 331; see also *Shapiro* v. *San Diego City Council* (2002) 96 Cal.App.4th 904.)

The closed session, however, must be preceded by an open session in which the body identifies the real property in question, the individual who will act as its negotiator, and the persons with whom its negotiator may negotiate. In 73 Ops.Cal.Atty.Gen. 1, 5 (1990), this office concluded that a district interested in purchasing property could not identify 700 prospective parcels, but must specifically identify the actual parcels subject to negotiation so that the public would have the opportunity to voice any objection to the proposed transaction. Eminent domain proceedings are not subject to section 54956.8, and a body may hold closed sessions to discuss eminent domain proceedings with its attorney under the pending litigation exception.

Depending on the circumstances, the agency may designate a member of the body, a staff person, the agency's attorney or another person to serve as its negotiator.

## D. Labor Negotiations Exception

The Act provides for closed sessions to enable a legislative body to meet with its negotiator concerning discussions with employee organizations and unrepresented employees regarding salaries and fringe benefits. (§ 54957.6(a).) However, prior to the closed session, the body must meet in open session and identify its negotiators. The purpose of the closed session is to permit the body to review its position and instruct its negotiator concerning the conduct of labor negotiations with current or prospective employees. During the closed session, the legislative body may approve an agreement concluding labor negotiations with its represented employees. (See § 54957.1(a)(6).) However, closed sessions with the negotiator may not include final action on the proposed compensation of one or more unrepresented employees.

The scope of the closed session held with the negotiator pursuant to section 54957.6 is limited to issues concerning salaries, salary schedules, and compensation paid in the form of fringe benefits. In addition, for represented employees, the legislative body also may grant authority to its negotiator concerning any other matter within the statutorily-provided scope of representation. Closed session discussions under the labor negotiations exception may include consideration of an agency's available funds and funding priorities, so long as such discussions relate to providing instructions to the local agency's designated negotiator. It should be emphasized that the labor negotiations exception applies only to actual bona fide labor negotiations, and a closed session may not be conducted where a legislative body merely wishes to set the salary of an employee.

The body may appoint from its membership one or more members constituting less than a quorum, to act as its negotiator, with whom it may meet and confer in closed session under the provisions of section 54957.6. (57 Ops.Cal.Atty.Gen. 209, 212 (1974).) However, if a body decides to conduct its meet-and-confer sessions itself without using a negotiator, the legislative body may not meet in closed session to review and decide upon its bargaining position. (57 Ops.Cal.Atty.Gen. 209, 212 (1974).) In addition, the legislative body as a whole may meet in closed session with a state conciliator who has intervened in the negotiations. (§ 54957.6(a); see also, 51 Ops.Cal.Atty.Gen. 201 (1968).)

For purposes of section 54957.6, the term "employee" not only refers to rank and file, but also includes an officer or an independent contractor who functions as an officer or employee. The term "employee" does not include any elected official, member of a legislative body, or other independent contractors. (§ 54957.6(b).)

### E. Public Security Exception

The Act permits local agencies to meet in closed session with the Attorney General, district attorney, agency counsel, sheriff, or chief of police or their deputies, or a security consultant or a security operations manager on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities. (§ 54957.)

### F. License Application Exception

The Act establishes special provisions for the consideration of license applications by persons with criminal records. (§ 54956.7.)

## 3. Minute Book

The Act provides for the discretionary keeping of a minute book with respect to closed sessions. (§ 54957.2.) The minute book is confidential and shall be available only to members of the legislative body or to a court in connection with litigation involving an alleged violation of the Act during a closed session. (§ 54957.2.) Neither the minute book nor the information which it memorializes may be released by the body's members. (Cal.Atty.Gen., Indexed Letter, No. IL 76-201 (October 20, 1976).) However, the minutes of an improper closed session are not confidential. (*Register Div. of Freedom Newspapers, Inc.* v. *County of Orange* (1984) 158 Cal.App.3d 893, 907-908.)

Under the Act, the recording of closed sessions is authorized by section 54957.2 only to the extent that such recording is accomplished with the knowledge or consent of the other participants in the closed session, pursuant to the requirements of Penal Code section 632. (62 Ops.Cal.Atty.Gen. 292 (1979).)

## CHAPTER VII.

## PENALTIES AND REMEDIES FOR VIOLATION OF THE ACT

If a person or member of the media believes a violation of open meeting laws has occurred or is about to occur, he or she may wish to contact the local body, the attorney for that body, a superior agency or the district attorney. If such contacts are not successful in resolving the concerns, the complainant may wish to consider one of the remedies or penalties provided by the Legislature to combat violations of the Act. These include criminal penalties, civil injunctive relief and the award of attorney's fees. In addition, with certain statutory exceptions, actions taken in violation of the Brown Act may be declared null and void by a court.

### 1. Criminal Penalties

The Act provides criminal misdemeanor penalties for certain violations. Specifically, the Act punishes attendance by a member of a body at a meeting where action is taken in violation of the Act, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled. (§ 54959.) The term "action taken" as defined by section 54952.6 includes a collective decision, commitment or promise by a majority of the members of a body. The fact that the decision is tentative rather than final does not shield participants from criminal liability; whether "action"within the meaning of the statute was taken would be a factual question in each case. (61 Ops.Cal.Atty.Gen. 283, 292-293 (1978).) Mere deliberation without the taking of some action will not trigger a criminal penalty.

### 2. Civil Remedies

#### A. Injunctive, Mandatory or Declaratory Relief

The Act provides two distinct types of civil remedies:

(1) Injunction, mandamus or declaratory relief to prevent or stop violations or threatened violations. (§ 54960.)

(2) Action to void past acts of the body. (§ 54960.1.)

These remedies are discussed in turn below.

The district attorney or any interested person also may seek injunctive, mandatory or declaratory relief in a superior court. (§ 54960.) An "interested person" may include, in addition to the public, a public entity or its officers. Unlike the criminal remedy, these civil remedies do not require that the body take action or that the members act with a specific intent to deprive the public of information to which the members know that the public is entitled.

In granting complainants the power to seek injunctive, mandatory or declaratory relief, the Legislature indicated on the face of the statute that such remedies were available to stop or prevent violations of the Act. (§ 54960.) This point was reiterated by the California Supreme Court in the case of *Regents of the University of California* v. *Superior Court* (1999) 20 Cal.4th 509, 522, where it concluded that these remedies were not available to redress the past actions of a body. However, with respect to state agencies, the Legislature quickly acted to supersede this interpretation. (See § 11130.)

A body may not always announce its intended action so as to give rise to an action for injunctive, mandatory or declaratory relief. Under these circumstances, the plaintiff may seek to support its case by demonstrating that a pattern of past conduct indicates the existence of present or future violations. (*Shapiro* v. *San Diego City Council* (2002) 96 Cal.App.4th 904; *Duval* v. *Board of Trustees* (2001) 93 Cal.App.4th 902, 906.) Alternatively, the body may seek to demonstrate that there is a current controversy that is evidenced by past practices of the body, and the body has not renunciated such practices. (*CAUSE* v. *City of San Diego* (1997) 56 Cal.App.4th 1024, 1029.) The court indicated that since the city would not admit to a violation it was likely that the current practices would continue. The court in *Common Cause* v. *Stirling* (1983) 147 Cal.App.3d 518, 524, concluded that courts may presume that a municipality will continue similar practices in light of the city attorney's refusal to admit the violation.

Where a legislative body has committed a violation of the Act concerning the conduct of closed sessions subject to the Act, a court may order the body to tape record future closed sessions pursuant to the procedures set forth in section 54960(b).

## B. Voidability of Action

Either interested persons or the district attorney may seek to have actions taken in violation of the Act declared null and void by a court. (§ 54960.1.) In *Boyle* v. *City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1118, the court ruled that merely conferring with and giving direction to staff, where no vote was taken and no decision made, did not constitute action that could be adjudged null and void.

The Act specifically provides that before a suit can be initiated, the complainant must make within 90 days a written demand to the board to cure or correct the violation, unless the action was taken in an open session but in violation of section 54954.2 (agenda requirements), in which case the written demand shall be made within 30 days from the date the action was taken. (§ 54960.1(c)(1); *County of Del Norte* v. *City of Crescent City* (1999) 71 Cal.App.4th 965, 978; *Bell* v. *Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 684.) The Act further provides that if the board refuses or fails to cure or correct a violation of sections 54953, 54954.2, 54954.5, 54954.6, 54956 or 54956.5 within 30 days from receipt of the written demand, the complainant may file a suit to have the action adjudged null and void. (§ 54960.1(c)(3).) Suits under this section must be brought within 15 days after receipt of the body's decision to cure or correct, or not to cure or correct; or 15 days after the expiration of the 30-day period for the body to cure or correct -- whichever is earlier. (§ 54960.1(c)(4); see *Boyle* v. *City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1117, fn. 5.) Once an action is challenged, a body nevertheless may cure or correct that action without prejudice and, where a lawsuit has been filed, may have the suit dismissed. (§ 54960.1(e); see *Boyle* v. *City of Redondo Beach* (1999) 70 Cal.App.4th 1109; *Bell* v. *Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 685.) Since a violation may be cured or corrected after a lawsuit has been filed, the plaintiff need not wait for an answer to its demand that a body cure or correct an action before filing suit. (See *Bell* v. *Vista Unified School Dist.* (2000) 82 Cal.App.4th 672 [where the demand and the lawsuit were filed on the same day].)

Exemptions are provided in connection with decisions involving bonds, taxes and contracts on which there has been detrimental reliance. (§ 54960.1(d).) Also, actions "in substantial compliance" with the requirements of the Brown Act are exempt. (§ 54960.1(d)(1); see *County of Del Norte* v. *City of Crescent City* (1999) 71 Cal.App.4th 965, 978-979.) Persons having actual notice of matters to be considered at a meeting, within statutorily prescribed time periods in advance of a meeting, are barred from suing to have an action declared null and void. (§ 54960.1(d)(5).)

In a case concerning a similar provision of the open meeting law governing state agencies, the California Supreme Court found that the time deadlines for notification and initiation of a legal action could not be extended, even if the defendant fraudulently concealed violations of the open meeting law. The Court concluded that the time deadlines were intended to balance two conflicting policies: the desire to permit nullification of an agency's decisions on the one hand, and the need not to imperil the finality of agency decisions, on the other. Extension of the time deadlines would disturb this balance. (*Regents of the University of California* v. *Superior Court* (1999) 20 Cal.4th 509, 527.)

**For a summary of the foregoing time deadlines for filing a suit to void an action taken by a body see Appendix A.**

## C. Attorney Fees

The Act provides for the award of attorney fees. (§ 54960.5.)

The Act provides that a plaintiff may receive attorney fees, but the award is against the agency, not the individual member or members who violated the Act. The defendant agency also may receive attorney fees when it prevails in a final determination and when the proceeding against the agency is frivolous and without merit. (*Sutter Sensible Planning, Inc.* v. *Board of Supervisors* (1981) 122 Cal.App.3d 813, 825-826; *Frazer* v. *Dixon Unified School Dist.* (1993) 18 Cal.App.4th 781, 800.)

The provision authorizing the award of attorney fees and court costs applies to both trial court and appellate court litigation. (*Boyle* v. *City* of *Redondo Beach* (1999) 70 Cal.App.4th 1109, 1121-1122; *International Longshoremen's & Warehousemen's Union* v. *Los Angeles Expert Terminal, Inc.* (1999) 69 Cal.App.4th 287, 302-304.) However, the award of fees is in the nature of a sanction and therefore, due process must be observed in the making of the award. Accordingly, the court must make written findings in order for a reviewing court to determine whether the awarding court properly exercised its discretion. (*Boyle* v. *City* of *Redondo Beach* (1999) 70 Cal.App.4th 1109.)

In *Common Cause* v. *Stirling* (1981) 119 Cal.App.3d 658, the trial court measured the petition for attorney fees under section 54960.5 against the standards established in Code of Civil Procedure section 1021.5, regarding the enforcement of an important right affecting the public interest.

Since the trial court concluded that attorney fees would not have been justified under section 1021.5, it refused to grant an award under the Act. The appellate court reversed, stating that even though recoveries would be small under normal principles, the damage was to the public integrity and, therefore, the Legislature had determined that public funds should be made available to pay for attorney fees to enforce these laws. Factors which should be considered in determining whether an award of attorney fees would be "unjust" and, therefore, should not be made, include the effect of such an award on settlement, the necessity for the lawsuit, the lack of injury to the public, the likelihood that the problem would have been solved by other means, and the likelihood that the problem would reoccur in the absence of the lawsuit.

The case was remanded to the trial court which still concluded that the plaintiff was not entitled to attorney fees. The matter once again was appealed, and the appellate court reversed the trial court a second time. (*Common Cause* v. *Stirling* (1983) 147 Cal.App.3d 518.) The court held that the plaintiff was entitled to attorney fees because it had established a legal principle on behalf of the public.

In *International Longshoremen's & Warehousemen's Union* v. *Los Angeles Expert Terminal, Inc.* (1999) 69 Cal.App.4th 287, 302, the court upheld an award of attorney fees because without the suit, violations of the Brown Act would have been ongoing. There, a for profit corporation claimed that it was not subject to the Brown Act. Plaintiffs demonstrated that the Act was applicable because the entity was created by a city council in order to exercise delegated governmental authority.

The award of fees may reflect market rates even though the prevailing party's attorney fees were lower. (*International Longshoremen's & Warehousemen's Union* v. *Los Angeles Expert Terminal, Inc.* (1999) 69 Cal.App.4th 287, 303.)

## APPENDIX A

## TIME DEADLINES

## FOR FILING A SUIT TO VOID AN ACTION TAKEN BY A BODY

An action is taken that a district attorney or interested person believes is in violation of:

- general open meeting requirement (§ 54953)
- agenda requirements for regular meetings (§ 54954.2)
- safe harbor notice provisions for closed sessions (§ 54954.5)
- procedures for new taxes and assessments (§ 54954.6)
- requirements for special meetings (§ 54956)
- requirements for emergency meetings (§ 54956.5)

Complainant must make written demand to the body to cure or correct within:

A. 30 days of the action if it were in open session, but in violation of agenda requirements.

B. 90 days of the action in all other situations.

Once the body receives demand, it has 30 days to cure or correct the violation.

If the body fails to cure or correct within this 30-day period, interested person may file suit to void the action.

The action must be filed within 15 days of:

A. Receipt of decision to cure or correct or refusal to do so.

B. End of 30-day period to cure or correct.

## APPENDIX B

## THE RALPH M. BROWN ACT

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## THE RALPH M. BROWN ACT

### 54950. Policy declaration

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

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

### 54951. Definition of 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. Definition of 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, decisionmaking 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.

(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. Definition of member of a legislative body**

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. Definition of meeting**

(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 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. Definition of 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. Copies of Act; Distribution**

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.

**54953. Open meetings required; Teleconferencing; Secret ballots**

(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.

**54953.2. Meeting; Disability rights**

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

**54953.1. Grand jury testimony by members**

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.

**54953.3. Conditions to attendance at meetings**

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 meetings**

(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. Broadcasting meetings**

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. Greater access to meetings permitted**

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 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. Notice of regular meetings; Boundary restrictions for all 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.

(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 the superintendent of that 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. Agenda information provided by mail; 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. Agenda requirements; Regular meetings**

(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 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's right to testify at 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 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. Reimbursement of costs**

(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 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.

**54954.5. Safe harbor agenda for closed sessions**

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION
(Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

**54954.6. New taxes and/or assessments; Procedural requirements**

(a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new

or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The estimated amount of the assessment per parcel. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIIIC or XIIID of the California Constitution is not subject to the notice and hearing requirements of this section.

**54955. Adjournment**

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

**54955.1. Continuance**

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent

meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

**54956. Special meetings**

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

**54956.5. Emergency meetings**

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

**54956.6. Fees**

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

**54956.7. Closed session; License application of rehabilitated criminal**

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not

be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

**54956.8. Closed session; Real property negotiations**

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

**54956.86. Closed session; Health claims**

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

**54956.87. Record exempt; Closed session; County health plan**

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board

of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (c) of Section 32106 of the Health and Safety Code, shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

**54956.9. Closed session; Pending litigation**

Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(a) Litigation, to which the local agency is a party, has been initiated formally.

(b) (1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(3) For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(F) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the subdivision of this section that authorizes the closed session. If the session is closed pursuant to subdivision (a), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

**§ 54956.95. Closed session; Insurance liability**

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

**54957. Closed session; Personnel and threat to public security**

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security

operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

**§ 54957.1. Report at conclusion of closed session**

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

**54957.2. Minutes of closed session**

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

**54957.5. Agendas and other materials; Public records**

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person 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.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of 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.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

**54957.6. Closed session; Labor negotiations**

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

**54957.7. Announcement prior to closed sessions**

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

**54957.8. Closed session; Multijurisdictional drug enforcement agency**

Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional drug law enforcement agency, or an advisory body of a multijurisdictional drug law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal

investigation of the multijurisdictional drug law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

"Multijurisdictional drug law enforcement agency," for purposes of this section, means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, which provides drug law enforcement services for the parties to the joint powers agreement.

The Legislature finds and declares that this section is within the public interest, in that its provisions are necessary to prevent the impairment of ongoing law enforcement investigations, to protect witnesses and informants, and to permit the discussion of effective courses of action in particular cases.

**54957.9. Disruption of meeting**

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

**54957.10. Closed session; Deferred Compensation Plan; Early withdrawal**

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

**54958. Act supercedes conflicting laws**

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

**54959. Violation of Act; Criminal penalty**

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the

public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

**54960. Violation of Act; Civil remedies**

(a) The district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency which has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording.

(ii) An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

**54960.1. Violation of Act; Actions declared null and void**

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c) (1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

**54960.5. Costs and attorney fees**

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a legislative body of the local agency has violated this chapter. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

**54961. Discrimination; Disabled access; Fees for attendance; Disclosure of victims**

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

**54962. Closed session; Express authorization required**

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

**54963. Closed session; Disclosure of confidential information**

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grandjury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

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