BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	**Case No.: CSM 4469**
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes 1993, Chapters 1136, 1137, 1138 and Statutes 1994, Chapter 32; and,	*Brown Act Reform*
Filed on December 29, 1994, by County of Santa Clara, Claimant; and,	**ADMINISTRATIVE RECORD**
Amended on August 9, 2000, to Substitute the City of Newport Beach for the Original Claimant.	

Reconsideration Order: Statutes 2004, Chapter 316, Section 3, Subdivision (c) (Assem. Bill No. 2851)	1

Administrative Record

I HEREBY CERTIFY that each of the following documents is a true and correct copy of the corresponding documents contained in the administrative record of the Commission on State Mandates for the *Brown Act Reform* Test Claim.

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I further certify that the above-listed documents constitute the record of the original administrative proceedings before the Commission on State Mandates on the *Brown Act Reform* test claim.

Dated: February 23, 2005

Paula Higashi

Paula Higashi, Executive Director

Assembly Bill No. 2851

CHAPTER 316

An act to amend Section 17581.5 of the Government Code, relating to local mandate reimbursement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2851, Laird. Budget Act: state mandates.

(1) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

Existing statutory law provides that a school district may not be required to implement or give effect to a statute imposing a state mandate for a specified period if it is identified by the Legislature in the Budget Act as being suspended. Existing law provides that this suspension provision is applicable only to specified mandates.

This bill would additionally make this suspension provision applicable to state mandates relating to certain investment reports and county treasury oversight committees.

(2) Existing law provides that the Commission on State Mandates shall not find costs to be mandated by the state if, among other things, the local agency or school district has authority to levy charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Existing law, the Surface Mining and Reclamation Act of 1975, requires local agencies, within 12 months of receiving mineral information and of being designated an area of statewide or regional significance, and in accordance with state policy, to establish mineral resource management policies in their general plans. Existing law also authorizes these local agencies to impose a fee upon mining operations to cover the reasonable costs incurred in implementing the act.

This bill would state that the Legislature finds and declares that the act no longer imposes a reimbursable mandate under these provisions because local agencies subject to the act have authority to levy fees to pay for the cost of the program mandated by the act.

(3) The Budget Act of 2003 provides that state-mandated local programs relating to, among others, Democratic Party presidential delegates, election materials, and specified county social services are suspended during the 2003–04 fiscal year.

This bill would state that the Legislature finds and declares that specified statutes relating to Democratic Party presidential delegates and certain county social services no longer constitute reimbursable mandates under Section 6 of Article XIII B of the California Constitution because they have been repealed.

(4) This bill also would direct the Commission on State Mandates, by January 1, 2006, to reconsider whether specified statutes continue to constitute reimbursable mandates in light of federal statutes enacted and federal and state court decisions rendered since enactment of these mandates.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district may not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety I (CSM-4433) and II (97-TC-22) mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) Investment reports (96-358-02; and Chapter 783 of the Statutes of 1995 and Chapters 156 and 749 of the Statutes of 1996).

(4) County treasury oversight committees (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

SEC. 2. The Legislature hereby finds and declares that, notwithstanding a prior determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.

SEC. 3. Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

(b) Extended commitment, Youth Authority (98-TC-13; and Chapter 267 of the Statutes of 1998).

(c) Brown Act Reforms (CSM-4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

(d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

SEC. 4. The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

(a) Democratic Party presidential delegates (CSM-4131; and Chapter 1603 of the Statutes of 1982 and Chapter 8 of the Statutes of 1988, which enacted statutes that were repealed by Chapter 920 of the Statutes of 1994).

(b) Short-Doyle case management, Short-Doyle audits, and residential care services (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991).

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary statutory changes to fully implement the Budget Act of 2003 at the earliest possible time, it is necessary that this act take effect immediately.

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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA [1]
State Capitol, Room 126
Sacramento, California

May 24, 2001

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 April 26, 2001

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-4.

A. TEST CLAIMS

Item 2 *Brown Act Reform* - CSM-4469
City of Newport Beach, Claimant
Statutes of 1993, Chapter 1136, 1137, and 1138
Statutes of 1994, Chapter 32

B. INCORRECT REDUCTION CLAIMS

Item 3 *Graduation Requirements* – CSM - 4435-I-03, 4435-I-05, 4435-I-07 to 12
Palos Verdes Peninsula Unified School District, Sweetwater Union High School District, Vista Unified School District, San Luis Coastal Unified School District, Lompoc Unified School District, Huntington Beach Unified School District, Fresno Unified School District, Santa Monica-Malibu Unified School District, Claimants
Education Code Section 51225.3, Statutes of 1983, Chapter 498

C. ADOPTION OF PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIM

Item 4* *Graduation Requirements*, CSM 4435-I-04
San Jose Unified School District, Claimant
Education Code Section 51225.3, Statutes of 1983, Chapter 498

[1] http://www.csm.ca.gov

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 5 *County Treasury Oversight Committees* - 96-365-03
County of San Bernardino, Claimant
Government Code Sections 27130 et seq.
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156

Item 6* *Mentally Disordered Offenders' Extended Commitment Proceedings* 98-TC-09
County of Los Angeles, Claimant
Penal Code Section 2970
Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858; Statutes of 1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of 1991, Chapter 435, Statutes of 2000, Chapter 324.

Item 7* *Extended Commitment, Youth Authority* - 98-TC-13
County of Alameda, Claimant
Statutes of 1984, Chapter 546; Statutes of 1998, Chapter 267

Item 8* *Elder Abuse, Law Enforcement Training* - 98-TC-12
City of Newport Beach, Claimant
Penal Code Section 13515
Statutes of 1997, Chapter 444

B. ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

Item 9* *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* - 97-TC-05 (tentative)
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

VI. EXECUTIVE DIRECTOR'S REPORT (info)

Item 10 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *Carmel Valley Fire Protection Dist. v. State of California, et al.*, Case Number S078828, California Supreme Court.
2. *County of San Bernardino v. State of California, et al.,* Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
3. *San Diego Unified School District v. Commission on State Mandates, et al.,* Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Department of Finance v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
5. *Long Beach Unified School District v. Commission on State Mandates,* Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
6. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.* Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara,* Case Number C037645, in the Court of Appeal, Third Appellate District.
8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.,* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.
11. *County of San Bernardino v. Joann E. Steinmeier, et al., Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
12. *County of San Diego v. Commission on State Mandates, et al.,* Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Chief Legal Counsel (C.E.A. 3) pursuant to Government Code sections 17529 and 19889 et seq. and the evaluation of the Executive Director.

REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

WORKSHOP

DEVELOPMENT OF REGULATIONS TO IMPLEMENT AB 1679

May 24, 2001

2:00 to 3:00 PM.

COMMISSION ON STATE MANDATES
CONFERENCE ROOM
980 NINTH STREET, SUITE 300
SACRAMENTO

For information, contact Paula Higashi, Executive Director, at (916) 323-3562.

Hearing Date: May 24, 2001
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ITEM 2

TEST CLAIM

FINAL STAFF ANALYSIS

Government Code Section 54952, subdivisions (a) and (b)
Government Code Section 54954.2, subdivision (a)
Government Code Section 54957.1, subdivisions (a), (b), (c)
Government Code Section 54957.7, subdivisions (a), (b), (c)

Statutes of 1993, Chapters 1136, 1137 & 1138
Statutes of 1994, Chapter 32

City of Newport Beach, Claimant

Brown Act Reform

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Tab 2-Statement of Decision, CSM 4257, *Open Meetings Act*
Tab 3-Statement of Decision, CSM 4501, *School Site Councils and Brown Reform Act*
Tab 4-79 Ops.Cal.Atty.Gen. 69 (1996)
Tab 5-*Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821
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Tab 7-*People v. Tanner* (1979) 24 Cal.3d 514

Hearing Date: May 24, 2001
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ITEM 2

TEST CLAIM

FINAL STAFF ANALYSIS

Government Code Section 54952, subdivisions (a) and (b)
Government Code Section 54954.2, subdivision (a)
Government Code Section 54957.1, subdivisions (a), (b), (c)
Government Code Section 54957.7, subdivisions (a), (b), (c)

Statutes of 1993, Chapters 1136, 1137 & 1138
Statutes of 1994, Chapter 32

City of Newport Beach, Claimant

Brown Act Reform

Executive Summary

Background

The test claim legislation requires the "legislative bodies" of local agencies to comply with certain changes to the Ralph M. Brown Act, the Open Meetings Law for local governments. Section 54952 changes the definition of "legislative body" by adding two new bodies now required to comply with the Brown Act; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and, section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

On March 15, 2001, a Draft Staff Analysis was issued. No comments have been received on the Draft Staff Analysis from either the Claimant or the Department of Finance. Comments were received from an Interested Person.

Claimant's Contentions

The claimant contends that the test claim legislation imposes an increased level of service on local agencies by: 1) expanding the definition of "legislative body" which is subject to the notice and agenda requirements of the Brown Act; 2) expanding the notice and agenda requirements to include a description of each item to be discussed or transacted in closed session; 3) expanding the nature and extent of the required public reporting of action taken in closed sessions; and, 4) necessitating training for local agencies.

Department of Finance Contentions

The Department of Finance (DOF) contends that while chapters 1136 and 1137 (agenda and notice requirements and closed session requirements) may have resulted in reimbursable state-mandated costs pertaining to certain notification requirements, they may also have resulted in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. In addition, the DOF contends that the intent of chapter 1138 (definition of legislative body) was to provide cost savings to local governments by simplifying and clarifying the Brown Act requirements.

Interested Party Contentions

The County Counsel of Marin County contends that the 1993 and 1994 amendments to the Brown Act require local agencies to perform an increased level of service resulting in increased state mandated costs for reporting requirements, record keeping, and other County staff responsibilities. In addition, the County claims that these provisions have resulted in an increased level of service to advisory bodies, which are now subject to the Brown Act amendments.

Interested Persons Contentions

Former Senator Quentin Kopp contends that the amendments to the Brown Act were proposed to reduce the costs to local agencies for posting agendas, making oral statements regarding closed session items, and providing a description of the items on the agenda.

The California Newspaper Publishers Association and the First Amendment Coalition contend that the changes to the Brown Act do not create a state mandated local program because the amendments were intended by the legislature to be instructive, not to expand the open meeting requirements. In particular, the clarifying language "A brief general description of an item generally need not exceed 20 words" was added to radically reduce the costs of creating and posting agendas.

Paul C. Minney of Spector, Middleton, Young & Minney, LLP contends that both permanent and temporary decisionmaking committees and boards created by formal action are "new legislative bodies" required to comply with the Brown Act.

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Conclusion

Based on the foregoing, staff concludes that the test claim legislation imposes a reimbursable state-mandated program for the following activities:

Open Session Requirements

Activity	Applies To
To prepare and post an agenda at least 72 hours before a regular meeting containing a brief general description of each item of business to be transacted or discussed at the meeting. A brief general description of each item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	Local Bodies created by state or federal statute. Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action. Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Closed Session Requirements

Activity	Applies To
To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of each item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	All "legislative bodies"
To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. [Gov. Code § 54957.7, subd. (a)]	All "legislative bodies"
To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). [Gov. Code § 54957.7, subd. (b)]	All "legislative bodies"
To provide copies of closed session documents as required. [Gov. Code § 54957.1, Subd. (b) and (c)]	All "legislative bodies"

Staff further concludes that all other statutes and code sections included in this test claim do not constitute a reimbursable state-mandated program.

Staff Recommendation

Therefore, staff recommends that the Commission adopt the staff analysis and recommendation.

Claimant
City of Newport Beach

Chronology

December 29, 1994	Test claim filed with the Commission on State Mandates (CSM) by County of Santa Clara.
May 26, 1995	Interested Party, County Counsel of Marin County submits comments in support of test claim.
June 1, 1995	Department of Finance submits comments in opposition to test claim.
June 28, 1995	Claimant submits rebuttal to comments in opposition to test claim.
October 5, 1995	Interested Persons, California Newspaper Publishers Assoc. and First Amendment Coalition submit comments in opposition to test claim.
October 27, 1995	Interested Person, Former Senator Quentin Kopp submits comments in opposition to test claim.
November 16, 1995	Claimant requests indefinite continuance (CSM approved 11/22/95).
September 9, 1998	Claimants (Kern High School District and County of Santa Clara) request that the portions of the test claim on *Brown Act Reform* (CSM–4469) addressing Government Code section 54952 specifically related to schoolsite councils be consolidated with the *School Site Councils* test claim (CSM-4501) and request that San Diego Unified School District be added as co-claimants to CSM-4501.
March 17, 2000	CSM notifies Claimant, County of Santa Clara, that test claim will be set for dismissal unless activated.
June 23, 2000	CSM notifies Claimant setting dismissal hearing for 8/24/00.
August 7, 2000	City of Newport Beach requests substitution as test claimant in place of County of Santa Clara and requests hearing date.
September 25, 2000	Claimant, City of Newport Beach submits supplemental filing.
March 15, 2001	Draft Staff Analysis Issued.
April 25, 2001	Interested Person, Paul C. Minney submits comments on Draft Staff Analysis.

Background

The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires the "legislative bodies" of local agencies[1] to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 54950 et seq., hereafter referred to as the Brown Act or the Act).[2] Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and, section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

The California Legislature enacted the Brown Act in 1953 based on an Assembly Judiciary Committee Report regarding the "secret decisionmaking" of local governments. The Act declared the law's intent that deliberations as well as action of local agencies occur openly and publicly. It also represented 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.[3] The underlying theme of the Brown Act recognizes that:

> The people [of this State], 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.[4]

Since the Brown Act was enacted, it has been amended regularly to expand the requirements of the Act and to clarify the "legislative bodies" to which the requirements of the Act apply. Numerous court cases and Attorney General Opinions have re-affirmed the Legislature's original intent to ensure that deliberations and decisionmaking of local agencies be conducted in an open forum with full participation from the public.

Prior Test Claims

The Commission on State Mandates has previously determined two test claims on the Brown Act.

Open Meetings Act (CSM-4257)

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim that added Government Code sections 54954.2 and 54954.3 to the Brown Act.[5] Section 54954.2 required

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[1] As used in the Ralph M. Brown Act, "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. (Gov. Code, § 54951.)

[2] All further statutory references are to the California Government Code unless otherwise indicated.

[3] California Attorney General's Office, The Brown Act, Open Meetings for Local Legislative Bodies (1994) p.1, Exhibit M, Tab 1.

[4] Government Code section 54950.

[5] Statement of Decision, CSM-4257, Exhibit M, Tab 2.

the "legislative bodies" of local agencies *for the first time* to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.

Under CSM-4257, local agencies were eligible for reimbursement for the Brown Act requirements for the following types of legislative bodies: 1) the governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity; 2) any board, commission, committee, or body which exercises authority delegated to it by the legislative body; and, 3) planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body. The Commission's Parameters and Guidelines for CSM-4257 specifically provided reimbursement for the increased costs to prepare and post a single agenda 72 hours before a meeting of the legislative body of a local agency containing a brief general description of each item of business to be transacted or discussed.

School Site Councils and Brown Act Reform (CSM-4501)

The Brown Act came before the Commission again in test claim CSM-4501, *School Site Councils and Brown Act Reform*, filed by the Kern High School District, San Diego Unified School District, and the County of Santa Clara. This test claim was filed on Government Code section 54952 and Education Code section 35147 and addressed the application of the open meeting provisions of the Brown Act to specified schoolsite councils and advisory committees of school districts. On April 27, 2000, the Commission approved this test claim finding that Statutes of 1993, chapter 1138 among other things, added Government Code section 54952, subdivision (a), which provided, in relevant part, that the term "legislative body" for purposes of the open meeting requirements of the Brown Act also included any local body created by state or federal statute.[6]

The Commission also found that Statutes of 1994, chapter 239 removed certain school site councils and advisory committees from the full requirements of the Brown Act, but added Education Code section 35147, which imposed an abbreviated set of open meeting requirements on school site councils and advisory committees established as part of the following programs: School Improvement Program; Native American Indian Early Childhood Education Act; Chacon-Moscone Bilingual-Bicultural Education Act; School-Based Coordination Program; Compensatory Education Program; Migrant Education Program; Motivation and Maintenance Program; and the federal Indian Education Program.

[6] Statement of Decision, CSM-4501 and portions of CSM-4469, Exhibit M, Tab 3.

The Commission's Parameters and Guidelines for CSM-4501 provided reimbursement for notice and agenda activities for school district's schoolsite councils and certain advisory committees.

Claimant's Contentions

The claimant contends that the test claim legislation imposes an increased level of service on local agencies.[7] The claimant asserts the following:

- Government Code section 54952, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the definition of "legislative body" which is subject to the notice requirements of the Brown Act. The agenda preparation and posting requirements of section 54954.2 now apply to an increased number of entities such as standing committees, advisory bodies and other local bodies created by state or federal statute;

- Government Code section 54954.2, subdivision (a), as amended, imposes a higher level of service on local agencies by expanding the notice requirements to include a description of each item to be discussed or transacted in closed session;

- Government Code sections 54957.1, subdivisions (a), (b) and (c) and 54957.7, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the nature and extent of the required public reporting of action taken in closed sessions; and,

- These amendments require an increased level of service by local agencies, necessitating training for local agencies.[8]

Department of Finance Contentions

The Department of Finance (DOF) submitted comments on this test claim on June 1, 1995.[9] Their contention is that while chapters 1136 and 1137 (agenda and notice requirements and closed session requirements) may have resulted in reimbursable state-mandated costs pertaining to certain notification requirements, they may also have resulted in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. In addition, the DOF contends that the intent of chapter 1138 (definition of legislative body) was to provide cost savings to local governments by simplifying and clarifying the Brown Act requirements. Finally, regarding chapter 32, the DOF states that this is essentially clean-up legislation for the other three named chapters and does not affect the scope of the changes made by those chapters. Consequently, it is the DOF's belief that there are no reimbursable state-mandated costs in that legislation.[10]

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[7] See Exhibit A.
[8] See Exhibit J.
[9] See Exhibit B.
[10] Regarding chapter 32, the test claim submitted by claimant stated: "The provisions of Chapter 32, Statutes of 1994, did not effect the scope of the state mandated activities and costs described in this test claim."

Interested Party Contentions

The County Counsel of Marin County submitted comments in support of the test claim on May 30, 1995.[11] Their contention is that the 1993 and 1994 amendments to the Brown Act require local agencies to perform an increased level of service resulting in increased state mandated costs for reporting requirements, record keeping, and other County staff responsibilities. In addition, the County claims that these provisions have resulted in an increased level of service to advisory bodies, which are now subject to the Brown Act amendments.

Interested Persons Contentions

Former Senator Quentin Kopp, author of the majority of the Brown Act legislation, submitted comments in opposition to the test claim.[12] His contention is that the amendments to the Brown Act were proposed to reduce the costs to local agencies for posting agendas, making oral statements regarding closed session items, and providing a description of the items on the agenda.

The California Newspaper Publishers Association submitted comments in opposition to the test claim. Their contention is that the changes to the Brown Act do not create a state mandated local program because the amendments were intended by the legislature to be instructive, not to expand the open meeting requirements. In particular, the clarifying language "A brief general description of an item generally need not exceed 20 words" was added to radically reduce the costs of creating and posting agendas. The First Amendment Coalition submitted comments in opposition to the test claim adopting the arguments and conclusion of the California Newspaper Publishers Association.[13]

Paul C. Minney of Spector, Middleton, Young & Minney, LLP submitted comments on the Draft Staff Analysis. His contention is that both permanent and temporary decisionmaking committees or boards created by formal action are "new legislative bodies" under the test claim statute because these bodies can exercise authority broader than that granted to the legislative body.[14]

STAFF ANALYSIS

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must direct or obligate an activity or task upon local governmental entities. If the statutory language does not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist. Further, the required activity or task must be new or it must create an increased or higher level

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[11] See Exhibit C.
[12] See Exhibit F.
[13] See Exhibit E.
[14] See Exhibit L.

of service over the former required level of service. The California Supreme Court has defined the word "program," subject to article XIII B, section 6 of the California Constitution, as an activity that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose "costs mandated by the state."[15]

The test claim legislation requires the performance of certain activities related to public meetings by specified "legislative bodies" of local agencies. These local governmental bodies are carrying out a basic governmental function of making decisions regarding the operations of local agencies that provide services to the public. The mandatory compliance with the Brown Act is unique to local agencies; it is a peculiarly governmental function that does not apply to all residents and entities in the state. Therefore, staff finds that compliance by local agencies with the open meeting requirements of the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The Commission must continue its inquiry to determine if the test claim legislation constitutes a new program or higher level of service and imposes "costs mandated by the state" upon local agencies. Claimant contends that the test claim legislation imposes a higher level of service upon local agencies because the agenda preparation and posting requirements apply to an increased number of entities now defined as "legislative bodies" such as standing committees, advisory bodies and other local bodies created by state or federal statute. Claimant also contends that the test claim legislation requires new activities regarding the inclusion of closed session items on agendas and the reporting of closed session items both prior to and after the closed session. The analysis of these issues for the statutes at issue is discussed below.

Issue 1: Does the test claim legislation impose a new program or higher level of service upon local governmental bodies within the meaning of article XIII B, section 6 of the California Constitution?

Issue 1 is presented in two parts: Part One discusses the entities subject to the open session notice and agenda requirements and Part Two discusses the closed session requirements for all legislative bodies.

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[15] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

Part One: Entities Subject to Open Session Notice and Agenda Requirements

The notice and agenda provisions of the Brown Act are found in Government Code section 54954.2. Under the test claim legislation, this section requires the "legislative bodies" of local agencies to post a notice and agenda containing a brief general description of each item to be discussed at the meeting. Section 54954.2 states in relevant part the following:

> At least 72 hours before a regular meeting, the legislative body of a 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.

New Entities Subject to the Notice & Agenda Requirements

Government Code section 54952 describes the "legislative bodies" required to comply with the Brown Act. The test claim legislation substantially amended section 54952 to clarify and describe the "legislative bodies" in greater detail. Section 54952 now defines "legislative body" in relevant part as follows:

> (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 which 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.

Thus, the "legislative bodies" required to comply with the Brown Act now include the following:

- The governing body of a local agency;
- A local body created by state or federal statute;
- A permanent decisionmaking body created by formal action;
- A temporary decisionmaking body created by formal action;
- A permanent advisory body created by formal action (except an advisory body with less than a quorum of the members);
- A temporary advisory body created by formal action (except an advisory body with less than a quorum of the members); and,
- Standing committees, irrespective of their composition with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action.

Under prior law, the "legislative body" of a local agency required to comply with the Brown Act was defined in several statutory provisions. Section 54952 defined the governing body of a local agency or any board or commission thereof, and any body on which officers of a local agency serve in their official capacity as members; section 54952.2 defined any multimember body with delegated authority of the legislative body; section 54952.3 defined any advisory body created by formal action and included both reduced notice requirements and an exemption from all Brown Act requirements for a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body; and, section 54952.5 defined planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency as "legislative bodies."

While amending section 54952, the test claim legislation also repealed sections 54952.2, 54952.3 and 54952.5. Based on the following analysis, staff finds that the test claim legislation created the following two new "legislative bodies" required to comply with the provisions of the Brown Act including the notice and agenda requirements of section 54954.2:

- Any local body created by state or federal statute

This body was not identified as a "legislative body" in prior law. Thus, under the test claim legislation, it *is* a new body required to comply with the open session notice and agenda requirements imposed by Government Code section 54954.2; and,

- Standing committees with less than a quorum of the governing body which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action

The test claim legislation defines legislative body to include "standing committees of a legislative body, *irrespective of their composition*, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action." Historically, standing committees were permanent committees that met regularly and considered subjects of a particular class.[16] Their composition, however, varied depending on the body that created them.

Prior to the enactment of the test claim legislation, the various statutory provisions regarding the application of the Brown Act created much confusion as to whether committees, regardless of their composition, fell under the requirements of the Act. However, numerous judicial decisions and opinions of the Attorney General found that the Brown Act essentially governed *all* meetings of a *quorum* of the legislative body of a local agency when the public's business was discussed.[17]

In 1993, just prior to the passage of the test claim legislation, this issue was finally resolved in the *Freedom Newspaper* case.[18] In *Freedom*, a newspaper publisher sought a writ of mandate

[16] 79 Ops.Cal.Atty.Gen. 69, 72 (1996), Exhibit M, Tab 4.
[17] *Id.*, at page 69, fn 3.
[18] *Freedom Newspapers, Inc., v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832-833, Exhibit M, Tab 5.

to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory in nature and was composed of four members of the nine-member board. The Supreme Court held that since the operations committee was an advisory committee composed solely of board members *numbering less than a quorum of the board*, the committee was not a "legislative body" pursuant to the provisions of Government Code section 54952.3, and was therefore excluded from the open meeting requirements of the Brown Act. The *Freedom* Court agreed with a long-standing 1968 Attorney General Opinion that stated: "[w]e have consistently concluded that committees composed of *less than a quorum of the legislative body creating them and not established on a permanent basis for a continuing function are not subject to the open meeting requirements of that Act.*" (Emphasis supplied).[19]

Thus, while standing committees with less than a quorum of the members of the legislative body were exempt from the requirements of the Brown Act under prior law, the test claim legislation now defines "standing committees, *irrespective of their composition*" as new bodies required to comply with the open session notice and agenda requirements imposed by section 54954.2.

Regarding the other five bodies identified in the test claim legislation, staff finds they are not new "legislative bodies" because they were identified in prior law as follows:

- Governing body of a local agency

This body is identified as a "legislative body" in prior law in section 54952 and thus it is not a new body.

- Permanent decisionmaking committee or board created by formal action

Interested Person, Paul C. Minney, contends that permanent decisionmaking committees created by formal action were not subject to the Brown Act before the enactment of the test claim legislation. In his comments, he states:

> Staff's conclusion [in the draft staff analysis] is predicated upon the assumption that the legislative body of a local agency can only create a "permanent decision making board" which may exercise the authority of the body that created it. This assumption is incorrect. For example, when a school district approves a charter school (by formal action) it creates a permanent body with decision making body [sic] that exercises authority broader than that granted to the school district...

Staff disagrees. Under prior law, section 54952.2 stated:

> As used in this chapter, "legislative body" also means *any* board, commission, committee, or similar multimember body which exercises *any authority* of a legislative body of a local agency *delegated* to it by that legislative body. (Emphasis added.)

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[19] *Id.*, at pages 828-829.

Also, under prior law, section 54952.5 specifically included permanent boards and commissions of local agencies within the coverage of the Brown Act. That section stated:

> As used in this chapter, 'legislative body' also includes, but is not limited to, planning commissions, library boards, recreation commissions, *and other permanent boards or commissions* of a local agency. (Emphasis added.)

When determining the intent of a statute, the first step is to look at the statute's words and give them their plain and ordinary meaning. Where the words of the statute are not ambiguous, they must be applied as written and may not be altered in any way.[20] The plain language of former sections 54952.2 and 54952.5 include permanent boards and commissions as legislative bodies and any board or commission that exercises any authority delegated to it; i.e. decisionmaking authority.

Moreover, in their 1989 booklet, *Open Meeting Laws*, the Attorney General's Office determined that decisionmaking bodies were required to comply with the Brown Act before the enactment of the test claim legislation. In the booklet, the Attorney General's Office states:

> *Under current law, decision-making bodies would primarily be covered under section 54952 or 54952.2* and advisory committees under section 54952.3. However, section 54952.5 was invoked by this office to apply to a hearing board of an air pollution control district. (71 Ops.Cal.Atty.Gen. 96 (1988).) Although there is not a published opinion or indexed letter precisely on point, we think that permanent committees (e.g., budget or finance committees) comprised solely of less than a quorum of the members of a board or commission were not intended to be covered by section 54952.5. (See discussion of less than a quorum exception in section C(6) at page 20 in this pamphlet.) *However, if such committees "exercise" enough "authority" "delegated" to them by a legislative body, they might be covered by section 54952.2 as a decision-making body rather than an advisory body.*

While the Attorney General's views do not bind us, they are entitled to considerable weight. This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements.[21]

Accordingly, staff finds that permanent decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

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[20] *City of Merced* v. *State of California* (1984) 153 Cal.App.3d 777; *Carrisales* v. *Department of Corrections* (1999) 21 Cal.4th 1132, Exhibit M, Tab 6.

[21] *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors*, *supra*, 6 Cal.4th at p. 829, Exhibit M, Tab 5.

- Temporary decisionmaking committee or board created by formal action

This body is also identified as a "legislative body" in prior law under section 54952.2 as discussed above. Section 54952.2 stated:

> As used in this chapter, "legislative body" also means *any* board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body. (Emphasis added.)

For the same reasons discussed under the section analyzing permanent decisionmaking bodies, staff finds that temporary decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Permanent advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in sections 54952.3 and 54952.5. Section 54952.3 defined "legislative body" as *any* advisory committee created by formal action. In addition, section 54952.3 provides an exception for any advisory committee composed solely of less than a quorum of the members of the legislative body. Section 54952.5 also defined "legislative body" to include permanent boards or commissions of a local agency. Thus, permanent advisory committees or boards created by formal action (except less than a quorum of the members) were "legislative bodies" under prior law.

- Temporary advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in section 54952.3 as discussed above, and thus, was a "legislative body" under prior law.

- Standing committees comprised of a quorum of the members of the legislative body

These bodies are also defined as a "legislative body" under prior law. Standing committees, by definition, are permanent committees that regularly consider a particular subject matter. When comprised of a quorum of the members of the legislative body, these committees fall under the definition of a committee with delegated authority since they are empowered to make decisions on behalf of the legislative body.[22] In addition, standing committees comprised of a quorum of the members fall under the definition of "legislative body" in former Government Code sections 54952.3 and 54952.5 (i.e. permanent advisory committees of a local agency). Thus, standing committees composed of at least a quorum of the members of the legislative body are not new bodies under the test claim legislation.

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[22] Former Government Code section 54952.2 stated in relevant part as follows:

> "...legislative body also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body."

The chart below provides a summary of staff's findings:

Test Claim Legislation Section 54952	Prior Law Sections 54952, 54952.3, 54952.3, 54952.5
Governing body	§ 54952 Governing body
Local body created by state or federal statute	NEW
Permanent decisionmaking committee or board created by formal action	§ 54952.2 Any board, committee, body that exercises any authority of a legislative body *delegated* to it by the legislative body § 54952.5 Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency
Temporary decisionmaking committee or board created by formal action	§ 54952.2
Permanent advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3 *Any* advisory committee created by formal action (except less than a quorum of the members) § 54952.5 Planning commissions, library boards, recreation commission, *and other permanent* boards or commissions of a local agency
Temporary advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3
Standing committees, irrespective of their composition (i.e. even those with less than a quorum of the members of the legislative body) with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action	NEW--Standing committees with less than a quorum of the members However, standing committees with a quorum of members of the legislative body are covered in prior law through §§ 54952.2, 54952.3 and 54952.5

Based on the foregoing, staff finds that Government Code sections 54952 and 54954.2, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for two new bodies (local bodies created by state or federal statute and standing committees with less than a quorum of the members of the legislative body with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action) to prepare and post an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Advisory Bodies Subject to the Notice & Agenda Requirements

In the *Open Meetings Act* (CSM-4257) test claim, the Commission determined that Government Code section 54954.2 imposed a reimbursable state mandated program upon "all legislative bodies," as defined, to post a notice and agenda 72 hours prior to the meeting of a

legislative body. That section also required that the notice and agenda contain a brief general description of all items to be discussed at the meeting. Section 54954.2 was enacted in 1986 and applied to all legislative bodies, which by definition included advisory bodies before the enactment of the test claim legislation.

However, prior law (former Government Code section 54952.3, which was enacted in 1968) also *exempted* advisory bodies from the regular notice and agenda provisions of the Act and held them to significantly reduced notice requirements:

> Meetings of such advisory commissions, committees or bodies...shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.
>
> If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. *No other notice of regular meetings is required.* (Emphasis added.)

Thus, prior law, as specified in sections 54954.2 and 54952.3, imposed conflicting duties on advisory bodies. If an advisory body complied with section 54952.3 by not preparing and posting an agenda, did it violate section 54954.2? In other words, which statute constitutes prior law with respect to the duties imposed on advisory bodies?

Sutherland Statutory Construction, a treatise on statutory construction, explains that whenever the legislature enacts a provision, it has in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the new provision is presumed to be in accord with the legislative policy embodied in those prior statutes. When a conflict exists, the more specific statute controls over the more general one.[23] However, where the conflict is irreconcilable, the statute that is the more recent of the two conflicting statutes prevails.[24]

In this case, staff finds the express language of section 54952.3 is more specific than the provisions of section 54954.2 and thus, prevails as prior law. Section 54952.3 *specifically* identified advisory commissions and committees as legislative bodies that were not required to prepare and post an agenda. They were only required to deliver notice of their meetings 24 hours prior to the meeting and to provide in their bylaws for the time and place of holding regular meetings. In contrast, section 54954.2 *generally* referred to "the legislative body of the local agency, or its designee," when describing the bodies to which the notice requirements applied. Thus, by the repeal of section 54952.3 by the test claim legislation, advisory bodies are now subject, for the first time, to the full notice and agenda requirements specified in section 54954.2, subdivision (a), of the Brown Act.

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[23] See also *People v. Tanner* (1979) 24 Cal.3d 514, 521, where the California Supreme Court states that "[a] specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates." Exhibit M, Tab 7.

[24] 2B, Sutherland, Statutory Construction (5th Ed. 1994) § 51.02.

Therefore, staff finds that Government Code section 54954.2, subdivision (a), constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all permanent and temporary advisory bodies created by formal action (except less than a quorum of the members of the legislative body) to comply with the full notice and agenda requirements of the Brown Act by preparing and posting an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Part Two: Closed Session Requirements

Under prior law, the legislative body was required to state the reasons for a closed session either before or after the closed session and to publicly report the action and vote taken in closed session regarding the appointment, employment or dismissal of a public employee. The test claim legislation added four new closed session requirements that apply to all "legislative bodies" including those newly defined under the test claim legislation.

Notice and Agenda Requirements

The test claim legislation amended the notice and agenda provisions to include closed session items on the agenda. Section 54954.2 states, in relevant part, the following:

> At least 72 hours before a regular meeting, the legislative body of a 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, <u>including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words</u>. (Underlined portion indicates amendments to this section by the test claim legislation).

Under prior law, the legislative body was only required to state the general reason or reasons for the closed session either prior to or after holding the closed session and if desired, cite the statutory authority under which the session was being held.[25] The test claim legislation now requires a brief general description of closed session items to be included on the agenda for the meeting.

Thus, staff finds that Government Code section 54954.2, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" defined in Government Code section 54952 to provide a brief general description of all items to be discussed in closed session on the agenda of the meeting.

Prior Disclosure Requirements

Under prior law, section 54957.7 only required a legislative body, prior to *or* after the closed session, to state the general reason for the closed session and to include the appropriate

[25] Former Government Code section 54957.7.

statutory authority, if desired. The test claim legislation amended this section to provide, in relevant part, as follows:

> (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.

The test claim legislation now requires all legislative bodies to disclose each item to be discussed in closed session prior to the start of the closed session.

Accordingly, staff finds that Government Code section 54957.7, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" as defined in Government Code section 54952 to disclose, prior to holding a closed session, each item to be discussed in closed session.

Subsequent Reporting Requirements

Subdivision (b) was added to section 54957.7 by the test claim legislation and provides as follows:

> (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.

Section 54957.1, subdivision (a) of the test claim legislation added an extensive list of items requiring the legislative body to publicly report, either orally or in writing,[26] the actions and votes taken in closed session for the following items:

> (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

[26] Government Code section 54957.1(b) provides in relevant part the following:
"Reports that are required to be made pursuant to this section may be made orally or in writing."

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.

Under prior law, the sole reporting requirement for closed sessions under section 54957.1 was to report at the current or a subsequent meeting, any action taken and any roll call vote *to appoint, employ, or dismiss a public employee*.[27] Other issues that could be discussed in closed

[27] Former section 54957.1 stated the following:

session such as licensing matters, real estate negotiations or pending litigation did not require any reporting in a public session.[28] The test claim legislation now requires the legislative body to reconvene into public, open session and report the actions and votes taken on the five new items listed above which were discussed in closed session.

Therefore, staff finds that Government Code sections 54957.7, subdivision (b), and 54957.1, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to reconvene in public session prior to adjournment and report the five items identified in section 54957.1, subdivision (a) (1-4, 6) which were discussed in closed session.

Documentation Requirements

Subdivisions (b) and (c) of section 54957.1 of the test claim legislation concern the provision of documentation from closed sessions to members of the public. This section provides, in relevant part, as follows:

> (b)...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 amendment 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 actions referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

Prior to the test claim legislation, section 54957.1 did not address writings. The subject of 'writings' was addressed in section 54957.5 which provided for the inspection and distribution of certain writings that were public records under the California Public Records Act. However, subdivision (e) of section 54957.5 provided that, "(T)his section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of a local agency...". Thus, while prior law provided for the inspection and provision of certain writings distributed to the legislative body, it did not require the distribution of documentation from closed sessions to members of the public.

> The legislative body of any local agency shall publicly report at the public meeting during which the closed session is held or at its next public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body.

[28] See Government Code sections 54956.7, 54956.8, 54956.9, 54957.

Accordingly, staff finds that Government Code section 54957.1, subdivisions (b) and (c), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to provide copies of documentation from the closed session within the specified timelines.

Issue 2: Does the test claim legislation impose costs mandated by the state pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514?

The remaining issue is whether there are increased costs mandated by the state. Government Code section 17514 provides in relevant part the following:

> Costs mandated by the state" means any *increased costs* which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975...which mandates a new program or higher level of service within the meaning of Section 6 of Article XIII B of the California Constitution. (Emphasis added.)

In addition, section 17556 provides in relevant part the following:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

Claimant has submitted a declaration to support their contention that the test claim legislation has resulted in an increase in costs incurred by several County departments. Steve Conrad, SB 90 Coordinator for the County of Santa Clara declared on December 28, 1994 that an additional $560 will be incurred per year by Santa Clara county to include closed session items on the agenda, and that an additional $2,200 will be incurred per year by Santa Clara county to record closed session discussions in order to report in open session the items discussed in closed session, and that an additional $6,300 will be incurred per year by Santa Clara county to prepare and post an agenda for the new bodies defined as "legislative bodies" in the test claim legislation.

The Department of Finance contends that while chapters 1136 and 1137 may have resulted in reimbursable state-mandated activities pertaining to certain notification requirements, these chapters may also result in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. The Department also contends that the test claim legislation results in cost savings to local governments by simplifying and clarifying the Brown Act. The Department did not comment on the new closed session requirements of the test claim legislation.

In reviewing the language of the test claim legislation, there is no language that provides for offsetting savings resulting in *no* net costs to the claimants, nor does the test claim legislation include any additional revenue specifically intended to fund the mandate. While the Department of Finance contends that the test claim statutes may result in offsetting savings to the claimants by limiting the agenda descriptions to "20 words or less", staff finds that the language of the test claim legislation does not support this conclusion. Nor has the Department provided any documentary evidence to support their contention. Former Senator Kopp contends that the legislative intent of these amendments was to simplify and clarify the Brown Act. However, no documentary evidence has been provided to support this contention.

Therefore, staff finds that the test claim legislation, which requires the legislative bodies of local agencies to perform a number of additional activities in relation to the open meeting requirements of the Brown Act, imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

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Conclusion

Based on the foregoing, staff concludes that the test claim legislation (Government Code sections 54952, 54954.2, 54957.1, and 54957.7) imposes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

Open Session Requirements

Activity	Applies To
To prepare and post an agenda at least 72 hours before a regular meeting containing a brief general description of each item of business to be transacted or discussed at the meeting. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	Local Bodies created by state or federal statute. Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action. Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Closed Session Requirements

Activity	Applies To
To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	All "legislative bodies"
To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. [Gov. Code § 54957.7, subd. (a)]	All "legislative bodies"
To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). [Gov. Code § 54957.7, subd. (b)]	All "legislative bodies"
To provide copies of closed session documents as required. [Gov. Code § 54957.1, Subd. (b) and (c)]	All "legislative bodies"

Staff further concludes that all other statutes and code sections included in this test claim do not constitute a reimbursable state-mandated program.[29]

Staff Recommendation

Therefore, staff recommends that the Commission adopt the staff analysis and recommendation.

[29] In their Supplemental Filing, claimant (City of Newport Beach) discusses other statutes [Government Code §§ 54952.1, 54956.9, subdivision (c), 54957.6, subdivision (b), 54 954, subdivision (d)] that have not been identified in the original test claim filing and have not been amended in by the claimant. Therefore, staff has not analyzed these statutes in this Staff Analysis. Government Code section 17557 provides in relevant part the following:

> (c) A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the original test claim.

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EXHIBIT A

County of Santa Clara

Finance Agency
Controller-Treasurer Department
County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-2541 FAX 289-8629

December 28, 1994

Commission on State Mandates
1414 K Street
Suite 315
Sacramento, CA 95814

Dear Sir/Madam:

Enclosed please find Santa Clara County's test claim (one original plus three copies) relating to Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994, all of which are associated with recent reform to the Brown Act.

Please contact me at (408) 299-2541 Ext. 151 if you have any questions or need additional information.

Sincerely,

Steve Conrad

Steve Conrad
SB 90 Coordinator

Board of Supervisors: Michael M. Honda, Zoe Lofgren, Ron Gonzales, Rod Diridon, Dianne McKenna

State of California
COMMISSION ON STATE MANDATES
1414 K Street, Suite 315
Sacramento, CA 95814
(916) 323-3562
CSM 1 (12 91)

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DEC 29 1994
COMMISSION ON STATE MANDATES

Claim No.

TEST CLAIM FORM

Local Agency or School District Submitting Claim

County of Santa Clara

Contact Person

Telephone No.

Steve Conrad (408) 299-2541 x151

Address

County of Santa Clara Finance Agency
70 W. Hedding St. East Wing Second Floor
San Jose, CA 95110

Representative Organization to be Notified

CSAC SB 90 Service - Allan Burdick
5715 Marconi. Suite A
Carmichael, CA 95608

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Government Code Section 54952(a)(b)(c)(d) - Ch. 1138/93
Government Code Section 54954.2 (a) - Ch. 1136 & 1137/93, Ch. 32/94
Government Code Section 54957.1(a)(b)(c) - Ch. 1136 & 1137/93, Ch. 32/94
Government Code Section 54957.7 (a)(b)(c) - Ch. 1136 & 1137/93

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Steve Conrad
SB 90 Coordinator

(408) 299-2541 x151

Signature of Authorized Representative

Date

Steve Conrad

December 28, 1994

BEFORE THE
COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of: County of Santa Clara	Chapters 1136, 1137 & 1138, Statutes of 1993 Chapter 32, Statutes of 1994 Government Code Section 54952 Government Code Section 54954.2 Government Code Section 54957.1 Government Code Section 54957.7 Brown Act Reform

TEST CLAIM FILING

AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551 (a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution". The County of Santa Clara is a local agency as defined in Government Code Section 17518.

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

Chapters 1136, 1137 and 1138, Statutes of 1993, and Chapter 32, Statutes of 1994, by making various revisions to the Ralph M. Brown Act as specified below, require an increased level of service by local agencies which has resulted in a corresponding increase in state mandated costs.

Chapters 1136, 1137 and 1138, Statutes of 1993, were triple-joined and became operative on April 1, 1994. AB 1426 and SB 36 (Chapters 1136 and 1137 respectively) essentially mirror one another while SB 1140 (Chapter 1138) contains separate provisions. Chapter 32, Statutes of 1994, which became operative as an urgency statute on April 1, 1994, "cleaned up" various sections which were added or amended by the 1993 legislation. The provisions of Chapter 32, Statutes of 1994, did not effect the scope of the State mandated activities and costs described in this test claim. [1]

The Ralph M. Brown Act (Government Code Section 54950 et seq [2]; hereafter referred to as the Brown Act or the Act) governs meetings conducted by "legislative bodies" of "local agencies" as defined in the Act. A variety of provisions of the Brown Act combine to provide public access to the meetings of legislative bodies. Prior to the 1993 amendments cited above, among other things, the Act required the legislative body (as defined) to post an agenda, at least 72 hours before a regular meeting, containing a description of each item of business to be transacted or discussed at the meeting. Closed sessions of the legislative body were allowed under certain specified circumstances and very limited notice and reporting of closed sessions was required.

---

1. The Senate Rules Committee Bill Analysis of SB 752, Chapter 32 of 1994 describes the bill as making technical and clarifying amendments to the Act such as: delete misnumbered sections, provide cross-reference, etc. related to recent revisions to the Act (i.e. Chapters 1136, 1137 and 1138 of 1993). The description further states that the 1993 legislation cited "makes comprehensive revisions to the Act, effective April 1, 1994, to, among other things, provide:

A. Standing committees are held in open and public meetings.
B. Closed session meeting notice and disclosure requirements are expanded."

The Legislative Counsel's Digest to Chapter 32 of 1994 states:

"The Ralph M. Brown Act...was revised by several acts in 1993, to be operative April 1, 1994. This bill would make technical revisions to resolve inconsistencies between those acts and would make conforming changes, to be operative April 1, 1994"

2. All further statutory references are to the California Government Code unless otherwise indicated.

Chapters 1136, 1137 and 1138, Statutes of 1993, revised the definition of "legislative body" to include new entities such as standing committees. By repealing Section 54952.3, Chapter 1138, Statutes of 1993, eliminated the special, relaxed procedural requirement for advisory bodies with respect to meeting notice requirements. Advisory bodies are, as a result, subject to the more stringent meeting notice requirements as specified in Section 54954.2 as well as Sections 54954, 54955, 54955.1 and 54956. Provisions which require the legislative body to publicly report closed session activities as well as procedures for providing notice prior to a closed session were revised and expanded. By expanding the number of legislative bodies subject to the various provisions of the Brown Act and by expanding the notice and reporting requirements relating to closed sessions, the subject legislation has required an increased level of service by local agencies. Local agencies are defined by the Act (Section 54951) to include counties, cities, towns, school districts, municipal corporations, districts, political subdivisions, or any board, commission or agency thereof.

B. MANDATED ACTIVITY

Closed Session Agenda and Reporting Requirements

The Brown Act provides that all meetings of the legislative body of a local agency shall be open and public, except as otherwise provided for in the Act. The Act permits closed session meetings when a local agency discusses a license application by someone with a criminal record (Section 54956.7), or meets with its negotiator regarding the price and terms acceptable to the agency in a real property transaction (Section 54956.8), or discusses pending litigation with legal counsel (Section 54956.9), or participates in a joint agency meeting about insurance pooling, tort liability losses, or workers' compensation liability (Section 54956.95), or discusses employee wages and benefits with its labor negotiator (Section 54957.6), or participates in meetings regarding multi-jurisdictional drug law enforcement (Section 54957.8).

Prior to the 1993 amendments to the Act by the subject legislation, there were four statutory provisions relating to closed session notice and/or reporting requirements:

Section 54957.7, as added by Chapter 1284, Statutes of 1980, required the legislative body to state the general reasons for holding a closed session prior to or after holding the closed session. Compliance with this section could generally be accomplished by citing the statutory or other legal authority under which the closed session was to be held.

Section 54957.1 as added by Chapter 959, Statutes of 1975, and subsequently amended by Chapters 181 and 1284, Statutes of 1980, required the legislative body to publicly report any action taken and votes thereon with respect to action to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body.

Section 54956.9, as added by Chapter 1320, Statutes of 1987, required a legislative body to publicly disclose the justification for a closed session to discuss pending litigation and in specified instances to identify the litigation to be discussed, prior to conducting the closed session as authorized by that section.

Section 54956.8, as added by Chapter 1126, Statutes of 1984, required the legislative body to conduct a public session in which it identified any real property which the legislative body intended to discuss in an upcoming closed session.

None of the four prior closed session notice and reporting provisions cited above required advanced written notice to be provided prior to a closed session. Prior law, Section 54954.2 (a) as added by Chapter 641, Statutes of 1986, provided in part:

> "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."

Section 54954.2(a), as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, adds the requirement that each item to be transacted or discussed in a closed session must be briefly described in the agenda for the regular meeting of the legislative body. This incremental increase in the number of items which must be described in the posted agenda requires an increased level of service by local agencies.

Section 54954.2 (a) now reads:

> "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, <u>including items to be discussed in closed session</u>."

Section 54957.7(b), as amended by Chapters 1136 and 1137, Statutes of 1993, requires the legislative body to reconvene into open session after any closed session and to make any disclosures required by Section 54957.1 of any action taken. Section 54957.1 (a), as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, requires that a report of any action taken and the vote thereon generally must be provided to the public at the reconvened session. Section 54957.1 (b) as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, specifies that the report may be made either orally or in writing. In the case of a contract or settlement of a lawsuit, copies of the document also must be disclosed as soon as possible pursuant to Section 54957.1 (b) and (c) as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994.

In order to perform the newly required reporting of closed session activity as required by Section 54957.1, some form of record keeping is generally necessary during the closed session. That is, in order to provide a complete report of any action taken in closed session and votes thereon, the legislative body must perform some form of record keeping of the closed session. There was no prior requirement that legislative bodies keep minutes or otherwise record action taken in closed session such as voting records, etc.

Some form of record keeping during the closed session, subsequently made available to the public in the form of an oral or written report, is **required** by the new reporting requirements of Section 54957.1 (a) as amended by Chapters 1136 and 1137, Statutes of 1993 and Chapter 32, Statutes of 1994. This additional record keeping requires a higher level of service by local agencies.

Definition of a Legislative Body

Prior law[3], Sections 54952, 54952.2, 54952.3 and 54952.5, provided four separate definitions of a "legislative body" as used in the Brown Act. Section 54952 provided the general definition to include the governing board or any body on which officers of a local agency service in their official capacity. Section 54952.2 provided a definition of a "legislative body" to include bodies which have been delegated authority of a local agency. Section 54952.3 defines a "legislative body" to include advisory bodies and provides an exemption from the more stringent notice requirements applicable to the other types of legislative bodies. Section 54952.5 defines a "legislative body" to include permanent boards and commissions.

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3. Prior definitions of a legislative body as used in the Brown Act:

Section 54952: "As used in this chapter,"legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency service in their official capacity as members..."

Section 54952.2: "As used in this chapter, "legislative body" also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body."

Section 54952.3: "As used in this chapter, "legislative body" also includes any advisory commission, committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency. Meetings...
shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws...for the time and place for holding such regular meetings. No other notice of regular meetings is required...The provisions of Sections 54954, 54955, 54955.1 and 54956 shall not apply to meetings under this section."

Section 54952.5: "As used in this chapter, "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency."

Chapter 1138, Statutes of 1993, consolidated the definition of "legislative body" into one section by amending Section 54952 into Parts (a), (b) and (c) and (d) and repealing Sections 54952.2, 54952.3 and 54952.5. Sections 54952 (a), (b), (c) and (d) expand the definition of "legislative body" to include several entities not previously included.

Section 54952 (a) as amended by Chapter 1138, Statutes of 1993, provides that a "legislative body" includes:

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

Local bodies created by state or federal statute were not included in the prior version of the Act's definition of a "legislative body". Section 54952 (a) as amended by Chapter 1138, Statutes of 1993, requires a higher level of service with respect to new entities covered by the open meeting and notice provisions of the Brown Act.

Section 54952 (b) as amended by Chapter 1138, Statutes of 1993, provides that a "legislative body" also includes:

"A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body which 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...are legislative bodies for purposes of this chapter."

Section 54952 (b) as amended by Chapter 1138, Statutes of 1993, provides that standing committees are subject to the Act no matter who is on them. A standing committee is a committee which has a continuing jurisdiction over a particular subject matter (e.g., budget or finance) or whose meeting schedule is fixed by charter, ordinance, resolution or other formal action of the legislative body which created it. By adding standing committees to the definition of "legislative body" as used in the Act, Section 54952 (b) as amended by Chapter 1138, Statutes of 1993, has increased the number of entities covered by the open meeting and notice requirements of the Act and therefore has required an increased level of service by local agencies.

Section 54952.3 was repealed by Chapter 1138, Statutes of 1993. The result is that advisory bodies are now subject to more stringent meeting notice and agenda requirements. Section 54952.3, as added by Chapter 1297, Statutes of 1968 and last amended by Chapter 968, Statutes of 1981, provided that certain meeting notice requirements of the Act did not apply to meetings of advisory bodies. Section 54952.3, before its repeal by Chapter 1138, Statutes of 1993, stated in part:

> "The provisions of Sections 54954, 54955, 54955.1 and 54956 shall not apply to meetings under this section."

By repealing the previous exemption of advisory bodies from certain meeting notice requirements of the Act, Chapter 1138, Statutes of 1993, has required an increased level of service by advisory bodies which are now subject to Sections 54954, 54955, 54955.1 and 54956 and the more stringent meeting notice requirements of Section 54954.2 (a).

In the Senate Rules Committee Bill Analysis of SB 36 (Chapter 1137 of 1993), copies of which are attached to this test claim, Item 2 on Page 3 of the Analysis section, states that this bill "...adds "standing committees" to the Acts requirements". Item 6 on Page 3 of the Analysis states that this bill "Revises certain closed session procedures, describes closed session notice forms...Provisions relating to the reporting of closed session activities are revised and expanded...Procedures for notice prior to, and following, a closed session are revised (e.g., legislative body must reconvene into open session, required closed session matters must be disclosed at reconvened session)". The Fiscal Effect section on Page 4 of the Analysis describes the major provisions of SB 36 as "Local Reimbursable Mandate" with a Department of Finance estimated annual statewide cost of $4.7 million.

Page 4 of the Analysis describes prior legislation:

> "Similar bills were SB 1538 (Kopp) and AB 3476 (Burton) of 1992 which were vetoed...The Governor's veto message of SB 1538 stated: "This bill would make a number of changes in the Ralph M. Brown Act relating to open meetings. It would expand the number of local agencies subject to the law, and expand notice, recordation, and recordkeeping requirements...I am concerned that this bill would add substantial new state-mandated and reimbursable costs to local government." "

In its 1994 pamphlet titled "The Brown Act: Open Meetings For Local Legislative Bodies", the California Attorney General's Office states that "Prior to April 1, 1994 standing advisory committees were exempt from the Act." [4]

In a recent California Supreme Court case, in a matter related to the definition of "legislative body" as used in the Brown Act (Freedom Newspapers v. Orange County Employees Retirement System (1993) 6 Cal.4th 821), the court ruled that an advisory committee composed solely of board members numbering less than a quorum of the board was not a "legislative body" and was therefore excluded from the open meetings requirements of the Act. It should be noted that Section 54952 as amended by Chapter 1138, Statutes of 1993, limits this less-than-a-quorum exception by specifying that even less than a quorum bodies, if considered a standing committee, are legislative bodies for purposes of the Brown Act.

D. COSTS MANDATED BY THE STATE

Government Code Section 17514 defines "costs mandated by the State" as:

> "any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Section 17518 defines "local agency" to include any city, county, special district, authority, or other political subdivision of the state. Section 17519 defines "school district" to include any school district, community college district, or county superintendent of schools. Section 17520 defines "special district" to include redevelopment agencies, joint powers authorities, county service areas, maintenance or improvement districts or any other zone or area.

4. Citation contained on Page 6 of the Attorney General's pamphlet, copies of which are attached to this test claim.

All of the criteria specified in Section 17514 for finding costs mandated by the State are met. Chapters 1136, 1137 and 1138 were enacted in October 1993 and became operative on April 1, 1994, thus costs have been incurred after July 1, 1980 as a result of statutes enacted after January 1, 1975.

Section 54952 (a), (b), (c) and (d) as amended by Chapter 1138, Statutes of 1993, has required a higher level of service by local agencies by expanding the definition of a "legislative body" as used in the Act. Compliance with the agenda preparation and posting requirements of Section 54954.2, applicable to all legislative bodies, is now required by an increased number of entities such as standing committees, advisory bodies and other local bodies created by state or federal statute.

Section 54954.2 (a) as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, has resulted in an incremental increase in the level of service required by local agencies to prepare each agenda by expanding the agenda notice requirements to include a description of each item to be discussed or transacted in closed session.

Section 54957.1 (a), (b) and (c) as amended by Chapter 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, plus Section 54957.7 (a), (b) and (c) as amended by Chapter 1136 and 1137, Statutes of 1993, have required a higher level of service by local agencies which conduct closed sessions by expanding the nature and extent of the required public reporting of action taken in closed session.

It should be noted that in the case of County of Los Angeles v. State of California (1987) 43 Cal.3d 46, the California Supreme Court ruling included a definition of a "program" within the meaning of Section 6 of Article XIII B. The Court defined the term "program" as one that carries out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Compliance with the Brown Act as amended by the 1993 subject legislation implements a state policy which imposes unique requirements on local agencies which does not generally apply to all residents and entities in the state.

E. DISCLAIMERS ARE NOT APPLICABLE

Costs Mandated By the Federal Government

Government Code Section 17513 defines "costs mandated by the federal government". We know of no federal statute or regulation which requires a local agency to perform the specific activities mandated by Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994. The subject legislation was not enacted to meet specific federal program or service requirements where failure to enact the legislation would result in substantial monetary penalties or a loss of funds.

Criteria For Not Finding Costs Mandated By The State

Government Code Section 17556 specifies conditions for which the Commission shall not find costs mandated by the State, as defined in Section 17514. The seven possible criteria for not finding costs mandated by the State do not apply to the subject legislation of this test claim, Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994. While the subject legislation expands the number of persons and bodies subject to the Brown Act and thereby expands the scope of existing crimes, the activity described in this test claim as "costs mandated by the state" does not directly relate to the enforcement of the crimes or infractions, therefore Section 17556 (g) is not applicable to this test claim.

TEST CLAIM REQUIREMENTS

The following items are herein provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: The Declaration of Phyllis Perez, Clerk of the Board, County of Santa Clara, which describes the activities required to comply with the mandate.
Exhibit 2: The Declaration of Steve Conrad, SB 90 Coordinator, County of Santa Clara, which describes the estimated costs of mandated activities cited in the Claim.
Exhibit 3: Copies of the chaptered legislation referenced in the narrative.
Exhibit 4: Commission on State Mandates Test Claim Form.
Exhibit 5: Senate Rules Committee Analysis of SB 36 of 1993.
Exhibit 6: The Brown Act: Open Meetings For Local Legislative Bodies, 1994 as published by the California Attorney General's Office.

CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on December 28, 1994 at San Jose, California, by:

Steve Conrad

Steve Conrad, SB 90 Coordinator
County of Santa Clara

County of Santa Clara
Test Claim

Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994

DECLARATION

I, Phyllis Perez, Clerk of the Board, County of Santa Clara, make the following declaration and statement:

In my capacity as Clerk of the Board, I oversee activities required by the Ralph M. Brown Act as performed by my staff. I am familiar with the recent amendments to the Brown Act by Chapters 1136, 1137 and 1138 of 1993 as well as Chapter 32 of 1994.
The activities required by Government Code Section 54952 (a), (b), (c) and (d) as amended by Chapter 1138, Statutes of 1993, relating to the definition of a legislative body as used in the Brown Act plus the increase in items which must be included in the agenda posted pursuant to Government Code Section 54954.2 (a) as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, have resulted in increased costs incurred by the County of Santa Clara. Government Code Section 54957.1 (a), (b) and (c) and Section 54957.7 (a), (b) and (c) both as amended by Chapters 1136 and 1137, Statutes of 1993, relating to reporting of actions taken in closed session, have also resulted in an increase in costs incurred by the County of Santa Clara.

A description of the procedures and activities required before and after the mandate is set forth on Pages 3 through 8 of the attached Test Claim Narrative. I believe that the costs which Santa Clara County has and will incur in compliance with the subject legislation should be reimbursed by the State as these costs clearly meet the criteria of "costs mandated by the State", as defined in Government Code Section 17514.

I certify under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to the matters which are stated therein as information or belief, and as to those matters I believe them to be true.

Executed on December 28, 1994 in the city of San Jose, California.

Phyllis Perez

Phyllis Perez
Clerk of the Board

County of Santa Clara
Test Claim

Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994

DECLARATION

I, Steve Conrad, am the SB 90 Coordinator for the County of Santa Clara. I am responsible for recovering "costs mandated by the state" as defined in Government Code Section 17514. A description of the procedures and activities required before and after the subject mandate is set forth on Pages 3 through 8 of the attached Test Claim Narrative. The activities required by Government Code Section 54952 (a), (b) (c) and (d), Section 54954.2 (a), Section 54957.1 (a), (b) and (c) plus Section 54957.7 (a), (b) and (c) as amended by Chapters 1136, 1137 and 1138, Statutes of 1993, and Chapter 32, Statutes of 1994, have resulted in an increase in costs incurred by several County departments.

A description of estimated costs to perform the mandated activity is set forth below:

Agenda Description of Closed Session Items

Compliance with Section 54954.2 (a) as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, requires a higher level of service with respect to agenda preparation activities. We estimate that an additional $560 will be incurred per year by Santa Clara County, calculated as follows:

> Estimated average additional items per agenda: 6; estimated average preparation time per agenda item: 5 minutes; estimated number of Board of Supervisor meeting agendas per year: 32. Total estimated increase of sixteen hours per year at $35.00 per hour results in additional estimated state mandated costs of approximately $560 per year for Board of Supervisors agendas.

Report At The Conclusion Of A Closed Session

Compliance with Section 54957.1 (a), (b) and (c) as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, plus Section 54957.7 (a), (b) and (c) as amended by Chapters 1136 and 1137, Statutes of 1993, requires a higher level of service with respect to record keeping required in order to provide a report at the conclusion of a closed session. We estimate that an additional $2,200 will be incurred per year by Santa Clara County, calculated as follows:

Estimated average number of closed sessions of the Board of Supervisors per year: 32; estimated average length per session: 1.5 hours. Total of 48 additional hours per year to record closed session discussions and actions at $46.00 per hour results in additional estimated state mandated costs of $2,200 per year for closed sessions of the Board of Supervisors.

Definition of a Legislative Body

Compliance with Section 54952 (a), (b), (c) and (d) as amended by Chapter 1138, Statutes of 1993, requires a higher level of service with respect to entities now defined as a "legislative body" as used in the Brown Act and therefore subject to the agenda preparation and posting provisions of the Brown Act. We estimate that an additional $6,300 will be incurred per year by Santa Clara County, calculated as follows:

Estimated number of standing committees: 15; estimated number of meetings each per year: 12; estimated average time to prepare and post an agenda for each meeting pursuant to Section 54954.2 (a): 1 hour. Total estimated additional 180 hours per year at $35.00 per hour results in additional estimated state mandated costs of $6,300 per year.

I believe that the costs which Santa Clara County has and will incur in compliance with the subject legislation should be reimbursed by the State as these costs clearly meet the criteria of "costs mandated by the State", as defined in Government Code Section 17514.

I certify under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to the matters which are stated therein as information or belief, and as to those matters I believe them to be true.

Executed on December 28, 1994 in the city of San Jose, California.

Steve Conrad

Steve Conrad
SB 90 Coordinator

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614	Bill No. SB 36 Author: Kopp (I), et al Amended: 9/8/93 Vote Required: 21

Committee Votes:

COMMITTEE: LOCAL GOVERNMENT BILL NO.: SB 36 DATE OF HEARING: 2-24-93		
SENATORS:	AYE	NO
Calderon		
Craven	✓	
Hughes		
Kopp	✓	
Russell	✓	
Ayala (VC)	✓	
Bergeson (CH)	✓	
TOTAL:	5	0

COMMITTEE: APPROPRIATIONS BILL NO.: SB 36 DATE OF HEARING: 6-3-93		
SENATORS:	AYE	NO
Alquist	✓	
Bergeson		
Dills	✓	
Greene	✓	
Johnston	✓	
Kelley		
Killea	✓	
Leonard		
Lockyer	✓	
Mello	✓	
Torres		
Beverly (VC)		
Presley (CH)	✓	
TOTAL:	8	0

Senate Floor Vote: p. 1583, 6/9/93

Senate Bill 36—An act to amend Sections 54951.7, 54952.2, 54952.3, 54953, 54953.5, 54954, 54954.2, 54954.3, 54956.9, 54957, 54957.1, 54957.2, 54957.5, 54957.7, 54959, 54960, 54960.1, and 54961 of, to amend and renumber Sections 54952.5, 54952.6, and 54952.7 of, and to add Sections 54952.5, 54952.6, 54953.6, 54954.5, and 54955.2 to, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

Roll Call

The roll was called and the bill was passed by the following vote:
AYES (29)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Dills, Greene, Hart, Hayden, Hill, Hughes, Johnston, Kelley, Killea, Kopp, Leonard, Lockyer, Maddy, Marks, Mello, Morgan, Presley, Roberti, Rosenthal, Russell, Thompson, Torres, Watson, and Wyman.
NOES (4)—Senators Calderon, Deddeh, Rogers, and Wright.
Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 72-2, 9/9/93

SUBJECT: Open meetings law revision

SOURCE: The author

DIGEST: This bill makes various changes in the law concerning the Ralph M. Brown Act concerning public meetings affecting local entities.

Assembly Amendments conform the bill's provisions to AB 1426 (Burton), delete urgency clause, provide that the bill shall become operative on April 1, 1994, and that its provisions shall be operative only if SB 1140 and AB 1426 become operative.

ANALYSIS: With limited exceptions, the Ralph M. Brown Act requires local officials to hold their meetings in public. The Brown Act declares that "the people insist upon remaining informed so that they may retain control over the agencies which serve them."

According to the Senate Local Government Committee analysis:

The heart of the Brown Act is a single sentence which reads, "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." Although the Act defines these terms, questions arise as to what constitutes a "meeting," a "legislative body," and a "local agency." When local officials can hold closed meetings remains controversial.

Local agencies interpret the Act in different ways. Some interpretations violate the spirit of the Brown Act if not its statutes. After compiling a long list of alleged

CONTINUED

Brown Act abuses, the California First Amendment Coalition, the California Newspaper Publishers Association, and others want the Legislature to strengthen the Brown Act.

Existing law, under the Ralph M. Brown Act:

1. Defines "local agency" to include any nonprofit corporation, created by one or more local agencies, if one or more directors is appointed by the local agencies and the corporation is formed to acquire, construct, reconstruct, maintain, or operate any public work project (54951.7).

2. Defines "legislative body" to include a body on which local agency officers serve in their official capacity or a body exercising authority delegated by a legislative body or serving as an advisory body (54952.2, 54952.3).

3. Requires all meetings of the legislative body to be open and public (54953), and allows public meeting attendees to record proceedings on a tape recorder (54953.5).

4. Provides that legislative body meetings need not be held within the agency's territory unless otherwise provided for in the Act under which the local agency was formed, and in emergencies, meetings may be located in a place designated by the presiding officer of the body (54954).

5. Requires a local agency to post an agenda at least 72 hours before a regular meeting containing a description of each item of business to be transacted or discussed at the meeting. No action can be taken on any item not appearing on the posted agenda (54954.2). Every agenda must provide an opportunity for the public to address the legislative body (54954.3).

6. Allows closed sessions under certain circumstances (54956.9), allows closed sessions on matters relating to an employee unless the employee requests a public hearing (54957), and requires local agencies to publicly report actions involving employees following a closed session (54957.1). Prior to holding a closed session, the legislative body must state the general reason for holding the closed session which must be made part of the notice for special, adjourned, and continued meetings (54957.7).

7. Provides that writings distributed to all or a majority of the members of a legislative body by a member, officer, or employee for discussion or consideration at a public meeting are public records under the California Public Records Act, unless exempt from public disclosure. Items which are distributed must be made available for public inspection (54957.5).

8. Allows any interested person to commence an action for a judicial determination that an action is in violation of the Act (there must be "knowledge of the fact that the meeting is in violation" of the Act), and a written demand to cure or correct an action alleged to be in violation of the Act must be made within 30 days of the action (54959, 54960, 54960.1).

9. Prohibits a local agency from conducting any meeting, conference, or function in any facility that prohibits the admittance of any person on the basis of race, religion, color, national origin, ancestry, or sex (54961).

CONTINUED

This bill:

1. Clarifies that "public work project" covers services and activities intended for public use rather than private residential use (54951.7).

2. Provides that the delegated authority applies whether the body is organized and operated by the local agency or by a private corporation created to exercise the delegated authority, with certain exceptions, and adds "standing committees" to the Act's requirements (54952.2, 54952.3). A definition is provided for "meeting" (54952.6), and any person elected to serve as a legislative body member, but has not yet assumed office, must also conform to the Act's requirements (54952.5).

3. Specifically prohibits actions by secret ballot (54953), and allows recording by video, still, or a motion picture camera. (Any tape or film record cannot be erased for 30 days after the taping. Any inspection must be provided on a tape recorder without charge. (54953.5).

4. Requires meetings to be held within the agency's boundaries with certain exceptions (e.g., inspecting real or personal property, in agency's principal office, visiting legal counsel), and in an emergency the local media requesting notice shall be notified "by the most rapid means of communication available at the time" (54954).

5. Specifies that agenda items must be "identified", revises conditions for discussing items not appearing on a posted agenda (54954.2), and each agenda must provide an opportunity for members to address the legislative body before action on the item (54954.3).

6. Revises certain closed session procedures (54956.9), describes closed session notice forms for certain closed session issues and limits liability if items are identified in this manner (54954.5), and requires employee notice as a condition to holding a closed session to consider complaints or charges (54957). Provisions relating to pending litigation and legal advice allowed in closed session are revised (specifies that this provision does not affect the privilege of written communications between legal counsel and the legislative body) (54956.9). Provisions relating to the reporting of closed session activities are revised and expanded (54957.1). Procedures for notice prior to, and following, a closed session are revised (e.g., legislative body must reconvene into open session, required closed session matters must be disclosed at reconvened session) (54957.7).

7. Provides that the writings are a public record if distributed by any person in connection with a matter subject to discussion, and items "intended" for distribution must be made available for public inspection and copying. Procedures relating to the distribution and inspection of materials and the affect on the California Public Records Act are also revised (54957.5).

8. Allows the district attorney to also commence an action, revises the violation provisions so that there must be an "intent to deprive the public of information" rather than with "knowledge of the fact that the meeting is in violation" of the Act, and sets a 90-day period for making a written demand regarding alleged violations (the period remains 30 days if the action was tak in open session but in violation of #5 above). The court may order the legislative body to tape record its closed sessions for the period and under the

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terms of security and confidentially deemed appropriate by the court (54959, 54960, 54960.1).

9. Prohibits an agency from also conducting any meeting in a facility that is inaccessible to disabled persons, or where the public cannot be present without making a payment or purchase (54961).

10. Makes numerous technical and corresponding amendments.

Prior Legislation

Similar bills were SB 1538 (Kopp) and AB 3476 (Burton) of 1992 which were vetoed. SB 1538 amendments were concurred in by the Senate 39-0. A veto override was attempted but failed 21-4.

The Governor's veto message stated:

"This bill would make a number of changes in the Ralph M. Brown Act relating to open meetings. It would expand the number of local agencies subject to the law, and expand notice, recordation, and recordkeeping requirements.

"While I strongly support the provisions of the Brown Act, and have signed legislation strengthening its application, I am concerned that this bill would add substantial new state-mandated and reimbursable costs to local governments.

"Current law requires that all local agencies give notice of their meetings, the subject matter of the meetings, and the fact that they are open to the public. This mandate was determined to be reimbursable, but was not funded in the 1992 Budget Act, and therefore was made optional for local government for 1992-93.

"It would be an anomaly if this bill of lesser significance was chaptered and deemed reimbursable, while core provisions of the Brown Act were suspended pending a year with a better fiscal outlook.

"I would consider this bill another year, when there is money available to provide the state-mandated reimbursement. However, I cannot approve mandating expensive new requirements while we are unable to afford the ones on the books today."

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: Yes

According to the Senate Appropriations Committee analysis, there are over 6,000 local entities that are covered by the requirements of this measure. Even at minor reimbursable costs for each municipality, the expense to the General Fund would be major. There are 468 cities, 58 counties, 5,000 special districts, 1,000 school districts, 300 redevelopment agencies and an unknown number of commissions and task forces that would be covered by the provisions of this bill.

Fiscal Impact (in thousands)

Major Provisions	1993-94	1994-95	1995-96	Fund
Local Reimbursable Mandate (DOF estimate)	$4,700	$4,700	$4,700	General

CONTINUED

SUPPORT: (Verified 9/9/93)

California First Amendment Coalition
California Newspaper Publishers Association
Alliance of California Taxpayers and Involved Voters
American Association of Retired Persons
Board of Supervisors, City and County of San Francisco
California Congress of Parents, Teachers and Students, Inc.
California Grocers Association
California Association of Alternative Newsweeklies
California Nurses Association
California Taxpayers Association
City Watch, Inc.
Georgiana Ranch, Inc.
Homeowners of Encino
Project Censored, Sonoma University
Sacramento County District Attorney
San Francisco Bay Guardian
Society of Professional Journalists

ARGUMENTS IN SUPPORT: The author's office indicates the bill is designed to strengthen the Ralph M. Brown Open Meetings Act. Various groups have compiled a long list of alleged Brown Act abuses over the years and which has restricted the public's right to know about actions taken by their local governments. This bill responds to those abuses.

The author's office states, "the preamble to the Ralph M. Brown Act is one of the most forceful and majestic utterances in the whole body of state law. It says simp. that government in California must conduct its business in open. The reason is self evident: as a creation of the people, government is accountable to the people for the decisions it makes on their behalf. Open-meeting laws such as the Brown Act are a bulwark of our democracy. When government shuts out the public, it loses its best source of ideas and information. Most important, it loses their trust." This bill will assist in bringing local accountability to governmental operations.

The California Newspaper Publishers Association states, "The Brown Act currently requires that local agencies post an agenda containing a brief general description of the issues to be discussed at a meeting. Although the Commission on State Mandates identified a reimbursable mandate from the requirement, the State Controller has yet to pay a single claim. Even though no claims have been audited or paid, the sad truth is that the total dollar amount of the unaudited claims submitted by local government agencies has been used by the committee and the Department of Finance to project the costs of SB 36.

"The California First Amendment Coalition did an excellent analysis of the submitted claims and found tremendous error in the claims -- error that the Controller will hopefully detect and correct."

CONTINUED

ASSEMBLY FLOOR VOTE:

MOTION: SB 36 KOPP THIRD READING BY BURTON
(AYES 72. NOES 2.) (PASS)

AYES
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Aguiar	Alby	Allen	Alpert
Andal	Archie-Hudson	Areias	Baca
Bates	Boland	Bornstein	Bowen
Bowler	Bronshvag	Valerie Brown	Brulte
Burton	Bustamante	Caldera	Campbell
Connolly	Conroy	Cortese	Costa
Eastin	Epple	Escutia	Ferguson
Frazee	Barbara Friedman	Terry Friedman	Goldsmith
Gotch	Hannigan	Harvey	Haynes
Hoge	Honeycutt	Horcher	Isenberg
Jones	Karnette	Katz	Klehs
Knight	Knowles	Lee	Margolin
Martinez	McDonald	Moore	Morrow
Mountjoy	Napolitano	Nolan	O'Connell
Peace	Pringle	Quackenbush	Rainey
Richter	Seastrand	Sher	Solis
Speier	Statham	Takasugi	Tucker
Umberg	Weggeland	Woodruff	Willie Brown

NOES
****

Hauser Murray

DLW:lm 9/10/93 Senate Floor Analyses

CHAPTER 1136

(Assembly Bill No. 1426)

An act to amend Sections 54952.7, 54953, 54953.5, 54954, 54954.2, 54954.3, 54956.9, 54957, 54957.1, 54957.5, 54957.7, 54959, 54960.1, 54961, and 54962 of, and to add Sections 54952.1, 54952.2, 54953.6, and 54954.5 to, the Government Code, relating to open meetings.

[Approved by Governor October 10, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1426, Burton. Open meetings of local government.

The Ralph M. Brown Act generally requires that the meetings of the legislative bodies of local agencies, as those terms are defined, be conducted openly, with specified exceptions. Among other things, the act provides for certain notice requirements concerning public meetings and makes it a misdemeanor for a member of a legislative body to attend a meeting where a violation occurs with knowledge of the fact that the meeting violates the act.

This bill would also define "member of a legislative body of a local agency" to include any person elected to serve as a member of a legislative body and who has not yet assumed the duties of office.

The Ralph M. Brown Act generally requires all meetings of the legislative body of a local agency to be open and public.

This bill would define "meeting," with exceptions, as any congregation of a majority of the members of a legislative body in the same time and place to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the legislative body or its local agency, and any use of direct communication, personal intermediaries, or technological devices employed by a majority of the members to develop a collective concurrence as to action to be taken on an item.

Existing law requires all meetings of the legislative body of a local agency shall be open and public with specified exceptions.

This bill would prohibit a legislative body from taking action by secret ballot.

The Ralph M. Brown Act permits recording of open and public meetings by any person.

This bill would make any recording made at the direction of a local agency subject to inspection pursuant to the California Public Records Act, as specified.

The bill would also provide that no legislative body shall prohibit or otherwise restrict the broadcast of its proceedings in the absence of a reasonable finding that the broadcast cannot be accomplished without disruption.

Under the Ralph M. Brown Act, meetings of the legislative body of a local agency need not be held within the boundaries of the territory over which the agency exercises jurisdiction. If an emergency makes the designated meeting place unsafe the presiding officer may designate a meeting place for the duration of the emergency.

This bill would require regular and special meetings to be held within the boundaries of the territory of the agency, with limited exceptions and with additional exceptions for the governing board of a school district, and would permit the presiding officer's designee to designate an emergency meeting place.

Italics indicate changes or additions. * * * indicate ommissions.

The Ralph M. Brown Act requires the posting of an agenda at least 72 hours before a regular meeting of a legislative body briefly describing each item of business and restricts action or discussion of the meeting to these items on the agenda, unless, by at least a 2/3 vote, as specified, the legislative body decides there is a need for action on a nonagenda item.

This bill would instead require the agenda to contain a brief general description of each item of business to be transacted or discussed, including items to be discussed in closed session and would permit members of a legislative body to respond to certain questions not relating to agenda items. This bill would make further restrictions on the discussion or action on nonagenda items.

The Ralph M. Brown Act requires the agenda for a regular meeting to provide an opportunity for members of the public to address the legislative body.

This bill would require the agenda for a special meeting at which action is proposed to be taken on an item to provide an opportunity for members of the public to address the legislative body prior to action on the item. The bill would further require the legislative body not to prohibit public criticism of the agency, as specified.

This bill would also prescribe disclosures of the nature of closed sessions according to a specified format.

The Ralph M. Brown Act authorizes closed sessions of a legislative body to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session would prejudice the position of the local agency in the litigation and describes the facts and circumstances that constitute pending litigation. Existing law states that this authority is the exclusive expression of the lawyer-client privilege for purposes of conducting closed sessions pursuant to the act. The act requires the legal counsel to prepare a memorandum concerning the reasons and legal authority for the closed session.

This bill would state that this authority for closed sessions for the legislative body to confer with or receive advice from its legal counsel does not limit or otherwise affect the lawyer-client privilege as it may apply to written or other communications outside meetings between the legislative body and its legal counsel. The bill would specify additional facts and circumstances for determining what is pending litigation. The bill would delete the memorandum requirement.

Under the Ralph M. Brown Act, closed sessions may be held for various reasons, including matters relating to employees, as defined.

This bill would revise the definition of employee to include an officer or independent contractor who functions as an officer or employee and to exclude any elected official, member of a legislative body, or other independent contractor and would require that, as a condition of holding a closed session on complaints against an employee, charges to consider disciplinary action, or to consider dismissal, the employee be given written notice of his or her right to a public session. The failure to give the notice would nullify any action taken in the closed session against the employee.

The Ralph M. Brown Act requires the legislative body to publicly report closed-session actions taken and roll call votes to appoint, employ, or dismiss a public employee.

This bill would instead require the legislative body to publicly report any action taken in closed session and the vote or abstention of every member present on real estate negotiations, litigation and pending litigation issues with specified exceptions, claims for various liability losses, various personnel actions, and certain collective bargaining matters. The bill would prohibit any action for injury to reputation, liberty, or other personal interest by an employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with these provisions. The bill would prescribe how the reports are to be made and would

Italics indicate changes or additions. * * * indicate ommissions.

require a brief statement of the information to be posted, as specified, thereby imposing a state-mandated local program.

Under the Ralph M. Brown Act, agendas and writings distributed to members of the legislative body by persons connected with the body for discussion or consideration at a public meeting of the body are public records unless specifically exempt from public disclosure.

This bill would specify that writings intended for distribution to members by any person in connection with a matter subject to discussion or consideration at a public meeting are public records, and would specify that writings intended for distribution prior to commencement of a public meeting are public records. The bill would require that writings that are made public records under this provision and are distributed during a public meeting shall be made available for public inspection at the meeting, or after the meeting, as specified.

The Ralph M. Brown Act requires the legislative body to state the general reason or reasons for holding any closed session prior to or after holding the closed session.

This bill would require the disclosure of the items to be discussed in the closed session prior to holding the closed session.

The Ralph M. Brown Act makes it a misdemeanor for a member of a legislative body to attend or participate in a meeting of the legislative body where action is taken in violation of the act with knowledge of the fact that the meeting is in violation of the act.

This bill would instead make it a misdemeanor if the member attends or participates with wrongful intent to deprive the public of information to which it is entitled under the act.

This bill, by enlarging the number of persons and bodies subject to the Ralph M. Brown Act and by revising the definition of a meeting elsewhere in the bill, would enlarge the scope of existing crimes and would create new crimes and would thereby impose a state-mandated local program.

The Ralph M. Brown Act permits any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body in violation of specified provisions of the act is null and void, unless any of specified conditions exist. However, a prior demand must first be made of the legislative body to cure or correct the alleged violation within 30 days from the date the action was taken.

This bill would expressly permit the district attorney or any interested person to commence an action as described and would also permit an action to determine the validity of any rule or action by the legislative body to limit the expression of its members or to compel the legislative body to tape record its closed sessions, as specified. The bill would also require the written demand to be made within 90 days if the alleged violation occurred in a closed meeting.

The bill would prohibit the conduct of meetings or functions in facilities inaccessible to disabled persons or that require members of the public to make a payment or purchase. The bill would provide that no notice, agenda, announcement, or report required by the act need identify any victim or alleged victim of tortious sexual conduct or child abuse, as specified.

Existing law expressly permits the board of directors of a hospital district and the board of trustees of a municipal hospital to hold closed sessions for specified purposes.

This bill would expressly permit the board of directors of a county hospital to hold closed sessions on reports of hospital medical audits or quality assurance committees and would permit an applicant or medical staff member whose staff privileges are the direct subject of a hearing to request a public hearing.

This bill would provide that its provisions shall be operative only if SB 36 and SB 1140 are chaptered and become operative.

Italics indicate changes or additions. * * * indicate ommissions.

This bill would provide that it shall become operative on April 1, 1994.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the cost of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that for certain costs no reimbursement is required by this act for a specified reason.

However, the bill would provide that if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. Section 54925.1 is added to the Government Code, to read:

§ 54925.1. As used in this chapter, "member of a legislative body of a local agency" includes, but is not limited to, any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person 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.

SEC. 2. Section 54952.2 is added to the Government Code, to read:

§ 54952.2. (a) As used in this chapter, "meeting" includes all of the following:

(1) Any congregation of a majority of the members of a legislative body in 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.

(2) 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.

(b) Nothing in subdivision (a) 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 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 business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

Italics indicate changes or additions. * * * indicate ommissions.

(4) The attendance of a majority of the members 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.

SEC. 3. Section 54952.7 of the Government Code is amended to read:

§ 54952.7. 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.

SEC. 4. Section 54953 of the Government Code, as amended by Section 1 of Chapter 399 of the Statutes of 1988, is amended to read:

§ 54953. (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) Notwithstanding any other provision of law, the legislative body of a local agency may use video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The use of video teleconferencing, as authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body. If the legislative body of a local agency elects to use video teleconferencing, it shall post agendas at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local agency. The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location.

SEC. 5. Section 54953.5 of the Government Code is amended to read:

§ 54953.5. (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 tape recorder made available by the local agency.

SEC. 6. Section 54953.6 is added to the Government Code, to read:

§ 54953.6. No legislative body shall prohibit or otherwise restrict the broadcast of its proceedings 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.

SEC. 7. Section 54954 of the Government Code is amended to read:

Italics indicate changes or additions. * * * indicate ommissions..

§ 54954. (a) The legislative body of a local agency shall provide, by ordinance, resolution, by-laws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings.

(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) Otherwise comply with the state or federal law or court order.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction.

(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 either 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.

SEC. 8. Section 54954.2 of the Government Code is amended to read:

§ 54954.2. (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.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body 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, members of a legislative body may ask a question for clarification, provide a reference to staff or other resources for factual information, or request staff to report back to the body at a subsequent meeting concerning any matter. Furthermore, a member of a legislative body, or the body itself, may take action to direct staff to place a matter of business of 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 legislative body, 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.

SEC. 9. Section 54954.3 of the Government Code is amended to read:

§ 54954.3. (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 at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the legislative body concerning that item prior to action on the 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.

SEC. 10. Section 54954.5 is added to the Government Code, to read:

§ 54954.5. 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 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 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 NEGOTIATOR

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

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

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)

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)

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)

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

CONFERENCE WITH LABOR NEGOTIATOR

Agency negotiator: (Specify name)

Employee organization: (Specify name of organization representing employee)

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

(h) With respect to every item of business discussed in closed session pursuant to Section 54962 and 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)

SEC. 11. Section 54956.9 of the Government Code is amended to read:

§ 54956.9. 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 proceedings, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing office, 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.

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 agency but which the 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.

Italics indicate changes or additions. * * * indicate ommissions.

(D) A statement made by a person in an open and public meeting threatening litigation made 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 made on a specific matter within the responsibility of the local agency so long as the official or employee of the legislative body 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.

SEC. 12. Section 54957 of the Government Code is amended to read:

§ 54957. 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, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, 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. 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. The legislative body also may exclude from that public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

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

Italics indicate changes or additions. * * * indicate ommissions.

include any elected official, member of a legislative body, or other independent contractors. Nothing in this section 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 section shall not include discussions of a local agency's available funds, funding priorities, or budget.

SEC. 13. Section 54957.1 of the Government Code is amended to read:

§ 54957.1. (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 the body's 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 the body's 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 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

Italics indicate changes or additions. * * * indicate ommissions.

position and specify any change in compensation. 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 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.

SEC. 14. Section 54957.5 of the Government Code is amended to read:

§ 54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and 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 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 pursuant to Sections 6253 and 6256 without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which 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.

(d) 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 6257.

(e) This section shall not be construed to limit or delay the public's right to inspect 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

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local agency to place any paid advertisement or any other paid notice in any publication.

SEC. 15. Section 54957.7 of the Government Code is amended to read:

§ 54957.7. (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.

SEC. 16. Section 54959 of the Government Code is amended to read:

§ 54959. 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, with wrongful intent to deprive the public of information to which it is entitled under this chapter, is guilty of a misdemeanor.

SEC. 17. Section 54960 of the Government Code is amended to read:

§ 54960. (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 the validity under the laws of this state or of the United States of any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members, or to compel the legislative body to tape record its closed sessions as hereafter 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:

Italics indicate changes or additions. * * * indicate ommissions.

(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.

SEC. 18. Section 54960.1 of the Government Code is amended to read:

§ 54960.1. (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, or 54956 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, or 54956. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

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. 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. 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. 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.

(c) An action taken that is alleged to have been taken in violation of Sections 54953, 54954.2, 54954.5, 54954.6, and 54956 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, and 54956.

(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.

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(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.

(d) 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, or 54956 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.

(e) 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.

SEC. 19. Section 54961 of the Government Code is amended to read:

§ 54961. (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.

SEC. 20. Section 54962 of the Government Code is amended to read:

§ 54962. Except as expressly authorized by this chapter, or by Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, no closed session may be held by any legislative body of any local agency.

SEC. 21. Section 1461 is added to the Health and Safety Code, to read:

§ 1461. Notwithstanding any other provisions of law, the board of directors of any hospital subject to this chapter may order that any hearings on the reports of hospital medical audit or quality assurance committees be held in closed session. An applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing. Deliberations of the board of directors in connection with matters pertaining to these hearings may be held in closed session.

SEC. 22. This bill shall become operative only if Senate Bill 1140 and Senate Bill 36 of the 1993–94 Regular Session of the Legislature are chaptered and become operative.

SEC. 23. This act shall become operative on April 1, 1994.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates

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a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17160 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide costs of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

EXPLANATORY NOTES ASSEMBLY BILL 1426:

Gov C § 54952.7. "For a later amendment to this section, see ch 1138."
Gov C § 54953. "For a later amendment to this section, see ch 1137."
Gov C § 54953.5. "For a later amendment to this section, see ch 1137."
Gov C § 54954. "For a later amendment to this section, see ch 1137."
Gov C § 54954.2. "For a later amendment to this section, see ch 1137."
Gov C § 54954.3. "For a later amendment to this section, see ch 1137."
Gov C § 54956.9. "For a later amendment to this section, see ch 1137."
Gov C § 54957. "For a later amendment to this section, see ch 1137."
Gov C § 54957.1. "For a later amendment to this section, see ch 1137."
Gov C § 54957.5. "For a later amendment to this section, see ch 1137."
Gov C § 54957.7. "For a later amendment to this section, see ch 1137."
Gov C § 54959. "For a later amendment to this section, see ch 1137."
Gov C § 54960. "For a later amendment to this section, see ch 1137."
Gov C § 54960.1. "For a later amendment to this section, see ch 1137."
Gov C § 54961. "For a later amendment to this section, see ch 1138."
Gov C § 54962. "For a later amendment to this section, see ch 1138."

CHAPTER 1137

(Senate Bill No. 36)

An act to amend Sections 54952.7, 54953, 54953.5, 54954, 54954.2, 54954.3, 54956.9, 54957, 54957.1, 54957.5, 54957.7, 54959, 54960, 54960.1, 54961, and 54962 of, and to add Sections 54952.1, 54952.2, 54953.6, and 54954.5 to, the Government Code, and to add Section 1461 to the Health and Safety Code, relating to open meetings.

[Approved by Governor October 10, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

SB 36, Kopp. Open meetings of local government.

The Ralph M. Brown Act generally requires that the meetings of the legislative bodies of local agencies, as those terms are defined, be conducted openly, with specified exceptions. Among other things, the act provides for certain notice requirements concerning public meetings and makes it a misdemeanor for a member of a legislative body to attend a meeting where a violation occurs with knowledge of the fact that the meeting violates the act.

This bill would also define "member of a legislative body of a local agency" to include any person elected to serve as a member of a legislative body and who has not yet assumed the duties of office.

The Ralph M. Brown Act generally requires all meetings of the legislative body of a local agency to be open and public.

This bill would define "meeting," with exceptions, as any congregation of a majority of the members of a legislative body in the same time and place to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the legislative body or its local agency, and any use of direct communication, personal intermediaries, or technological devices employed by a majority of the members to develop a collective concurrence as to action to be taken on an item.

Existing law requires all meetings of the legislative body of a local agency shall be open and public with specified exceptions.

This bill would prohibit a legislative body from taking action by secret ballot.

The Ralph M. Brown Act permits recording of open and public meetings by any person.

This bill would make any recording made at the direction of a local agency subject to inspection pursuant to the California Public Records Act, as specified.

The bill would also provide that no legislative body shall prohibit or otherwise restrict the broadcast of its proceedings in the absence of a reasonable finding that the broadcast cannot be accomplished without disruption.

Under the Ralph M. Brown Act, meetings of the legislative body of a local agency need not be held within the boundaries of the territory over which the agency exercises jurisdiction. If an emergency makes the designated meeting place unsafe the presiding officer may designate a meeting place for the duration of the emergency.

This bill would require regular and special meetings to be held within the boundaries of the territory of the agency, with limited exceptions and with additional

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exceptions for the governing board of a school district, and would permit the presiding officer's designee to designate an emergency meeting place.

The Ralph M. Brown Act requires the posting of an agenda at least 72 hours before a regular meeting of a legislative body briefly describing each item of business and restricts action or discussion of the meeting to these items on the agenda, unless, by at least a ²/₃ vote, as specified, the legislative body decides there is a need for action on a nonagenda item.

This bill would instead require the agenda to contain a brief general description of each item of business to be transacted or discussed, including items to be discussed in closed session and would permit members of a legislative body to respond to certain questions not relating to agenda items. This bill would make further restrictions on the discussion or action on nonagenda items.

The Ralph M. Brown Act requires the agenda for a regular meeting to provide an opportunity for members of the public to address the legislative body.

This bill would require the agenda for a special meeting at which action is proposed to be taken on an item to provide an opportunity for members of the public to address the legislative body prior to action on the item. The bill would further require the legislative body not to prohibit public criticism of the agency, as specified.

This bill would also prescribe disclosures of the nature of closed sessions according to a specified format.

The Ralph M. Brown Act authorizes closed sessions of a legislative body to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session would prejudice the position of the local agency in the litigation and describes the facts and circumstances that constitute pending litigation. Existing law states that this authority is the exclusive expression of the lawyer-client privilege for purposes of conducting closed sessions pursuant to the act. The act requires the legal counsel to prepare a memorandum concerning the reasons and legal authority for the closed session.

This bill would state that this authority for closed sessions for the legislative body to confer with or receive advice from its legal counsel does not limit or otherwise affect the lawyer-client privilege as it may apply to written or other communications outside meetings between the legislative body and its legal counsel. The bill would specify additional facts and circumstances for determining what is pending litigation. The bill would delete the memorandum requirement.

Under the Ralph M. Brown Act, closed sessions may be held for various reasons, including matters relating to employees, as defined.

This bill would revise the definition of employee to include an officer or independent contractor who functions as an officer or an employee and to exclude any elected official, member of a legislative body, or other independent contractor and would require that, as a condition of holding a closed session on complaints against an employee, charges to consider disciplinary action, or to consider dismissal, the employee be given written notice of his or her right to a public session. The failure to give the notice would nullify any action taken in the closed session against the employee.

The Ralph M. Brown Act requires the legislative body to publicly report closed session actions taken and roll call votes to appoint, employ, or dismiss a public employee.

This bill would instead require the legislative body to publicly report any action taken in closed session and the vote or abstention of every member present on real estate negotiations, litigation and pending litigation issues with specified exceptions, claims for various liability losses, various personnel actions, and certain collective bargaining matters. The bill would prohibit any action for injury to reputation, lib-

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erty, or other personal interest by an employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with these provisions. The bill would prescribe how the reports are to be made and would require a brief statement of the information to be posted, as specified, thereby imposing a state-mandated local program.

Under the Ralph M. Brown Act, agendas and writings distributed to members of the legislative body by persons connected with the body for discussion or consideration at a public meeting of the body are public records unless specifically exempt from public disclosure.

This bill would specify that writings intended for distribution to members by any person in connection with a matter subject to discussion or consideration at a public meeting are public records. The bill would require that writings that are made public records under this provision and are distributed during a public meeting shall be made available for public inspection at the meeting, or after the meeting, as specified.

The Ralph M. Brown Act requires the legislative body to state the general reason or reasons for holding any closed session prior to or after holding the closed session.

This bill would require the disclosure of the items to be discussed in the closed session prior to holding the closed session.

The Ralph M. Brown Act makes it a misdemeanor for a member of a legislative body to attend or participate in a meeting of the legislative body where action is taken in violation of the act with knowledge of the fact that the meeting is in violation of the act.

This bill would instead make it a misdemeanor if the member attends or participates with wrongful intent to deprive the public of information to which it is entitled under the act.

This bill, by enlarging the number of persons and bodies subject to the Ralph M. Brown Act and by revising the definition of a meeting elsewhere in the bill, would enlarge the scope of existing crimes and would create new crimes and would thereby impose a state-mandated local program.

The Ralph M. Brown Act permits any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body in violation of specified provisions of the act is null and void, unless any of specified conditions exist. However, a prior demand must first be made of the legislative body to cure or correct the alleged violation within 30 days from the date the action was taken.

This bill would expressly permit the district attorney or, any interested person to commence an action as described and would also permit an action to determine the validity of any rule or action by the legislative body to limit the expression of its members or to compel the legislative body to tape record its closed sessions, as specified. The bill would also require the written demand to be made within 90 days if the alleged violation occurred in a closed meeting.

The bill would prohibit the conduct of meetings or functions in facilities inaccessible to disabled persons or that require members of the public to make a payment or purchase. The bill would provide that no notice, agenda, announcement, or report required by the act need identify the victim or alleged victim of tortious sexual conduct or child abuse, as specified.

Existing law expressly permits the board of directors of a hospital district and the board of trustees of a municipal hospital to hold closed sessions for specified purposes.

This bill would expressly permit the board of directors of a county hospital to hold closed sessions on reports of hospital medical audits or quality assurance committees and would permit an applicant or medical staff member whose staff privileges are the direct subject of a hearing to request a public hearing.

Italics indicate changes or additions. * * * indicate ommissions.

This bill would provide that its provisions shall be operative only if SB 1140 and AB 1426 are chaptered and become operative.

This bill would provide that it shall become operative on April 1, 1994.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the cost of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that for certain costs no reimbursement is required by this act for a specified reason.

However, the bill would provide that if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. Section 54952.1 is added to the Government Code, to read:

§ 54952.1. As used in this chapter, "member of a legislative body of a local agency" includes, but is not limited to, any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person 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.

SEC. 2. Section 54952.2 is added to the Government Code, to read:

§ 54952.2. (a) As used in this chapter, "meeting" includes all of the following:

(1) Any congregation of a majority of the members of a legislative body in 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.

(2) 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.

(b) Nothing in subdivision (a) 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 business of a specific 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 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 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.

SEC. 3. Section 54952.7 of the Government Code is amended to read:

§ 54952.7. 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.

SEC. 4. Section 54953 of the Government Code, as amended by Section 1 of Chapter 399 of the Statutes of 1988, is amended to read:

§ 54953. (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) Notwithstanding any other provision of law, the legislative body of a local agency may use video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The use of video teleconferencing, as authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body. If the legislative body of a local agency elects to use video teleconferencing, it shall post agendas at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local agency. The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location.

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

* * *

SEC. 5. Section 54953.5 of the Government Code is amended to read:

§ 54953.5. *(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 tape recorder made available by the local agency.

SEC. 6. Section 54953.6 is added to the Government Code, to read:

§ 54953.6. No legislative body shall prohibit or otherwise restrict the broadcast

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of its proceedings 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.

SEC. 7. Section 54954 of the Government Code is amended to read:

§ 54954. *(a)* The legislative body of a local agency 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. * * *

(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) Otherwise comply with the state or federal law or court order.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction.

(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 either 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.*

SEC. 8. Section 54954.2 of the Government Code is amended to read:

§ 54954.2. (a) At least 72 hours before a regular meeting, the legislative body of

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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. * * *

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body 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, members of a legislative body may ask a question for clarification, provide a reference to staff or other resources for factual information, or request staff to report back to the body at a subsequent meeting concerning any matter. Furthermore, a member of a legislative body, or the body itself, may 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 legislative body, 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.

SEC. 9. Section 54954.3 of the Government Code is amended to read:

§ 54954.3. (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 at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the legislative body concerning that item prior to action on the 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

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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.

SEC. 10. Section 54954.5 is added to the Government Code, to read:

§ 54954.5. 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 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 NEGOTIATOR

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

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

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)

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)

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)

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

CONFERENCE WITH LABOR NEGOTIATOR

Agency negotiator: (Specify name)

Employee organization: (Specify name of organization representing employee)

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

(h) With respect to every item of business discussed in closed session pursuant to Section 54962 and 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)

SEC. 11. Section 54956.9 of the Government Code is amended to read:

§ 54956.9. 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.

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 agency but which the agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

Italics indicate changes or additions. * * * indicate omissions.

(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).

(2) 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.

SEC. 12. Section 54957 of the Government Code is amended to read:

§ 54957. 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, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, 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. 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*

Italics indicate changes or additions. * * * indicate ommissions.

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

* * *

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. Nothing in this section 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 section shall not include discussions of a local agency's available funds, funding priorities, or budget.

SEC. 13. Section 54957.1 of the Government Code is amended to read:

§ 54957.1. *(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 the body's 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 the body's 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 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.

Italics indicate changes or additions. * * * indicate ommissions.

(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 and specify any change in compensation. 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 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.

SEC. 14. Section 54957.5 of the Government Code is amended to read:

§ 54957.5. (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 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 pursuant to Sections 6253 and 6256 *without delay*. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) *Writings which are public records under subdivision (a) and which 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.*

Italics indicate changes or additions. * * * indicate ommissions.

* * *

(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 6257.

(d) This section shall not be construed to limit or delay the public's right to inspect 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.

* * *

SEC. 15. Section 54957.7 of the Government Code is amended to read:

§ 54957.7. *(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.

SEC. 16. Section 54959 of the Government Code is amended to read:

§ 54959. 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, with *wrongful intent to deprive the public of information to which it is entitled under this chapter*, is guilty of a misdemeanor.

SEC. 17. Section 54960 of the Government Code is amended to read:

§ 54960. *(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 the validity under the laws of this state or of the United States of any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members, 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:

Italics indicate changes or additions. * * * indicate ommissions.

(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.

SEC. 18. Section 54960.1 of the Government Code is amended to read:

§ 54960.1. (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, or 54956 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, or 54956. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

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*. 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. 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. 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.

(c) An action taken that is alleged to have been taken in violation of Sections

Italics indicate changes or additions. * * * indicate ommissions.

54953, 54954.2, *54954.5*, 54954.6, and 54956 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, and 54956.

(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.

(d) 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, or 54956 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.

(e) 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.

SEC. 19. Section 54961 of the Government Code is amended to read:

§ 54961. (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.

SEC. 20. Section 54962 of the Government Code is amended to read:

§ 54962. Except as expressly authorized by this chapter, or by Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, no closed session may be held by any legislative body of any local agency.

SEC. 21. Section 1461 is added to the Health and Safety Code, to read:

§ 1461. Notwithstanding any other provisions of law, the board of directors of any hospital subject to this chapter may order that any hearings on the reports of hospital medical audit or quality assurance committees be held in closed session. An applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing. Deliberations of the board of directors in connection with matters pertaining to these hearings may be held in closed session.

Italics indicate changes or additions. * * * indicate ommissions.

SEC. 22. This bill shall become operative only if Senate Bill 1140 and Assembly Bill 1426 of the 1993–94 Regular Session of the Legislature are chaptered and become operative.

SEC. 23. This act shall become operative on April 1, 1994.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17160 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide costs of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

EXPLANATORY NOTES SENATE BILL 36:

Gov C § 54952.7. For a later amendment to this section, see Ch 1138.

Gov C § 54961. For a later amendment to this section, see Ch 1138.

Gov C § 54962. For a later amendment to this section, see Ch 1138.

CHAPTER 1138

(Senate Bill No. 1140)

An act to amend Section 35145.5 of the Education Code, and to amend Sections 54952, 54952.3, 54952.7, 54957.6, 54961, and 54962 of, and to repeal Sections 36808, 54951.1, 54951.7, 54952.2, 54952.3, and 54952.5 of, the Government Code, relating to open meetings.

[Approved by Governor October 10, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, Calderon. Open meetings of local government.

Existing law permits the taking of testimony at regularly scheduled school district governing board meetings on matters not on the agenda if no action is taken by the board on those matters at the same meeting.

This bill would permit action to be taken in specified circumstances.

An existing provision of law provides that the meetings of the city council shall be held within the corporate limits of the city at a place designated by ordinance and shall be public.

This bill would repeal that provision.

The Ralph M. Brown Act generally requires that the meetings of the legislative bodies of local agencies, as those terms are defined, be conducted openly, with specified exceptions. Among other things, the act makes certain notice requirements concerning public meetings and makes it a misdemeanor for a member of a legislative body to attend a meeting where a violation occurs with knowledge of the fact that the meeting violates the act.

Under existing law a legislative body of a local agency may require that a copy of the act be given to each member of the legislative body.

This bill would additionally permit the legislative body to require that a copy of the act be given to any person elected to serve as a member of the legislative body who has not yet assumed office.

Existing law defines local agency to include, among other things, all private nonprofit organizations receiving public money to be expended for public purposes pursuant to the federal Economic Opportunity Act of 1964, and nonprofit corporations created by one or more local agencies, as prescribed, to acquire, construct, reconstruct, maintain, or operate any public work project.

This bill would repeal those definitions of local agency.

Existing law defines "legislative body" as any commission, committee, or any board or commission thereof which is supported in whole or part by funds provided by that agency. Existing law also defines legislative body as including any advisory commission, advisory committee or advisory body of a local agency created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency.

This bill would revise that definition to include those commissions, committees, boards, and other subsidiary bodies thereof, whether permanent or temporary, created by charter, ordinance, resolution, or formal action of a legislative body, as specified.

Italics indicate changes or additions. * * * indicate ommissions.

This bill further defines "legislative body" with respect to lessees of certain hospitals.

Existing law permits a legislative body of a local agency to hold closed sessions with the local agency's designated representatives on specified employment matters.

This bill would define employee for purposes of that authorization.

Existing law prohibits a local agency from conducting any meeting in any facility that prohibits the admittance of citizens on the basis of race, religious creed, color, national origin, ancestry, or sex.

This bill would extend those proscriptions and prohibit meetings in facilities inaccessible to disabled persons or where members of the public may not be present without making a payment or purchase.

Existing law states that no closed session may be held by any legislative body of any local agency except as provided by the Ralph M. Brown Act with a specified exception.

This bill would make an exception where the Education Code permits closed sessions by school districts and community college districts.

This bill would provide that it shall become operative only if SB 36 and AB 1426 of the 1993–94 Regular Session of the Legislature are chaptered and become operative.

This bill would provide that it shall become operative on April 1, 1994.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

The people of the State of California do enact as follows:

SECTION 1. Section 35145.5 of the Education Code is amended to read:

§ 35145.5. It is the intent of the Legislature that members of the public be able to place matters directly related to school district business on the agenda of school district governing board meetings, and that members of the public be able to address the board regarding items on the agenda as such items are taken up. Governing boards shall adopt reasonable regulations to insure that this intent is carried out. Such regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.

This subdivision shall not preclude the taking of testimony at *regular* meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that, *except as authorized by Section 54954.2 of the Government Code, no action is taken by the board on those matters at the same meeting at which the* testimony is taken. Nothing in this paragraph shall be deemed to limit further discussion on the same subject matter at a subsequent meeting.

SEC. 2. Section 36808 of the Government Code is repealed.

SEC. 2.3. Section 54951.1 of the Government Code is repealed.

SEC. 2.5. Section 54951.7 of the Government Code is repealed.

Italics indicate changes or additions. * * * indicate ommissions.

SEC. 3. Section 54952 of the Government Code is amended to read:

§ 54952. *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 which 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) A board, commission, committee, or other multimember body that governs a private corporation or entity that either:

(1) 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 or entity.

(2) 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 by the legislative body of the local agency.

(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.

SEC. 4. Section 54952.2 of the Government Code is repealed.

SEC. 5. Section 54952.3 of the Government Code is repealed.

SEC. 6. Section 54952.5 of the Government Code is repealed.

SEC. 7. Section 54952.7 of the Government Code is amended to read:

§ 54952.7. 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.

SEC. 8. Section 54957.6 of the Government Code is amended to read:

§ 54957.6. (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.* 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.

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

Italics indicate changes or additions. * * * indicate ommissions.

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.

Closed sessions held pursuant to this section shall not include discussions of a local agency's available funds, funding priorities, or budget.

SEC. 9. Section 54961 of the Government Code is amended to read:

§ 54961. *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.*

SEC. 10. Section 54962 of the Government Code is amended to read:

§ 54962. Except as expressly authorized by this chapter, or by Sections 32106 and 32155 of the Health and Safety Code as they apply to hospital districts, *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.

SEC. 11. This act shall become operative only if Senate Bill 36 and Assembly Bill 1426 of the 1993–94 Regular Session of the Legislature are chaptered and become operative.

SEC. 12. This act shall become operative on April 1, 1994.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Italics indicate changes or additions. * * * indicate ommissions.

CHAPTER 32

(Senate Bill No. 752)

An act to amend Sections 54952.1, 54952.2, 54953, 54953.5, 54953.6, 54954, 54954.2, 54954.3, 54954.5, 54956, 54956.8, 54956.9, 54957, 54957.1, 54957.5, 54957.6, 54959, 54960, 54960.1, 54961, and 54962 of, and to repeal Section 54925.1 of, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 30, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

SB 752, Kopp. Open meetings of local agencies.

The Ralph M. Brown Act, which generally requires that the meetings of the legislative bodies of local agencies be conducted openly, was revised by several acts in 1993, to be operative April 1, 1994.

This bill would make technical revisions to resolve inconsistencies between those acts and would make conforming changes, to be operative April 1, 1994.

Existing law regarding special meetings states that the call and notice shall specify the time and place of the special meeting and the business to be transacted and that notice is required regardless of whether any action is taken at the special meeting.

This bill would also state that the call and notice shall specify the business to be transacted or discussed and would delete the requirement that notice is required regardless of whether any action is taken at the special meeting.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 54925.1 of the Government Code is repealed.

SEC. 2. Section 54952.1 of the Government Code is amended to read:

§ 54952.1. * * * 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.

SEC. 3. Section 54952.2 of the Government Code is amended to read:

§ 54952.2. *(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:

Italics indicate changes or additions. * * * indicate ommissions.

(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, 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.

SEC. 4. Section 54953 of the Government Code is amended to read:

§ **54953.** (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 video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law.

(2) The use of video teleconferencing, as authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body.

(3) If the legislative body of a local agency elects to use video teleconferencing, it shall post agendas at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(4) The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location.

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

SEC. 5. Section 54953.5 of the Government Code is amended to read:

§ **54953.5.** (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 reason-

Italics indicate changes or additions. * * * indicate ommissions.

able 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.

SEC. 6. Section 54953.6 of the Government Code is amended to read:

§ **54953.6.** 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.

SEC. 7. Section 54954 of the Government Code is amended to read:

§ **54954.** (a) The legislative body of a local agency 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.

(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:

Italics indicate changes or additions. * * * indicate ommissions.

(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.

SEC. 8. Section 54954.2 of the Government Code is amended to read:

§ 54954.2. (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.

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 legislative body, 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.

SEC. 9. Section 54954.3 of the Government Code is amended to read:

§ 54954.3. (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

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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.

SEC. 10. Section 54954.5 of the Government Code is amended to read:

§ **54954.5.** 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 NEGOTIATOR

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

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

Italics indicate changes or additions. * * * indicate ommissions.

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)

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 NEGOTIATOR

Agency negotiator: (Specify name)

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)

Italics indicate changes or additions. * * * indicate ommissions.

SEC. 11. Section 54956 of the Government Code is amended to read:

§ 54956. 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 personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. The notice shall be delivered personally or by mail 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.

SEC. 12. Section 54956.8 of the Government Code is amended to read:

§ 54956.8. 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 the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For the purpose of this section, the negotiator may be a member 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.

SEC. 13. Section 54956.9 of the Government Code is amended to read:

§ 54956.9. 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.

Italics indicate changes or additions. * * * indicate ommissions.

(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.

SEC. 14. Section 54957 of the Government Code is amended to read:

§ 54957. 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, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's

Italics indicate changes or additions. * * * indicate ommissions.

right of access to public services or public facilities, or 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.

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.

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.

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. Nothing in this section shad 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 section shall not include *discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.*

SEC. 15. Section 54957.1 of the Government Code is amended to read:

§ 54957.1. (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

Italics indicate changes or additions. * * * indicate ommissions.

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.

SEC. 16. Section 54957.5 of the Government Code is amended to read:

§ **54957.5.** (a) Notwithstanding Section 6255 or any other provisions of law,

Italics indicate changes or additions. * * * indicate ommissions.

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, or 6254.7.

(b) Writings which are public records under subdivision (a) and which 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.

(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 6257.

(d) This section shall not be construed to limit or delay the public's right to inspect 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.

SEC. 17. Section 54957.6 of the Government Code is amended to read:

§ 54957.6. (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. 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.

* * *

SEC. 18. Section 54959 of the Government Code is amended to read:

§ 54959. 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.

Italics indicate changes or additions. * * * indicate ommissions.

SEC. 19. Section 54960 of the Government Code is amended to read:

§ 54960. (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.

SEC. 20. Section 54960.1 of the Government Code is amended to read:

§ 54960.1. (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, or 54956 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

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correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956. 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, or 54956 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, and 54956.

(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, or 54956 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.

SEC. 21. Section 54961 of the Government Code is amended to read:

§ 54961. *(a)* No legislative body of a local agency shall conduct any meeting in

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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.

SEC. 22. Section 54962 of the Government Code is amended to read:

§ 54962. Except as expressly authorized by this chapter, or by Sections *1461*, 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.

SEC. 23. This act shall become operative on April 1, 1994.

SEC. 24. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to resolve inconsistencies created by several acts revising the Ralph M. Brown Act before these acts become operative on April 1, 1994, it is necessary that this act take effect immediately.

EXPLANATORY NOTES SENATE BILL 752:

Gov § 54952.1. Substituted the section for the former section which read: "As used in this chapter, 'member of a legislative body of a local agency' includes, but is not limited to, any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person 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."

Gov § 54952.2. (1) Substituted subd (a) for former subd (a) which read: "(a) As used in this chapter,' 'meeting' includes all of the following: "(1) Any congregation of a majority of the members of a legislative body in 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. "(2) 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."; (2) added subd (b); (3) redesignated former subd (b) to be subd (c); and (4) amended subd (c) by (a) substituting "this section" for "subdivision (a)" in the introductory clause; (b) adding ", other than as part of the scheduled program," in the first sentence of subd (c)(2) and in subd (c)(3); (c) substituting "specified" for "specific" near the end of the first sentence of subd (c)(2); (d) adding subd (c)(4); (e) redesignating former subd (c)(4) to be subd (c)(5); and (f) adding "of a legislative body" near the beginning of subd (c)(5).

Gov § 54953. Added subdivision designations (b)(1)—(b)(4).

Gov § 54953.5. Substituted "video or tape player" for "tape recorder" in the last sentence of subd (b).

Gov § 54953.6. (1) Added "of a local agency" after "legislative body"; and (2) substituted "open and public meetings" for "proceedings".

Gov § 54954. (1) Amended subd (b) by (a) adding the comma after "jurisdiction" in the introductory clause; (b) substituting subd (b)(1) for former subd (b)(1) which read: "(b)(1) Otherwise comply with the state or federal law or court order."; and (c) adding "provided that the topic of the meeting is limited to items directly related to the real or personal property" at the end of subd (b)(2); and (2) substituted "any" for "for either" in the introductory clause of subd (c).

Gov § 54954.2. (1) Added "or its staff" after "legislative body" in the first sentence of the second paragraph of subd (a); (2) amended the second sentence of the second paragraph of subd (a) by (a) deleting a comma after "initiative"; (b) substituting "a member" for "members" after "posed by the public,"; (c) adding "or its staff" after "legislative body"; and (d) substituting "make a brief announcement, or make a brief report on his or her own activities" for "provide a reference to staff or other resources for factual information, or request staff to report back to the body at a subsequent

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meeting concerning any matter"; and (3) substituted "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" for "may" in the last sentence of the second paragraph of subd (a).

Gov § 54954.3. Amended the last sentence of subd (a) by (1) deleting "at which action is proposed to be taken on an item" after "special meeting"; and (2) substituting "any item that has been described in the notice for the meeting before or during consideration of that item" for "that item prior to action on the item" at the end.

Gov § 54954.5. (1) Substituted "Section 54954.2 or 54956" for "Section 54954.2"; (2) amended subd (c) by adding (a) "(Subdivision (a) of Section 54956.9)"; and (b) the next to the last paragraph; (3) amended the last paragraph of subd (e) by adding (a) "of a public employee"; and (b) the last sentence; (4) added "or employees in question" in subd (f); (5) added the last paragraph of subd (g); and (6) amended the introductory clause of subd (h) by (a) adding "to be" after "business"; and (b) deleting "Section 54962 and" after "pursuant to".

Gov § 54956. Amended the first paragraph by (1) adding "or discussed" at the end of the third sentence; and (2) deleting the former last sentence which read: "Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting."

Gov § 54956.8. Substituted "grant authority" for "give instructions" in the first paragraph.

Gov § 54956.9. Added "local" before "agency" both times it appears in subd (b)(3)(A).

Gov § 54957. (1) Added "discipline," after "performance," in the first paragraph; (2) substituted "the" for "that" after "exclude from" in the third paragraph; and (3) substituted "discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline" for "discussions of a local agency's available funds, funding priorities, or budget" at the end of the section.

Gov § 54957.1. Amended subd (a) by (1) substituting "its" for "the body's" after "Approval given to" in subds (a)(2) and (a)(3); (2) deleting "and specify any change in compensation" at the end of the second sentence of subd (a)(5); and (3) adding "with represented employees" in the first sentence of subd (a)(6).

Gov § 54957.5. Amended the first sentence of subd (a) by (1) adding "disclosable"; and (2) substituting "upon request" for "pursuant to Sections 6253 and 6256" near the end.

Gov § 54957.6. (1) Added the last sentence of the first paragraph of subd (a); (2) added the second paragraph of subd (a); and (3) deleted the former last paragraph of subd (b) which read: "Closed sessions held pursuant to this section shall not include discussions of a local agency's available funds, funding priorities, or budget."

Gov § 54959. Substituted "and where the member intends to deprive the public of information to which the member knows or has reason to know the public" for "with wrongful intent to deprive the public of information to which it".

Gov § 54960. Amended subd (a) by (1) substituting "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" for "the validity"; and (2) deleting "of any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members" after "United States".

Gov § 54960.1. (1) Designated the former second paragraph of subd (b) to be subds (c)(1)-(c)(4); (2) redesignated former subd (c) to be subd (d); (3) made changes in punctuation in subd (d)(5); and (4) redesignated former subds (d) and (e) to be subds (e) and (f).

Gov § 54961. (1) Added subdivision (a); and (2) added subd (b).

Gov § 54962. (1) Substituted "Sections 1461, 32106, and 32155" for "Sections 32106 and 32155"; (2) added "or Sections 37606 and 37624.3 of the Government Code"; and (3) substituted "hospitals" for "hospital districts".

THE BROWN ACT

OPEN MEETINGS FOR LOCAL LEGISLATIVE BODIES

1994

California Attorney General's Office

State of California

Office of the Attorney General

Daniel E. Lungren
Attorney General

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.

In April, sweeping new additions to the Brown Act became effective. These changes resulted from a collaborative effort between public agencies and representatives of the news media. The purpose of this pamphlet is to present a comprehensive discussion of the new legislation, as well as court decisions and opinions of this office which continue to be applicable. 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.

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

Sincerely,

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THE BROWN ACT

OPEN MEETINGS FOR LOCAL LEGISLATIVE BODIES

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INTRODUCTION

This pamphlet concerns the provisions of the Ralph M. Brown Act, which governs open meetings for local government bodies. 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, in some instances, the courts have adopted the analysis of Attorney General opinions, and for that reason, we believe that these opinions may be helpful in interpreting the Brown Act. 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., I.L. 76-201). 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 May 1994 with respect to statutes, case law, and Attorney General opinions.

SUMMARY OF BROWN ACT

COVERAGE

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 CORPORATIONS OR ENTITIES:

Covered only if:		Ch. II
(1) A legislative body delegates some of its functions to a private corporation or entity; or	54952(c)(1)	
(2) If a legislative body provides some funding to a private corporation or entity and appoints one of its members to serve in official capacity on entity's board of directors.	54952(c)(2)	

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 meetings which are open to public so long as members of legislative bodies do not discuss amongst 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

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

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 disaster.	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, 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

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 ESTATE NEGOTIATIONS:

A body may meet in closed session 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

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 supervisor, 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. 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; 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, etc., 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. (§§ 54953; 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.)

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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. (§§ 54957; 54956.9; 54957.6; 54956.8.) 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 must report on such action. (§ 54957.1.)

The following chapters are a more detailed discussion of who is covered 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 COVERED BY 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.)

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 (1992); 56 Ops.Cal.Atty.Gen. 14, 19 (1973).) However, boards or commissions which are created by statute or ordinance are covered 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), nor is an individual city councilmember screening candidates for a vacant city office. (I.L. 76-181.)

The Act covers "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 covered by the Act. (§ 54951.) If, however, the agency is a multi-member state body, it is covered by the Bagley-Keene Act. (§ 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 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 . . . .
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> "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, supra,* 89 Cal.App.3d at pp. 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. (I.L. 72-79.) 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.)

The Act does not apply to the judicial branch of government or boards and commissions which are an adjunct to the judiciary. (See I.L. 75-109; I.L. 62-46; I.L. 60-16.) This office has also concluded that the Act is not applicable to county central committees 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 (1976).)

2. Legislative Bodies

Having concluded that the Act covers bodies which 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. Actions which are primarily executive or quasi-judicial in nature are also covered. (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 1993, the Legislature amended these provisions and consolidated all definitions of bodies covered under the Act into a single section. (§ 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 which are defined as "legislative bodies" for purposes of the Act.

A. Governing Bodies

The most basic of the legislative bodies covered by the Act are governing bodies of local government agencies such as the board of supervisors of a county, the city council of a city or the governing board of a district. (§ 54952(a).) In addition, local bodies created by state or federal statute are specifically covered. (§ 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 which 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 whose meeting schedule is fixed by charter, ordinance, resolution or other formal action of the legislative body which created it.

The term "formal action" is used twice in section 54952(b) in connection with advisory committees and standing committees. The term "formal action of the 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. *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 establishing 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.

When a legislative body designates less than a quorum of its members 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 so long as they do not qualify as standing committees. (*Joiner* v. *City of Sebastopol, supra,* 125 Cal.App.3d 799.) 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 covered by the open meeting and notice provisions of the Act. (*Ibid.*) 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. (*Id.* at 805.)

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

- Commission comprised of councilmembers, 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 covered under the Act 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 covered by the Act as a standing committee because its meeting schedule is fixed by the city council.

Prior to April 1, 1994 standing advisory committees were exempt from the Act. (*Freedom Newspapers, Inc.* v. *Orange County Employees Retirement System, supra,* 6 Cal.4th 821.)

C. Nonprofit Corporations and Other Entities

Under specified circumstances, meetings of boards, commissions, committees or other multi-member bodies which govern nonprofit corporations or other entities may become subject to the open meeting requirements of the Act. These circumstances are set forth in section 54952(c). The Act expressly covers private corporations and other entities which are created by the legislative body for the purpose of exercising authority which can be lawfully delegated to them. (§ 54952(c)(1).) Typically, these bodies 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. The Act also covers 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. (§ 54952(c)(2).) The Act does not cover 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 covers 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. Second, the Act specifically prohibits any use of direct communication, 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.*, *supra*, 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 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." (*Id.* at pp. 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 amongst 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, etc., 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 amongst 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 covered by 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 amongst 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 primarily 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 amongst 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.

This exception also would apply if individual members of one legislative body independently decided to attend a meeting held by another legislative body. However, if two legislative bodies conduct a joint meeting, both bodies should notice the meeting under the Act.

C. Meetings of Other Bodies under the Same Local Agency

When a majority of the legislative body attends an open and noticed meeting of another body of the same local agency, the legislative body is not deemed to be conducting a meeting, so long as the members in attendance do not discuss amongst 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.

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 amongst 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., supra,* 263 Cal.App.2d 41; 43 Ops.Cal.Atty.Gen. 36 (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 multimember 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 which are conducted through direct communications, 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.) 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 covers a situation by 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 video teleconferencing).

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. Accordingly, we think it is likely that a court would determine that matters which have been placed on an agenda are to be deliberated and acted upon by the legislative body in a public meeting. As such, substantive conversations amongst 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 amongst 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.

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. The 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 amongst 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 would 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 will have occurred outside the public eye. In this way, the public is able only to witness a shorthand version of the deliberative process, and its ability to monitor and contribute to the decision-making process will have been curtailed.

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*, *supra*, 18 Cal.App.4th 781, 796-798, the court concluded that the Act covers both deliberations and the taking of 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 covered by the Act, 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, supra*, 171 Cal.App.3d 95, 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 (1982); 63 Ops.Cal.Atty.Gen. 820 (1980).)

A. 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 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 amongst 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 insure 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.

In quasi-judicial proceedings, an issue to be considered which is not addressed in this pamphlet, is whether due process rights may restrict communications otherwise permitted by open meeting laws. (*Safeway Stores,*

Inc. v. *City of Burlingame* (1959) 170 Cal.App.2d 637; *Flagstad* v. *City of San Mateo* (1957) 156 Cal.App.2d 138; *Desert Turf Club* v. *Board of Supervisors* (1956) 141 Cal.App.2d 446; *La Prade* v. *Department of Water & Power* (1945) 27 Cal.2d 47.)

B. Video Teleconferencing and Conference Telephone Calls

The prohibition against serial meetings specifically exempts video teleconference meetings conducted according to the procedures set forth in section 54953(b). All other video teleconferences or telephone conference calls in which members of the body or members of the public participate from a remote location are prohibited. (§ 54952.2(b).) Where the members of the body and members of the public are gathered at a single location, staff members or other persons retained to advise the body may appear from remote locations via technological devices, where it is in the best interests of the public to do so.

Section 54953(b) authorizes the conduct of meetings by legislative bodies through video teleconferencing facilities under specified circumstances. The use of video teleconferencing is limited to the receipt of public comment or testimony by, or deliberations of, the legislative body. Language permitting the use of teleconferencing to establish a quorum or take a roll call vote was removed from the legislation. (AB 3191 April 27, 1988; May 24, 1988.) Accordingly, only the persons physically present at the location designated for the meeting may be counted for purposes of establishing a quorum or determining the outcome of a vote. (See Bill Analysis of the Senate Local Government Committee as the bill was amended June 28, 1988.) A body which uses video teleconferencing shall post an agenda at all video teleconference facilities and adopt regulations to protect the constitutional and statutory rights of the public and any parties to the proceeding.

C. Writings as Meetings

Generally, meetings do not occur through written instruments; however, the court found that circulation of a proposal amongst board members for their review and signature did constitute 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.) In the case of *Roberts* v. *City of Palmdale* (1993) 5 Cal.4th 363, 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 discussion 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.

CHAPTER IV.

NOTICE AND AGENDA REQUIREMENTS

The Brown Act provides for three different types of meetings. Regular meetings occur at a time and location 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 who have requested notice in writing. Emergency meetings, which are extraordinarily rare, may be called upon one-hour notice to media outlets which 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.) Lastly, unless specifically exempted, all meetings must be conducted within the geographical boundaries of the body's jurisdiction. (§ 54954(b).)

1. Regular Meetings

The time and place for regular meetings are set by ordinance, resolution, or by-laws. (§ 54954(a).)

A. Agenda Requirement

At least 72 hours prior to the 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 sessions. (§ 54954.2(a).) The statute 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 a section of the Education Code. That section required ". . . A list of items that will constitute the agenda for all regular meetings shall be posted. . . ." 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." (*Id.* at 200, original emphasis; see also 67 Ops.Cal.Atty.Gen. 84 (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 should use approximately 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*). The agenda requirement does not apply 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 specified circumstances. (§ 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 statute specifies that in order to take advantage of this agenda exception, the need for immediate action must have come to the attention of the body after the agenda had already been posted. (§ 54954.2(b)(2).) Lastly, the determination that a need for immediate action exists must be made by two-thirds of the total body 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 which 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).)

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 § 11125.7(c) 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 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 legislative body may enact regulations to assist in processing comments from the public. These regulations may establish procedures for public comment as well as specifying reasonable time limitations on speakers. So long as the body acts fairly, it has great discretion in regulating 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).) Although this provision does not confer any privilege or protection not otherwise provided by law, it evidences an intent by the Legislature to permit individuals to criticize the policies or programs of an agency while leaving open the possibility that a body may prohibit comments which it believes to be slanderous or which may invade an individual's personal privacy.

2. Special Meetings

Under the Act, a local body may call a special meeting by providing notice 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 (1970).) The notice shall state the time, place, and business to be transacted at the meeting, and 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.) At least one hour prior to the meeting, telephonic notice must be provided to all media outlets which have requested that they receive notice of any special meetings called pursuant to section 54956. The Act defines an emergency as a crippling disaster, work stoppage or other activity which severely impairs public health, safety or both. In the event telephone services are not working, 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.) Emergency meetings may not be held in closed session. (§ 54956.5.)

4. Closed Sessions

There are three types of "notice" obligations that accompany the conduct of a closed-session 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).) Frequently, this requirement may be satisfied by merely referring to the relevant portion of the written agenda for the meeting. However, the law contains specific 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.*, *supra*, 18 Cal.App.3d at 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.)

In order to assist legislative bodies in preparing agendas for closed-session meetings, section 54954.5 establishes a model format for closed session agendas. 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. 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 section 54954.5.)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

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

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

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

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).) Generally, this requirement can be satisfied by referring to the item by number as it appears on the agenda. However, in at least one situation, such a referral may not be sufficient.

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 final action was taken in closed session

by the legislative body, a report of the action taken and the vote thereon generally must be provided 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, the name of the position must be reported in open session in connection with the appointment or employment of an individual. (§ 54957.1(a)(5).) However, with respect to a dismissal or a refusal to renew a 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

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(b) (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. (§ 54952(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 covered by the Act. (§ 54952(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 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; 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 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, the body may enact regulations to ensure reasonable access for members of the public. The regulations may limit the total amount of time of testimony on particular issues and for each individual speaker. (§ 54954.3(b); 75 Ops.Cal.Atty.Gen. 89 (1992); see also *White* v. *City of Norwalk* (9th Cir. 1990) 900 F.2d 1421, where time of repetitive speaker was limited.) 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).) Personal attacks on individuals are not authorized by the Act, nor does the Act confer any privilege or protection for expression beyond that otherwise provided by law.

Despite the public's rights to attend meetings as discussed above, a legislative body may exclude all persons from a meeting where a disturbance has been created and where exclusion of the disruptive persons is not sufficient to allow the meeting to continue unimpeded. (§ 54957.7.) 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 to members of the public in accordance with the provisions of section 54957.5. Members of the public who have made 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*, *supra*, 5 Cal.4th 363; I.L. 77-67.) Pursuant to section 6257, 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.)

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(a).) The agency is not required to prepare a transcript, but if one were prepared, the public generally would have the right to receive copies. (64 Ops.Cal.Atty.Gen. 317 (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 Americans with Disabilities Act. If a meeting facility is inaccessible, the meeting must be moved to an accessible facility.

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 Supvrs.*, *supra*, 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. Legislative intent for this interpretation was set forth in a letter from Constance Barker to the author of SB 200 (Stats. 1987, ch. 1320 [which added § 54962 to the Act]):

> "In our discussions with the other parties, we have agreed that SB 200 is not intended to affect other provisions of law that provide for confidential communication such as the attorney-client privilege and Public Records Act. The bill will simply prevent use of our reliance on the provisions of those other laws for the purpose of meeting in closed session."

In a letter from the Attorney General to the bill's author on May 8, 1987, also setting forth legislative intent, the provision requiring express authorization for closed sessions was discussed as follows:

> "In addition, SB 200 clearly states that closed sessions must be authorized by express legislation. That intent is expressed in the addition of section 11132 as to state bodies and section 54962 as to legislative bodies of local agencies."

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*, *supra*, 121 Cal.App.3d 231.) 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 (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 impliedly authorized. In 71 Ops.Cal.Atty.Gen. 96 (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 private with the board's counsel or the board's attorney member. Similarly, in 57 Ops.Cal.Atty.Gen. 189 (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 (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. (I.L. 70-184.) 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 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).)

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.

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. (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.)

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.) 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).)

Care must be exercised to analyze the status of the individual involved. 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, in addition to covering civil

service employees or their equivalent, the personnel exception covers 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*, *supra*, 121 Cal.App.3d 231, which concluded under law prior to the 1993 amendments 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, salary structures, etc. In *Santa Clara Federation of Teachers* v. *Governing Board* (1981) 116 Cal.App.3d 831, 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 (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 *Cozzolino* v. *City of Fontana* (1955) 136 Cal.App.2d 608, the court upheld a closed hearing to consider the propriety of a past firing of an employee by the chief of police, and to ratify his action.

The court's decision in *San Diego Union* v. *City Council, supra*, 146 Cal.App.3d 947, broke new ground in delineating the subjects which are appropriate for consideration in closed sessions. 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, supra*, 146 Cal.App.3d at p. 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, "Closed sessions held pursuant to this section shall not include discussions 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., supra*, 263 Cal.App.2d 41, reasoned that the Act was not intended to impliedly repeal pre-existing 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 privilege 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 (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 and 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.)

In 75 Ops.Cal.Atty.Gen. 14 (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., supra*, 263 Cal.App.2d 41, 239.)

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 strengths 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.)

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." (*Id.* at pp. 19-20.)

This interpretation is supported by section 54957.1(a)(3), which requires disclosure of settlements which are finalized in closed session.

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(a)(2).) 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 (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, by video teleconference, or by telephone conference call), 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 (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 (1979).)

Settlement negotiations, however, may be conducted by the attorneys for the respective litigating bodies, and a limited closed session, pursuant to the attorney-client exception, may be held by each body to consult with its attorney about the settlement. (*Ibid.*)

C. Real Estate Negotiations Exception

The Act contains provisions concerning the circumstances under which a body may meet to grant authority to its negotiator, who may be a member of the body, regarding the conduct of 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 estate 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 closed session for real estate negotiations concerns the purchase, sale, lease or exchange of property by or for the agency. The closed session, however, must be preceded by an open session in which the body identifies both the real property in question and the persons with whom its negotiator may negotiate. In 73 Ops.Cal.Atty.Gen. 1 (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.

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).) 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 pursuant to section 54957.6 concerns 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 (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, sheriff, or chief of police on matters posing a threat to the security of public buildings and public services or 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. (I.L. 76-201.) 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.) In 76 Ops.Cal.Atty.Gen. 289 (1993), this office concluded that a city could not impose misdemeanor penalties on an individual who, without permission of the council, disclosed the substance of any discussion properly held during a closed session.

Possible actions which might be undertaken against a person who discloses confidential information might include misdemeanor penalties for failure to perform duties required by law (§ 1222), barring the person from future closed sessions (see *Hamilton* v. *Town of Los Gatos* (1989) 213 Cal.App.3d 1050, 1054), obtaining an injunction against the person's public disclosures (see § 54960; *Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs., supra,* 263 Cal.App.2d 41, 46; *City Council* v. *Superior Court* (1962) 204 Cal.App.2d 68, 73), or filing an accusation against the person for "willful or corrupt misconduct in office" (§ 3060; see *People* v. *Tice* (1956) 146 Cal.App.2d 750, 754).

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

To assist in enforcement of the open meeting laws, criminal penalties, civil injunctive relief and the award of attorney's fees are provided. 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 (1978).) Mere deliberation without the taking of some action will not trigger the criminal penalty.

2. Civil Remedies

A. Injunctive Relief

The Act provides civil remedies in the form of injunction, mandamus or declaratory relief. (§ 54960.) These remedies are available to prevent further or future violations and do not require knowledge or action taken -- elements required for imposition of criminal liability. (See *Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs., supra*, 263 Cal.App.2d 41.)

If a person or member of the media believes a violation of open meeting laws has occurred or is about to occur, or there is some belief that a past violation will reoccur, 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, either the district attorney or any interested person also may seek relief in a superior court. (§ 54960.) An "interested person" may include, in addition to the public, a public entity or its officers. Where a legislative body has committed a violation of the Act concerning closed-session meetings, 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.)

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(b).) If the board refuses or fails to cure or correct a violation of sections 54953, 54954.2, 54954.5, 54954.6 or 54956 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(b).) 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(b).) Once an action is challenged, a body nevertheless may cure or correct that action without prejudice and may have the lawsuit dismissed. (§ 54960.1(d).)

Exemptions are provided in connection with decisions involving bonds, taxes and contracts on which there has been detrimental reliance. (§ 54960.1(c).) Also, actions "in substantial compliance" with the requirements of the Brown Act are exempt. (§ 54960.1(c)(1).) 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 having an action declared null and void. (§ 54960.1(c)(5).)

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, supra*, 122 Cal.App.3d 813; *Frazer* v. *Dixon Unified School Distr.*, *supra,* 18 Cal.App.4th 781, 800.)

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*, *supra*, 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.

APPENDIX

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 which 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) A board, commission, committee, or other multimember body that governs a private corporation or entity that either:

(1) 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 or entity.

(2) 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 by the legislative body of the local agency.

(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, 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.

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; Video 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 video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law.

(2) The use of video teleconferencing, as authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body.

(3) If the legislative body of a local agency elects to use video teleconferencing, it shall post agendas at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(4) The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location.

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

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 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) The legislative body of a local agency 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.

(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. Mailed notice of meetings

The legislative body which is subject to the provisions of this chapter shall give mailed notice of every regular meeting, and any special meeting which is called at least one week prior to the date set for the meeting, to any person who has filed a written request for that notice with the legislative body. Any mailed notice required pursuant to this section shall be mailed at least one week prior to the date set for the meeting to which it applies except that the legislative body may give the notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting.

Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within 90 days after January 1 of each year.

The failure of any person to receive the notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions of the legislative body for which the notice was given.

The legislative body may establish a reasonable annual fee for sending the notice based on the estimated cost of providing the service.

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.

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 legislative body, 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 NEGOTIATOR

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

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)

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 NEGOTIATOR

Agency negotiator: (Specify name)

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)

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 city, county, special district, or joint powers authority shall conduct at least one public meeting at which local officials must 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 which does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge or benefit charge, unless a special district's principal act requires service charges or benefit charges 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 which does not exceed an assessment formula or range of assessments 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. The public hearing shall take place no earlier than seven days after the public meeting 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 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 must 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).

(3) Notwithstanding paragraph (1), in the case of an assessment which is proposed exclusively for operation and maintenance expenses for an entire city, county, or district, or operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to paragraph (1) of subdivision (b) and shall include the information required by 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 decision-making 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 city, county, special district, or joint powers authority 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.

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, by law, 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 personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. The notice shall be delivered personally or by mail 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

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.

For purposes of this section, "emergency situation" means any of the following:

(a) Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

However, each local newspaper of general circulation and radio or television station which 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 by telephone and all telephone numbers provided in the most recent request of such 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.

Notwithstanding Section 54957, the legislative body shall not meet in closed session during a meeting called pursuant to this section.

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.

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 estate 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 the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For the purpose of this section, the negotiator may be a member 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.

54956.9. 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 a 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

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, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or 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.

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.

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.

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. Nothing in this section 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 section 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 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 the 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, or 6254.7.

(b) Writings which are public records under subdivision (a) and which 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.

(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 6257.

(d) This section shall not be construed to limit or delay the public's right to inspect any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250), Division 7, 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. 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 wilfully 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 wilfully 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 wilfully disturbing the orderly conduct of the meeting.

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, or 54956 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, or 54956. 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 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, or 54956 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, or 54956.

(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, or 54956 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, 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.

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71 Ops.Cal.Atty.Gen. 96 (1988)	4, 29, 34, 37
73 Ops.Cal.Atty.Gen. 1 (1990)	4, 38
75 Ops.Cal.Atty.Gen. 89 (1992)	26
75 Ops.Cal.Atty.Gen. 263 (1992)	2
76 Ops.Cal.Atty.Gen. 289 (1993)	39

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AB 3191, April 27, 1988; May 24, 1988	14
SB 200, Statutes of 1987, chapter 1320	28, 33
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NOTES

NOTES

STATE OF CALIFORNIA
DEPARTMENT OF FINANCE
915 L STREET
SACRAMENTO, CA 95814-3706

EXHIBIT B

RECEIVED
JUN 05 1995
COMMISSION ON
STATE MANDATES

June 1, 1995

Sharlene Steed
Mandate Consultant
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Dear Ms. Steed:

As requested in your January 17, 1995, letter, the Department of Finance (DOF) has reviewed the test claim submitted by the County of Santa Clara which alleges that specified costs incurred under Government Code Sections 54952, 54954.2, 54957.1, and 54957.7, as amended by Chapters 1136, 1137, and 1138, Statutes of 1993, and Chapter 32, Statutes of 1994, result in state mandated reimbursable expenses (Claim No. CSM-4469). These chapters revised various provisions of the Ralph M. Brown Act pertaining to meetings of local agencies.

As a result of our review, we have concluded that Chapter 1136 and 1137 may have resulted in reimbursable state-mandated costs pertaining to certain notification requirements. However, these chapters may also result in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. With regard to Chapter 1138, our files indicate that, when contacted by Finance staff prior to enactment of this legislation (SB 1140), a representative of the League of California Cities indicated that its provisions would result in savings to local governments by simplifying and clarifying the Brown Act. As such, it would appear that no State reimbursement is required for Chapter 1138. This statement is corroborated by the staff analyses of SB 1140 of both the Assembly Local Government Committee and the Senate Local Government Committee (Attachments 2 and 3) which list the League of Cities as a supporter of the bill. Finally, Chapter 32 is essentially clean-up legislation for the other three named chapters and does not effect the scope of the law changes made by those chapters. Consequently, we believe that there are no reimbursable state-mandated costs in that legislation. If the Commission reaches the same conclusion at its scheduled August 24, 1995, hearing on the matter, the nature and extent of the specific activities required of counties can be addressed in the parameters and guidelines which will then have to be developed for the program.

If you have any questions regarding this letter, please contact James M. Apps, state mandates claims coordinator for the Department of Finance, at the address indicated in the letterhead, or at (916) 445-8913.

Sincerely,

Calvin Smith

S. CALVIN SMITH
Program Budget Manager

Attachment 1

DECLARATION OF JAMES M. APPS
DEPARTMENT OF FINANCE
CLAIM NO. CSM-4469

1. I am currently employed by the State of California, Department of Finance (DOF), am familiar with the duties of the DOF, am designated as the state mandates claims coordinator for the DOF, and am authorized to make this declaration on behalf of the DOF.

2. We concur that the Government Code sections relevant to this claim are accurately quoted in the test claim submitted by the County of Santa Clara and therefore we do not restate them in this declaration.

3. Section 6 of Article XIIIB of the California Constitution reads, in pertinent part, as follows:

   "Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

   (a) legislative mandates requested by the local agency affected "

4. Government Code Section 17556 reads, in pertinent part, as follows:

   "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

   (e) the statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts..."

5. Attachment 2 is a copy of the analysis of SB 1140 of the 1993-94 Regular Session which was prepared by the staff of the Assembly Committee on Local Government for its July 14, 1993 hearing on the bill.

6. Attachment 3 is a copy of the analysis of SB 1140 of the 1993-94 Regular Session which was prepared by the staff of the Senate Local Government Committee for is May 12, 1993 hearing on the bill.

7. SB 1140 of the 1993-94 Regular Session was enacted as Chapter 1138, Statutes of 1993.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge, except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

6/1/95 Sacramento CA

Date and Place

Signature

Date of Hearing: July 14, 1993

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Mike Gotch, Chair

SB 1140 (Calderon) - As Amended: July 7, 1993

SENATE ACTIONS:

COMMITTEE L. GOV. VOTE 4-3 COMMITTEE APPRO. VOTE 11-0 FLOOR VOTE 24-7

ASSEMBLY ACTIONS:

COMMITTEE L. GOV. VOTE> COMMITTEE W. & M. VOTE>

SUBJECT: Revises the Ralph M. Brown Act.

DIGEST

Existing law, under the Ralph M. Brown Act:

1) Defines "legislative body" to include a body on which local agency officers serve in their official capacity, a body exercising authority delegated by a legislative body, an advisory body, and permanent boards or commissions [54952, 54952.2, 54952.3, 54952.5]. Procedures for advisory body meetings are also specified (e.g., must be held within territory of the local agency, 24-hour notice, provide for conduct in bylaws if regular meetings are held) [54952.3].

2) Allows a legislative body to require that a copy of the Act be given to each legislative body member [54952.7].

3) Requires all meetings of the legislative body to be open and public [54953].

4) Requires a regular meeting to be held on the business day following a holiday [54954].

5) Requires a local agency to post an agenda at least 72 hours before a regular meeting containing a description of each item of business to be transacted or discussed at the meeting. No action can be taken on any item not appearing on the posted agenda [54954.2].

6) Allows a legislative body to adjourn a meeting to a time and place specified in the adjournment order. If all members are absent, then the clerk or secretary may declare the meeting adjourned and cause a written notice to be given. The written notice must be posted on "the" door

- continued -

[54955].

7) Allows closed sessions under certain circumstances [54956.9], allows closed sessions on matters relating to an employee unless the employee requests a public hearing [54957], and allows a legislative body to hold a closed session with designated representatives regarding compensation and benefits of represented and unrepresented employees [54957.6]. Prior to or after holding a closed session, the legislative body must state the general reason for holding the closed session which must be made part of the meeting notice [54957.7].

8) Allows any interested person to commence an action to stop or prevent violations or threatened violations [54960].

9) Prohibits a local agency from conducting any meeting, conference, or function in any facility that prohibits the admittance of any person on the basis of race, religion, color, national origin, ancestry, or sex [54961].

10) Prohibits a closed session except as authorized by the Act and certain provisions relating to hospital districts [54962].

This bill:

1) Consolidates the definition of legislative body into a single section and clarifies certain terms. Certain hospital lessees are exempt from the definition [54952]. Procedures for advisory bodies are revised (e.g., delete 24-hour notice provision) to apply to advisory "committees" [54952.3]. [Note: Bodies created by charter, ordinance, resolution, or formal action are included under the "legislative body" definition and are thereby covered under the Act's requirements; the 24-hour notice for standing and advisory committees are added under the meeting notice provisions (#5 below).]

2) Allows a legislative body to require that a copy of the Act also be given to any person elected to a legislative body who has not assumed the duties of office [54952.7].

3) Specifically prohibits actions by secret ballot [54953].

4) Allows, rather than requires, a regular meeting to be held on the business day following a holiday [54954].

5) Provides that advisory and standing committee agendas must be posted 24 hours prior to meetings [54954.2].

6) Allows an adjournment to also be announced orally. The written notice must be posted on "each" door and a meeting cannot be reconvened until the notice is posted [54955].

7) Revises certain closed session procedures (e.g., deletes the requirement to publicly state circumstances for closed session) [54956.9], clarifies that it is the employee charged who may request a

- continued -

public session and allows a hospital board of directors to order closed sessions on certain matters
4957], and allows closed session for represented employees on other matters within the statutorily-provided scope of representation [54957.6]. Closed session notices must be given prior to holding the session (the allowance for notice after the closed session is deleted) and requires the notice to include the title of the litigation unless the effectuation of service would be jeopardized [54957.7].

8) Allows the district attorney to also commence an action [54960].

9) Prohibits an agency from also conducting any meeting in a facility that is inaccessible to disabled persons, or where the public cannot be present without making a payment or purchase [54961].

10) Allows exceptions to the closed session prohibition pursuant to Education Code provisions relating to school districts and community college districts [54962].

11) Makes numerous technical and corresponding amendments.

FISCAL EFFECT

State mandated local program.

COMMENTS

Background.

The Ralph M. Brown Act requires meetings of a local agency "legislative body" to be open and public, with certain exceptions. "Legislative body" includes officers of a local agency serving in their official capacity as members of a board, commission, committee or other body supported with agency funds. Although the Act provides definitions for these terms, there are questions over what constitutes a "legislative body" and a "meeting". Concerns also exist over meeting locations, adequacy of notices, closed session activities, distribution of materials, and violations.

This bill is a response to theses issues.

Last year, the California First Amendment Coalition, the California Newspaper Publishers Association, and other groups, supported AB 3476 and SB 1538 (Kopp). These bills followed numerous meetings involving various interests, including two long conference committee hearings.

Governor Wilson vetoed both bills because of the "substantial new state-mandated and reimbursable costs to local governments". This year,
AB 1426 (Burton) and SB 36 (Kopp) are similar to the vetoed measures.

2) A Local Government Effort.

According to supporters of this bill, SB 1140 represents an effort by

- continued -

the League of California Cities, the California School Boards Association, the
ssociation of California Hospital Districts, the Community Colleges
eague, and the Association of California Water Agencies to develop reform
ithout "creating giant new state mandated costs".

UPPORT	OPPOSITION
eague of California Cities ssoc. of California Hospital Districts A State Association of Counties A School Boards Association ommunity College League edding idgecrest	None on file.

- continued -

SENATE LOCAL GOVERNMENT COMMITTEE	**VERSION:**	05/10/93	S
Senator Marian Bergeson, Chairman	**SET:**	First	B
	HEARING:	05/12/93	
	FISCAL:	Approp.	1
Senate Bill 1140 - Calderon	**CONSULTANT:**	Manatt	1
			4
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BROWN ACT REVISIONS

Background:

With limited exceptions, the Ralph M. Brown Act requires local officials to hold their meetings in public. The Brown Act declares that "the people insist upon remaining informed so that they may retain control over the agencies which serve them." The heart of the Brown Act is a single sentence which reads, "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."

Local agencies interpret the Brown Act in different ways. Many legislative bodies find the Act confusing and hard to follow. Some interpretations violate the spirit of the Brown Act if not its statutes. In past years, the Legislature has introduced several major Brown Act reform measures. In response, local officials are proposing SB 1140 to clarify and change many of the Brown Act's provisions.

Proposed Law:

Senate Bill 1140 modifies several elements of the Brown Act:

I. **Legislative Bodies.** The Brown Act applies to "legislative bodies" defined as: the governing board, commission, directors, or body of a local agency, or any board or commission thereof. It includes any body where officers of a local agency serve in their official capacity and which is supported by agency funds, regardless of whether the body is operated by the local agency or a private corporation. In addition, the Brown Act defines "legislative body" to include any body which exercises the delegated authority of the local agency and any body created by official action, including planning commissions, library boards, recreation commissions, and others. The Brown Act does not apply to bodies composed solely of members of the governing board which are less than a quorum.

Senate Bill 1140 reorganizes these definitions into one section and makes several changes. SB 1140 defines "legislative body" to include the elected governing body, permanent boards and commissions created by formal action,

exercising delegated authority and whose members are appointed by the elected body. SB 1140 also includes a committee, task force, or other multi-member body created by formal action of a legislative body or any member which has not been delegated decision-making authority. SB 1140 also includes bodies which govern private corporations created by the elected legislative body to exercise delegated authority. SB 1140 excludes "Section P" hospitals from the Brown Act. SB 1140 states that "legislative body" does not include an advisory committee composed solely of members of the governing body that is less than a quorum.

II. **Closed Sessions.** The Brown act allows legislative bodies to hold closed sessions to confer with their legal counsel regarding pending litigation, employment matters, and public threats. Prior to or after entering a closed sessions, the Brown Act requires the legislative body to state the general reasons for the session and allows them to cite the statutory authority for holding the closed session. **Senate Bill 1140** requires the legislative body to state the general reasons for a closed session before the session occurs. When the legislative body proposes a closed session during a special, adjourned, or continued meeting, SB 1140 requires the statement to be made as part of the notice for these meetings.

SB 1140 also requires statements regarding closed session to discuss pending litigation to cite the specific statutory authorization for closed session to discuss the pending litigation. SB 1140 also requires that if the legislative body has been a party to a matter in an adjudicatory hearing before a court, an administrative body, or arbitrator, the announcement must give the titles of the litigation unless doing so would jeopardize the service of notice on parties or the conclusion of settlement negotiations.

III. **Writings.** The Brown Act declares that agendas and other writings distributed to all or a majority of the members of the legislative body by a member, officer, employee, or agent of the body in a public meeting are public records. **Senate Bill 1140** states that writings distributed to all or a majority of the legislative body by a person who is not a member, officer, employee, or agent shall not be public records unless the writing has been prepared at the direction of a legislative body's member, officer, or employee, or a copy has been provided to the legislative body's clerk or secretary. SB 1140 also declares that writings distributed in connection with a matter subject to consideration in closed session are exempt from the Public Records Act.

IV. Secret Ballots. The Brown Act does not expressly prohibit secret ballots. **Senate Bill 1140** prohibits legislative bodies from taking action by secret ballot.

V. Meeting Facilities. Current law prohibits local agencies from meetings in facilities that prohibit the admittance of persons on the basis of race, religion, color, national origin, or sex. **Senate Bill 1140** also prohibits meetings in facilities inaccessible to disabled persons, or where payment or purchase is required.

VI. Newly-Elected Officials. Current law lets legislative bodies of local agencies require that their members receive a copy of the Brown Act. **Senate Bill 1140** lets legislative bodies require that the Act be given to elected members who have not yet assumed duties.

VII. Holidays. If a regularly scheduled meeting falls on a holiday, the Brown Act requires that the meeting be held on the next business day. **Senate Bill 1140** allows the regular meeting to be held on the next business day.

VIII. Adjournment. The Brown Act allows the legislative body or its clerk or secretary to adjourn meetings to a stated time or place. **Senate Bill 1140** allows the legislative body's designee to adjourn meetings, but prohibits resuming a meeting which has been orally adjourned until notice is posted.

Senate Bill 1140 also makes other technical and clarifying changes to current law.

Comments:

1. The public's rights. Of all the rights that Californians cherish, few are more important than our insistence that government officials make public decisions in the open. Public meetings are one of the best ways that citizens can monitor their government. SB 1140 reforms the Brown Act by providing clearer, more concise definitions of local agencies' rights and responsibilities under the Brown Act. Sponsors feel that making the Brown Act more understandable and practical will lead to better compliance.

2. Who drops out. The Brown Act defines "legislative body" in several different sections. In consolidating these different sections, SB 1140 excludes two types of bodies currently covered by the Act: ad hoc multi-member bodies

which exercise the delegated authority of a local agency, and bodies where officers of a local agency serve in an official capacity and which are supported by agency funds. The Committee may wish to consider whether these committee meetings should remain open and public.

3. Is there an attorney in the house? The Brown Act allows a legislative body to hold closed sessions to confer with its legal counsel on pending litigation. SB 1140 lets a legislative body hold closed sessions at the request of its legal counsel. While current law requires the presence of an attorney in order to hold a closed session, SB 1140 eliminates this requirement. The Committee may wish to consider what pending litigation issues legislative bodies need to discuss without their attorney. Will this provision of SB 1140 lead to more closed sessions?

4. Blanket exemption. The Brown Act allows closed sessions in limited circumstances. In addition, the Legislature has granted exemptions for hospital district trade secrets and school district disciplinary actions against students. SB 1140 authorizes new exemptions for "any provision of the Education Code relating to school districts and community college districts." Is such a generic exemption wise? The Committee may wish to consider whether exemptions to the Brown Act should be given case by case consideration.

5. Play it again. When SB 1140 was presented at the Committee's April 21 hearing, the Chairman directed the bill's sponsors to work with the bill's opponents on some amendments. This version of SB 1140 incorporates several amendments suggested by the bill's opponents.

6. Related measure. On February 24, the Committee approved SB 36 (Kopp), a comprehensive Brown Act reform measure. Like SB 1140, SB 36 addresses secret ballots, closed session disclosure requirements, and definitions of legislative bodies. In addition, SB 36 provides more precise definitions of meetings and employees, it revises agenda disclosure requirements, and deals extensively with closed sessions. The Committee may wish to consider whether a more or less comprehensive Brown Act reform measure is warranted.

7. Application to other entities. SB 1140 does not apply Brown Act revisions to the Legislature's open meeting law (Grunsky-Burton) and state agencies' open meeting law (Bagley-Keene). The Committee may wish to consider whether these other statues should conform to the changes made by SB 1140.

Support and Opposition: (05/06/93)

Support: Association of California Hospital Districts, Association of California Water Districts, California Association of Sanitation Agencies, California Municipal Utilities Association, California School Boards Association, California State Association of Counties, Community College League of California, Independent Cities Association, League of California Cities, Cities of Apple Valley, Coronado, Duarte, El Cerrito, Exeter, Manteca, Merced, Oceanside, Pacific Grove, Poway, Rancho Cucamonga, San Juan Capistrano, Visalia.

Opposition: California Newspaper Publishers Association.

PROOF OF SERVICE

Case Name: Brown Act Reform
Case Number: CSM-4469

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA, 95814.

On June 1, 1995, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to the Commission and the other parties listed below, in the United States Mail at Sacramento, California, addressed as follows:

Ms. Sharlene Steed
Mandate Consultant
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814
Facsimile No.: (916) 445-0278
Telephone No.: (916) 323-3562

CSAC SB 90 Service, Attn.: Allan Burdick
5717 Marconi Ave., Suite A
Carmichael, CA 95608
Facsimile No.: (916) 485-0111
Telephone No.: (916) 485-8102

Mr. Steve Conrad
SB 90 Coordinator
70 West Hedding Street
East Wing, Second Floor
San Jose, CA 95110

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 1, 1995, at Sacramento, California.

Mary Latorre

Mary Latorre

EXHIBIT C

THOMAS G. HENDRICKS
COUNTY COUNSEL

ALLEN A. HAIM
CHIEF DEPUTY

PAULETTE ENGLER
ADMINISTRATIVE ASSISTANT

COUNTY COUNSEL OF MARIN COUNTY
SUITE 342, CIVIC CENTER
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TDD (415) 499-6172

ROBERT H. SAN CHEZ
DOROTHY R. JONES
RUTH W. ROSEN
PATRICK K. FAULKNER
JOHN F. GOVI
ALEXIS J. MCBRIDE
MARI-ANN G. RIVERS
CHARLES J. MCKEE
DEBORAH A. BIALOSKY
DEPUTIES

May 26, 1995

RECEIVED
MAY 30 1995
COMMISSION ON
STATE MANDATES

Commission on State Mandate
1414 K Street, Suite 315
Sacramento, Ca 95814

Re: CSM-4469 - County of Santa Clara - Government Code Sections 54952, 54954.2, 54957.1, and 54957.7 - Chapter 1136, 1137, 1138, Statutes 1993, Chapter 32, Statutes of 1994 - Brown Act Reform

Dear Commission Members:

Enclosed please find and original and three copies of Comments of County of Marin in support of County of Santa Clara in the above mentioned issue.

We would appreciate it if you could file endorse one of the copies and return it to us in the self-addressed envelope.

Thank you for your attention to this matter.

Very truly yours,

Allen A. Haim
Chief Deputy

AAH:dj
Enclosures

cc: Carolyn McIntyre, Legislative Representative

G:\aah\bos\brownact.ovr

BEFORE THE
COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	Chapters 1136, 1137 & 1138, Statutes of 1994
	)	Chapter 32, Statutes of 1994
	)	Government Code Section 54952
County of Santa Clara	)	Government Code Section 54954.2
	)	Government Code Section 54957.1
	)	Government Code Section 54957.7
	)	
	)	Brown Act Reform

TEST CLAIM FILING

Comments of County of Marin In Support of Test Claim of County of Santa Clara

In response to the letter of the Commission on State Mandates requesting that all interested parties analyze the merits of the above claim and make recommendations on its validity under Government Code Sections 17500 through 17630, the County of Marin hereby files its statement in support:

1. The County of Marin is a political subdivision of the State of California mandated to carry out the amendments to the Ralph Brown Act set forth in the test claim filed by the County of Santa Clara (hereafter "test claim").

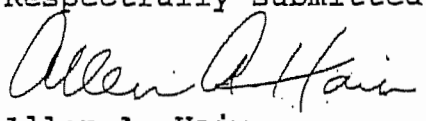
2. Marin County joins in with the County of Santa Clara for the reasons stated in its test claim that the 1993 and 1994 Amendments to the Ralph M. Brown Act require an increased level of service by local agencies, including Marin, which has resulted in a corresponding increase in State mandated costs.

3. These costs have resulted in increased reporting requirements in publication of agendas, record keeping, and other County staff responsibilities requiring a higher level of service. In addition, these provisions have resulted in an increased level of service to advisory bodies which are now subject to the Brown Act Amendments.

4. We are of the opinion that the conditions under Government Code Section 17556 are not applicable, and do not preclude the Commission from approving State mandated costs of local agencies arising from the Brown Act amendments which are the subject of this test claim.

Accordingly, it is respectfully requested that the Commission approve the test claim submitted by the County of Santa Clara.

Respectfully submitted,



Allen A. Haim
Chief Deputy County Counsel
County of Marin

AAH:dj
Enclosure

G:\aah\bos\brownact.com

Originated: 1/19/95
Updated: 06/01/95

MAILING LIST

CSM-4469
Claim of County of Santa Clara
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Chapters 1136/93, 1137/93, 1138/93, and 32/94
Brown Act Reform

Mr. Jim Apps (A-15)
Department of Finance
915 L Street, Eighth Floor
Sacramento, CA 95814

Ms. Mary Jane Archer (B-8)
State Controller's Office
3301 C Street, Room 501
Sacramento, CA 95816

Ms. Patricia Healy
Office of the City Clerk
City of Los Angeles
City Hall, Room 395
Los Angeles, CA 90012

Dr. Carol Berg
Education Mandated Costs Network
1127 11th Street, Suite 401
Sacramento, CA 95814

Mr. J. Richard Whitmore (E-8)
Deputy Superintendent/Field Services
State Department of Education
Administration Branch
721 Capitol Mall, Room 524
Sacramento, CA 95814

Interested Party:
Mr. Leonard Kaye
County of Los Angeles
Department of Auditor-Controller
500 West Temple Street, Suite 603
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Mr. James B. Lindholm, Jr.
County Counsel
County of San Luis Obispo
County Government Center, Room 386
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Originated: 1/19/95
Updated: 06/01/95

MAILING LIST

CSM-4469
Claim of County of Santa Clara
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Chapters 1136/93, 1137/93, 1138/93, and 32/94
Brown Act Reform

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Mr. Tom Newton
Calif. Newspaper Publisher's Assoc.
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Mr. Bruce Brugmann
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520 Hampshire
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Mr. Brent Barnhart
Assembly Judiciary
State Capitol, Room 6005
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Mr. Dan Friedlander
Chief of Staff
Senator Quentin L. Kopp's Office
State Capitol, Room 2057
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Ms. Marcia C. Faulkner
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MAILING LIST

CSM-4469
Claim of County of Santa Clara
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Chapters 1136/93, 1137/93, 1138/93, and 32/94
Brown Act Reform

Ms. Carolyn McIntyre
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1100 K Street, Suite 101
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State Capitol, Room 4167
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Assemblymember Jack O'Connell (E-24)
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Monterey, CA 93940

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Torrance, CA 90504

Mr. James R. Erickson
City Administrator
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Milbrae, CA 94030

Mr. Steve Conrad
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San Jose, CA 95110

Originated: 1/19/95
Updated: 06/01/95

MAILING LIST

CSM-4469
Claim of County of Santa Clara
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Chapters 1136/93, 1137/93, 1138/93, and 32/94
Brown Act Reform

Mr. Chris Cetti
Sacramento County
Auditor-Controller
700 H Street, RM 4650
Sacramento, CA 95814

Mr. Paul Abelson
Contra Costa County
Auditor-Controller's Office
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Mr. Bob Jones
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Mr. Richard Stuuts
District Director
Assemblymember David Knowles
3161 Cameron Park Drive #214
Cameron Park, CA 95682

Mr. Clarence Chan
Senator Patrick Johnston
State Capitol, Room 4035
Sacramento, CA 95814

Ms. Teresa Stark
Assemblymember Barbara Lee
State Capitol, Room 4146
Sacramento, CA 95814

Ms. Polly Gardner
Senator Ralph C. Dills
State Capitol, Room 5050
Sacramento, CA 95814

Ms. Betty Anderson
Assemblymember Bill Morrow
27126-A Paseo Espada, Suite 1625
San Juan Capistrano, CA 92675

Originated: 1/19/95
Updated: 06/01/95

MAILING LIST

CSM-4469
Claim of County of Santa Clara
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Chapters 1136/93, 1137/93, 1138/93, and 32/94
Brown Act Reform

Mr. Charles A. Comstock
City Manager
City of Scotts Valley
One Civic Center Drive
Scotts Valley, CA 95066

Mr. Philip Squire
8804 Samoline Street
Downey, CA 90240

Mr. Andy Glass, Accounting Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Mr. Fred Sorsabal, City Manager
City of Mission Viejo
26522 La Alameda, Suite 190
Mission Viejo, CA 92691

Mr. David E. Wellhouse
Wellhouse & Associates
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 98526

Mr. William Norton,
City Manager
City Hall, Room 301
2263 Santa Clara Avenue
Alameda, CA 94501-4456

Ms. Phoebe Graubard
P. O. Box 4
Mendocino, CA 95460

Interested Party:
Mr. Keith Petersen
Legislative Financial Specialist
San Diego Unified School District
4100 Normal Street, Room 3202
San Diego, CA 92102-2682

EXHIBIT D

County of Santa Clara

Finance Agency
Controller-Treasurer Department
County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-2541 FAX 289-8629

June 28, 1995

RECEIVED
JUN 29 1995
COMMISSION ON
STATE MANDATES

Sharlene Steed, Mandate Consultant
Commission on State Mandates
1414 K Street. Suite 315
Sacramento, CA 95814

RE: CSM - 4469
County of Santa Clara
Chapter 1136, Statutes of 1993
Chapter 1137, Statutes of 1993
Chapter 1138, Statutes of 1993
Chapter 32, Statutes of 1994
Brown Act Reform

Dear Ms. Steed:

Thank you for providing me with the comments on our test claim submitted to you by Kern County Counsel, Marin County Counsel and the Department of Finance. Listed below is our response to the comments offered by the Department of Finance.

I. THE SUGGESTION THAT CHAPTERS 1136 AND 1137 MAY RESULT IN OFFSETTING SAVINGS BY SPECIFYING THAT AGENDA DESCRIPTIONS BE RESTRICTED TO 20 WORDS OR LESS IS NOT SUPPORTED BY LAW OR THE EXPERIENCE OF LOCAL AGENCIES.

The Department of Finance (DOF) concludes that Chapters 1136 and 1137 may result in reimbursable state-mandated costs pertaining to certain notification requirements. The DOF states that these chapters may also result in offsetting savings by specifying that agenda descriptions be ***restricted*** to 20 words or less.

Careful reading of the provision in question indicates that agenda descriptions have not been restricted to 20 words or less. Government Code Section 54954.2, as amended by Chapters 1136 and 1137, Statutes of 1993, provides that "a brief general description of an item generally need not exceed 20 words." Notwithstanding this general provision, compliance with the Brown Act ultimately requires that the agenda provide a meaningful and informative description of each item of business to be transacted or discussed.

Board of Supervisors: Michael M. Honda, Blanca Alvarado, Ron Gonzales, James T. Beall Jr., Dianne McKenna
County Executive: Richard Wittenberg

Compliance with the Brown Act notice requirements is determined by the adequacy of the agenda description not its length. Local agencies have no assurance that an agenda item description of 20 words or less will constitute substantial compliance with Section 54954.2 in all cases. The attached Declaration from the Santa Clara County Clerk of the Board describes the legal concerns and lack of savings from the "20 words or less" provision. Exhibits 1 and 2 from the City of Modesto and the City of Los Angeles further illustrate this point.

II. GOVERNMENT CODE SECTION 17556(E) IS NOT APPLICABLE TO THIS TEST CLAIM: COSTS HAVE NOT BEEN OFFSET WITH SAVINGS.

Government Code Section 17556 specifies criteria for not finding costs mandated by the state. The DOF cites Section 17556(e) relating to "*offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts....*" As explained in the attached Declaration from the Santa Clara County Clerk of the Board, we have not realized any savings as a result of the subject legislation. The subject legislation has imposed state-mandated reimbursable costs as described in our test claim and these costs have not been offset by any savings whatsoever. Our experience is similar to that described by various cities familiar with the fiscal impact of the 1993 amendments to the Brown Act. (See Exhibits 1 and 2 from the City of Modesto and the City of Los Angeles)

III. PROJECTED SAVINGS ANTICIPATED BY THE LEAGUE OF CALIFORNIA CITIES IS NOT RELEVANT TO THE DETERMINATION OF A MANDATE.

The DOF suggests that reimbursement is not required for increased costs mandated by Chapter 1138 simply because the League of California Cities, prior to enactment, indicated that the legislation would result in savings by simplifying and clarifying the Brown Act. Mere conjecture by the League, before the final version of SB 1140 was enacted, is not determinative of the issue of costs mandated by the state. Statements regarding resultant costs and/or savings, made by local agencies with the benefit of experience in implementing and administering the provisions of Chapter 1138, Statutes of 1993, are more valuable. Exhibits 1 & 2 from the City of Modesto and the City of Los Angeles, along with the Declaration from the County of Santa Clara Clerk of the Board are three such statements which attest to the fiscal impact of the subject legislation. Local agencies have incurred reimbursable state-mandated costs as a result of Chapter 1138, Statutes of 1993.

IV. GOVERNMENT CODE SECTIONS 54952, 54954.2, 54957.1 AND 54957.7 AS AMENDED BY CHAPTERS 1136, 1137 AND 1138, STATUTES OF 1993, RESULT IN COSTS MANDATED BY THE STATE.

Government Code Section 54952, as amended by Chapter 1138, Statutes of 1993, expanded the definition of "legislative body" as used in the Brown Act, thereby requiring an increased level of service by increasing the number of entities subject to the Act. Furthermore, Government Code Sections 54954.2, 54957.1 and 54957.7, as amended by Chapters 1136 and 1137, Statutes of 1993, expanded closed session reporting requirements thereby requiring an increased level of service. We have not realized any savings which would offset the state-mandated costs we have incurred as a result of this legislation.

GOVERNMENT CODE SECTION 54952

Government Code Section 54952, as amended by Chapter 1138, Statutes of 1993, expands the definition of "legislative body" as used in the Brown Act. Section 54952(a), as amended, expands the definition to include a "...local body created by state or federal statute." Section 54952(b), as amended, expands the definition to include standing committees, as defined, irrespective of their composition. Government Code Section 54952(d), as amended, expands the definition of "legislative body" to include the lessee of a hospital leased pursuant to Health & Safety Code Section 32121 (p). As a result of the increased number of entities subject to the Brown Act, we have incurred increased costs in connection with the preparation of agendas required by the Act.

Prior law, Government Code Section 54952.3, provided advisory bodies with exemption from the notice provisions of Sections 54954, 54955, 54955.1 and 54956 relating to time and place of regular meetings, adjournment of meetings, continuance of hearing and special meetings respectively. Chapter 1138, Statutes of 1993, repealed Government Code Section 54952.3. As a result, advisory commissions, committees and bodies are now subject to Sections 54954, 54955, 54955.1 and 54956, thereby requiring an increased level of service with respect to advisory body notice requirements.

GOVERNMENT CODE SECTION 54954.2

Prior law, Government Code Section 54954.2 (a) as added by Chapter 641, Statutes of 1986, required the legislative body to "post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting". Section 54954.2 (a) as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, expanded this requirement to additionally include brief general descriptions of items to be discussed or transacted in closed session. This incremental increase in the number of items which must be described in the posted agenda requires an increased level of service by local agencies.

GOVERNMENT CODE SECTION 54957.1

Prior law, Government Code Section 54957.1 as last amended by Chapters 181 and 1284, Statutes of 1980, required the legislative body to reconvene after closed session to report "...any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body".

Section 54957.1 (a) as amended by Chapters 1136 and 1137, Statutes of 1993, and Chapter 32, Statutes of 1994, now requires the legislative body to publicly report any action taken in closed session and the vote thereon. Section 54957.1 (a), parts (1) through (6) specify the nature and extent of the required reporting. The report may be made either orally or in writing pursuant to Section 54957.1 (b).

In order to provide the expanded report of closed session activity, as required by Section 54957.1, some form of record keeping of the closed session must be performed. This additional record keeping requires an increased level of service by local agencies. There was no prior requirement that legislative bodies keep minutes or otherwise record action taken in closed session such as voting records, etc.

GOVERNMENT CODE SECTION 54957.7 (b)

Section 54957.7(b), as amended by Chapters 1136 and 1137, Statutes of 1993, requires the legislative body to reconvene into open session after any closed session and to make the public disclosures required by Section 54957.1 of any action taken.

SUMMARY

Our contention that the activities required by Government Code Sections 54952, 54954.2, 54957.1 and 54957.7, as amended by Chapters 1136, 1137 and 1138, Statutes of 1993, result in reimbursable state-mandated costs is supported by the statements submitted to the Commission by Kern County Counsel and Marin County Counsel. None of the issues raised by the DOF preclude the Commission from finding costs mandated by the state.

Our experience indicates that the reimbursable state-mandated costs we have incurred have not been offset by savings resulting from the subject legislation. The fiscal impact and lack of savings experienced by Santa Clara County, as described in the Declaration of the Santa Clara County Clerk of the Board, is similar to that described by the City of Modesto and the City of Los Angeles (Exhibits 1 and 2 respectively).

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge, except as to those matters therein stated as belief and, as to those matters, I believe them to be true.

Steve Conrad — June 28, 1995 San Jose

Signature — Date and Place

Steve Conrad
SB 90 Coordinator

County of Santa Clara

Office of the Clerk of the Board of Supervisors

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1770
(408) 299-4321 FAX 298-8460 TDD 993-8272

Phyllis A. Perez
Clerk of the Board

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: County of Santa Clara Declaration of Phyllis Perez	CSM - 4469 Chapters 1136,1137,1138, Statutes of 1993. Chapter 32, Statutes of 1994 Brown Act Reform

Declaration of Phyllis Perez

I, Phyllis Perez, make the following declaration and statement:

I am the Clerk of the Board of Supervisors of the County of Santa Clara. My office provides professional office support for the Board of Supervisors and the various boards and commissions of the County. Our responsibilities include attendance at all regular and special meetings of the Board and 39 advisory boards, committees, commissions and authorities. Duties for each meeting attended include proper noticing, agenda preparation, processing and maintaining official records of all actions taken, writing and maintaining minutes and other duties. I am familiar with the requirements of the Brown Act, both prior to, and subsequent to, amendments made by Chapters 1136, 1137 and 1138, Statutes of 1993.

Prior to amendment in 1993, Government Code Section 54954.2 required that, at least 72 hours before a regular meeting, the legislative body of a local agency post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. Chapters 1136 and 1137, Statutes of 1993, amended Government Code Section 54954.2 to include the statement that, "(A) brief general description of an item generally need not exceed 20 words".

The Department of Finance suggests that the 1993 amendment may result in offsetting savings by specifying that agenda descriptions be restricted to 20 words or less (emphasis added). Government Code Section 54954.2 **did not** in fact restrict the agenda descriptions to 20 words or less. Unless the legislature and the courts determine that agenda descriptions of 20 words or less will universally constitute substantial compliance with the Brown Act notice requirements, we do not expect to realize any savings as a result of Section 54954.2 as amended by Chapters 1136 and 1137, Statutes of 1993.

The longstanding requirement that the agenda provide meaningful and informative descriptions of each item of business to be discussed or transacted at public meetings remains operative and ultimately governs the adequacy of agenda descriptions. To suggest that we can restrict our agenda descriptions to 20 words or less seems to ignore one of the fundamental purposes of the Brown Act. Legal interpretations of the Brown Act requirement for meaningful agendas suggest that the agenda description be sufficient to inform the public of the nature of the subject matter under consideration in order to allow them to determine whether to attend or participate in the meeting - anything less could be construed as a violation of the Act.

Violation of the agenda notice requirements (Government Code Section 54954.2) can result in an injunction or mandamus to find the action taken by a legislative body to be null and void, court awarded court costs and attorney fees payable to the plaintiff as well as potential misdemeanor charges against the members of the legislative body. If we can accurately and adequately describe an item of business to be transacted or discussed in 20 words or less, it has always been our practice to do so. Many items of business require a more extensive description in order to comply with the Brown Act notice requirements. Examples include notice to bidders, land use issues, and ordinances, all of which generally require more than 20 words to properly describe the item of business. The provision in question has had no practical impact on our agendas and certainly has not resulted in any savings by my office.

The Department of Finance notes that the League of California Cities indicated that (unspecified) provisions of Chapter 1138, Statutes of 1993, would result in savings to local governments by simplifying and clarifying the Brown Act. We have not realized any savings as a result of this bill. It is not possible for my office to achieve any real savings such as a reduction in staffing levels or a reduction in staff time as a result of any of the provisions of Chapter 1138, Statutes of 1993.

Chapter 1138, Statutes of 1993, ***permits*** a legislative body to require that a copy of the Brown Act be given to any person elected to serve as a member of the legislative body who has not yet assumed office; the bill ***defines*** "employee" for purposes of authorization for closed sessions relating to employee matters; the bill ***prohibits*** meetings in facilities inaccessible to disabled persons or where the public must make a payment or purchase; the bill also ***permits*** a school district or community college district to conduct a closed session if the Education Code permits such a closed session. It is difficult to believe that any of these provisions could result in actual savings by local agencies.

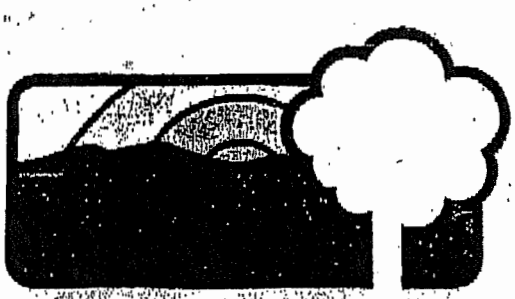
Chapter 1138, Statutes of 1993, amended Government Code Section 54952 to expand the definition of "legislative body" to include various entities as described in our test claim. As a result of this expansion in the number of entities subject to the Brown Act, the County of Santa Clara has incurred additional costs to prepare and post agendas pursuant to Government Code Section 54954.2.

The actual increased costs incurred by Santa Clara County have not been offset by any savings which may have been projected by the League of California Cities prior to the enactment of this legislation.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge, except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

6/23/95 San Jose, Ca Phyllis Perez

Date and Place Signature



CITY of MODESTO

Office of City Clerk:
(209) 577-5396 FAX (209) 571-5152

801 11th Street, P.O. Box 642, Modesto, CA 95353
[TDD (209) 526-9211 Hearing and Speech Impaired only]

June 22, 1995

Mr. Steve Conrad, SB 90 Coordinator
Controller-Treasurer Department
County Government Center, East Wing
70 W. Hedding Street
San Jose, California 95110

Dear Mr. Conrad:

This is to confirm our telephone conversation of June 15, 1995, concerning the costs of complying with new Brown Act provisions pertaining to City Council and Council Policy Committees agendas.

As I mentioned, the theory was that a brief general description of 20 words or less would save money. Frankly, that wouldn't save much -- just a little typing time and maybe a sheet of paper per agenda. However, if you are going to truly comply with the Brown Act requirements that the agenda describe what the City Council is going to discuss, you cannot do it in 20 words. We have not been able to save any money with the 20 words or less provision.

The new provision that requires us to produce and post agendas for City Council Policy Committees, which are comprised of less than a quorum of the Council, has really increased our costs. In Modesto, we have seven policy committees. None of them have regularly scheduled meetings, but most of them meet at least once a month, and sometimes several times in a month. Even if we could find a way of keeping the description of each City Council agenda item to 20 words or less, the extra time of producing and posting agendas for the Policy Committee would be many times more than the little we might have saved.

I hope this information will be helpful to you. If you need anything further, I will be happy to get it for you.

Sincerely,

Norrine Coyle

Norrine Coyle
City Clerk & Auditor

City Pride — Citywide

CITY OF LOS ANGELES
CALIFORNIA

ELIAS MARTINEZ
City Clerk

J. Michael Carey
Executive Officer

When making inquiries relative to this matter refer to File No.

RICHARD J. RIORDAN
MAYOR

Office of
CITY CLERK
Council and Public Services
Room 395, City Hall
Los Angeles, CA 90012
Council File Information - (213) 485-5703
General Information - (213) 485-5705

Pat Healy
Chief Legislative Assistant

June 27, 1995

Steve Conrad
Santa Clara County
70 West Hedding Street,
East Wing, Second Floor
San Jose, CA 95110

Dear Mr. Conrad:

Pursuant to our telephone conversation June 19, 1995, this letter is to reiterate two issues concerning 1993 amendments to the Brown Act.

First, the requirement that an agenda item "need not exceed twenty words" does not adequately protect the legislative body from legal liability, particularly with "closed session" issues. The Los Angeles City Council Agenda invariably uses far more than twenty words to describe non-closed session items. However, to provide a "safe harbor" from liability and to comply with the recent amendments to the Brown Act, closed session items descriptions have had to be greatly expanded beyond our regular listing of court case name, or bargaining unit involved, etc. These expanded listings not only are legally required, but clearly involve more than twenty words.

Second, the definition of "legislative body" has been expanded to include far more situations than a Council meeting or Council Committee meeting. The definition now is applicable to staff briefing meetings, advisory groups for Business Improvement Districts that assess themselves, City created internal task forces, and other groups that literally have no decision making authority. The City of Los Angeles, for example, has an Earthquake Recovery Task Force comprised of City staff from various departments who are brought together to report to the Council on the status of earthquake recovery and to make any recommendations for action. Though this is an advisory/research/study body only, due to the expanded Brown Act definition, its meeting agendas are duly noticed and the public is invited. Obviously this expanded definition has added costs, time, and inefficiency to this City's governmental process.

Sincerely,

Pat Healy

Pat Healy,
Chief Legislative Assistant
(213) 485-4796

AN EQUAL EMPLOYMENT OPPORTUNITY – AFFIRMATIVE ACTION EMPLOYER

EXhibiT 2

EXHIBIT E

California Newspaper Publishers Association

1225 8th Street, Suite 260, Sacramento, CA 95814-4809
(916) 449-6000 • Fax: (916) 443-6447

October 5, 1995

Sharlene Steed
Mandate Consultant
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: CSM-4469
County of Santa Clara
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Chapter 1136, Statutes of 1993
Chapter 1137, Statutes of 1993
Chapter 1138, Statutes of 1993
Chapter 32, Statutes of 1994
Brown Act Reform

Dear Ms. Steed:

This letter is filed on behalf of the approximately 500 members of the California Newspaper Publishers Association in opposition to the County of Santa Clara Test Claim requesting the commission to consider whether the provisions of Chapters 1136, 1137 and 1138, Statutes of 1993, and Chapter 32, Statutes of 1994, which amended Government Code section 54952, 54954.2, 54957.1 and 54957.7, result in a state mandated local program. CNPA was a principal sponsor of Brown Act reform and was involved in the negotiation of virtually every code section changed or added by Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994.

1. Section 54952

Section 54952 consolidated the several code sections that previously defined the term "legislative body" into a single code section. The change in the law was authored by Senator Charles Calderon and sponsored by virtually every lobbying organization representing local government agencies governed by the Ralph M. Brown Act (hereinafter called "Act"), including the California State Association of Counties (CSAC), of which the County of Santa Clara is a member. First, it is absurd that the County, through its taxpayer financed lobbying arm CSAC, would urge the legislature to change the law, and then ask the state to pay for the perceived costs associated with the requested change.

Second, the change to law that requires permanent standing committees to be governed by the Act does not create a state mandated local program. Nowhere in the Act is there a requirement that any "legislative body" governed by the Act create standing committees. The Act simply says that

if a body governed by the act, which is already required to post agendas and hold open meetings, determines there is a need to create a standing committee, that the committee post an agenda.

Further, prior law requires all items of business to be agendized. Section 54952 does not increase the items which must be agendized, it simply requires that these items be agendized for the appropriate bodies. Once the item has been described for the subcommittee, the work associated with describing the item is completed. The cost associated with placing the already described agenda on the agenda for a future meeting of the full body is di minimus. In other words, delegating a function to a subcommittee does not increase the number of issues that must be agendized -- it simply requires the issues to be agendized for a different body. However, this line of reasoning need not be entertained to conclude that no state mandate exists. The bottom line is that the change to Section 54952 does not "mandate" the creation of subcommittees, therefore does not create a state mandated local program.

2. Section 54954.2

Section 54954.2 generally requires legislative bodies to post agendas 72 hours prior to meetings containing a brief general description of "each item of business to be transacted or discussed at the meeting." The amendment adds the language, but not the requirement, that agendas must include "items to be discussed in closed session."

The previous law clearly required that "each item" of business be described on the agenda. It is settled that closed sessions are part of a "regular meeting" at which "business [is] to be transacted or discussed." Section 54954.2, since its enactment in 1986, has required all business of the body to be described on the posted agenda, whether the business is to be transacted or discussed in an open meeting or in a permissible closed session. The clarifying language "including items to be discussed in closed session" was intended by the legislature to be instructive, not to expand the existing agenda requirement.

In addition, the change to the law adds the words, "A brief general description of an item generally need not exceed 20 words." This language, negotiated by local government lobbyists, was placed in the law to radically reduce the costs of creating and posting agendas. In crafting this language, the interested parties reviewed actual posted agendas from Brown Act bodies and found that most agendas went far beyond the minimum requirements of Section 54954.2 that items be briefly described. The sentence limiting the number of words was not only intended to eliminate the costs associated with the legislation, but was intended and understood by all interested parties to reduce the costs of the prior law. It was this change to the law that convinced Governor Pete Wilson to sign the Kopp/Burton/Calderon package of bills. Wilson had vetoed Brown Act reform legislation the previous year because he perceived the bills would have increased costs associated with the Act.

Not only does the new law not create any increased cost to legislative bodies, it reduces the costs associated with agenda posting for all bodies governed by the Act under prior law. The commission should use the Santa Clara County test claim as a vehicle to completely revisit the existing state mandated local program established pursuant to existing Section 54954.2 with the idea the existing mandate should be greatly reduced or eliminated.

3. Section 54957.1

Section 54957.1 requires bodies to report out action taken in closed session. Reporting out can be accomplished orally or in writing. The county vaguely refers to "some form" of increased record keeping that is required by simply announcing to the public what action was taken, if any, in a closed session. In fact, the only requirement is that the body reconvene the open meeting and orally inform the public of what action was taken, if any. No increased record keeping is required to make an oral announcement, that, for example, a lawsuit has been settled. This new section, while it vastly improves the public's ability to understand the actions taken by bodies, does not create any increased costs to local government.

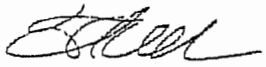
4. Section 54957.7

The change to Section 54957.7, which was requested by local government, was designed to reduce costs associated with prior law which required oral statements in an open meeting of the items to be discussed in closed sessions. In negotiations, attorneys representing local agencies, indicated that lengthy oral recitation of closed session disclosures were unnecessary and time consuming. The law was changed to allow a mere reference to closed meeting item descriptions contained in a posted agenda as an alternative to the lengthy oral disclosures required by prior law. The change to Section 54957.7, if anything, saves local agencies valuable time.

Conclusion

There are no increased costs to local agencies pursuant to Government Code Sections 54952, 54954.2, 54957.1 or 54957.7. Instead, Section 54954.2 was amended to radically reduce the existing cost, if any, of posting agendas by Brown Act bodies. CNPA respectfully urges you to reject, in total, Santa Clara County's test claim and to reduce or eliminate the existing state mandated local program associated with Section 54954.2.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: w/o attachment
Honorable Quentin Kopp
Honorable Charles Calderon
Honorable John Burton
Jack Bates, CNPA Executive Director
Bill Niese, Senior Vice President of Law & Human Relations, *Los Angeles Times*
Al McCombs, Publisher, *Malibu Times*
Terry Francke, Executive Director of the California First Amendment Coalition

Attachment

Attachment 1

DECLARATION OF THOMAS W. NEWTON
CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION
CLAIM NO. CSM-4469

1. I am currently employed by the California Newspaper Publishers Association (CNPA). I am familiar with the duties and interests of CNPA and designated as the representative of CNPA with regards to issues involving California State Mandates.

2. CNPA was a principal sponsor of Brown Act reform, and on behalf of CNPA, I was involved in the negotiation of virtually every code section changed or added by Chapters 1136, 1137 and 1138, statutes of 1993 and Chapter 32, Statutes of 1994.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge, except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

10/5/95
Date

Thomas W. Newton, CNPA General Counsel

C A L I F O R N I A

FIRST AMENDMENT COALITION

PROMOTE AND DEFEND
THE PEOPLE'S RIGHT TO KNOW

October 5, 1995

Ms. Sharlene Steed
Mandate Consultant
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

EXECUTIVE DIRECTOR

Terry Francke
926 J Street, Suite 1406
Sacramento, CA 95814

Tel: (916) 447-2322
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OFFICERS

Dan Day
President

Irv Kass
Vice President

Diane Hardisty
Secretary

Mel Opotowsky
Treasurer

DIRECTORS

Jean Askham
Richard Bergholz
Bruce Brugmann
James Erickson
Murray Fromson
Bob Ingle
Bill Johnson
Andy Lipmann
Milli Martinez
Allen McCombs
Doug McKnight
Fran Packard
Bob Rawitch
Rowland Rebele
Stan Statham
Carola Wagner Vallianos

MEMBER ORGANIZATIONS

Associated Press
News Executives of
California and Nevada

California Broadcasters
Association

California Newspaper
Publishers Association

California Society
of Newspaper Editors

Radio-Television
News Association

Radio-Television News
Directors Association

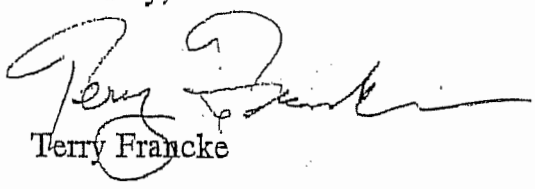
Society of Professional
Journalists

RE: CSM-4469
County of Santa Clara
Government Code §§ 54952, 54954.2, 54957.1 and 54957.7
Chapter 1136, Statutes of 1993
Chapter 1137, Statutes of 1993
Chapter 1138, Statutes of 1993
Chapter 32, Statutes of 1994

Dear Ms. Steed,

The California First Amendment Coalition, as a principal co-sponsor of the 1993-94 revisions to the Ralph M. Brown Act, adopts the arguments and conclusions of the California Newspaper Publishers Association in its letter to you today (Thomas W. Newton, author) concerning the referenced matter.

Sincerely,



Terry Francke

EXHIBIT F

SACRAMENTO ADDRESS
STATE CAPITOL
95814
(916) 445-0503

DISTRICT OFFICE
363 EL CAMINO REAL, #205
SAN FRANCISCO, CA 94080
(415) 952-5666

California State Senate

STATE SENATOR
QUENTIN L. KOPP
EIGHTH SENATORIAL DISTRICT
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

AGRICULTURE & WATER RESOURCES
BUDGET AND FISCAL REVIEW
CRIMINAL PROCEDURE
HOUSING AND LAND USE
LOCAL GOVERNMENT
REVENUE AND TAXATION

SELECT COMMITTEES
INFORMATION SERVICES IN STATE GOVERNMENT - CHAIRMAN
DEFENSE BASE CLOSURES
MARITIME INDUSTRY
NORTHRIDGE EARTHQUAKE
STATE PROCUREMENT AND EXPENDITURE PRACTICES
VOTING PRACTICES AND PROCEDURES

SUBCOMMITTEES
BUDGET SUBCOMMITTEE NO. 2 ON RESOURCES, ENVIRONMENTAL PROTECTION AND JUDICIARY - CHAIRMAN

JOINT COMMITTEES
JOINT COMMITTEE ON RULES

October 27, 1995

Ms. Sharlene Steed
Mandate Consultant
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

OCT 30 1995

Re: CSM-4469, County of Santa Clara,
Government Code Sections 54952, 54954.2,
54957.1 and 54957.7

Dear Ms. Steed:

I am informed that the County of Santa Clara has filed a so-called "test claim" which requests the Commission on State Mandates to consider whether the provisions of Chapters 1136, 1137 and 1138, Statutes of 1993, and Chapter 32, Statutes of 1994, result in a state-mandated local program, so as to entitle the County of Santa Clara and other entities similarly situated to payment by the State of California for alleged mandated costs.

I write to record my strong opposition to any such payments. As the author of most of the aforementioned legislation, I memorialize the fact that no increase in cost to local agencies results from Government Code Sections 54952, 54954.2, 54957.1 or 54957.7. In fact, Section 54954.2 was amended specifically at the request of local agencies to reduce the existing cost, if any, of posting agendas. Section 54957.7 was revised to reduce costs of the prior law requiring oral statements in an open meeting of items discussed in closed sessions. Section 54954.2 was revised to permit not more than 20 words for the requisite "brief general description" of any item on a local agency agenda. The purpose was cost reduction. The source of that revision was local agency legislative advocates. Thus, the

existing state-mandated local program costs associated with Section 54954.2 should be eliminated or reduced.

Additionally, the test claim should be rejected in its entirety. It is unmeritorious.

Yours truly,

QUENTIN L. KOPP

QLK:tt
cc: Hon. John Burton
Hon. Charles Calderon
Thomas W. Newton, Esq.
Terry Francke, Esquire

EXHIBIT G

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECEIVED
SEP 11 1998
COMMISSION ON
STATE MANDATES

PARTIAL CONSOLIDATION OF TEST CLAIMS AND ADDITION OF CO-CLAIMANTS	CSM-4469 *Brown Act Reform* County of Santa Clara, Claimant CSM-4501 *Schoolsite Councils* Kern High School District, Claimant

Kern High School District ("Kern") and the County of Santa Clara ("Santa Clara") jointly agree to a partial consolidation of Test Claim CSM-4469 *Brown Act Reform* ("Brown Act Reform Test Claim") with Test Claim CSM-4501 *Schoolsite Councils* ("Schoolsite Councils Test Claim"), and to add San Diego Unified School District ("San Diego") as a co-claimant with respect to the merged test claims.

PROCEDURAL BACKGROUND

On December 29, 1994, Santa Clara filed the Brown Act Reform Test Claim with the Commission on State Mandates ("Commission"). The Brown Act Reform Test Claim alleges that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as amended by Chapter 1136, Statutes of 1993, Chapter 1137, Statutes of 1993, Chapter 1138, Statutes of 1993 ("Chapter 1138/93"), and Chapter 32, Statutes of 1994, imposed a reimbursable state-mandated new program or higher level of service on local governments, including school districts. On October 25, 1995, Commission staff granted Santa Clara's request to continue the Brown Act Reform

Test Claim pending resolution of certain procedural issues. The hearing for the Brown Act Reform Test Claim has not been rescheduled.

On December 26, 1995, Kern filed the Schoolsite Councils Test Claim with the Commission. The Schoolsite Councils Test Claim alleges that Education Code section 35147, added by Chapter 239, Statutes of 1994, imposed a reimbursable state-mandated new program or higher level of service on school districts. The hearing for the Schoolsite Councils Test Claim is pending.

PARTIAL CONSOLIDATION OF TEST CLAIMS AND ADDITION OF CO-CLAIMANTS

In the Test Claim Narrative for the Schoolsite Councils Test Claim, Kern notes that Chapter 1138/93 significantly amended Government Code section 54952 to, among other things, add local bodies "created by state or federal statute" as "legislative bodies" that were subject to the provisions of the Brown Act. Kern also notes that Chapter 1138/93 was the subject of Brown Act Reform Test Claim.

Santa Clara has not yet resolved all procedural issues relating to Brown Act Reform Test Claim. Santa Clara and Kern agree that it is in the best interests of all parties to consolidate the allegations in Brown Act Reform Test Claim concerning the requirements imposed upon school districts by Government Code section 54952, as amended by Chapter 1138/93, with the Schoolsite Councils Test Claim. The consolidation preserves the eligibility dates for both test claims.

Santa Clara agrees to segregate all allegations in Brown Act Reform Test Claim concerning Government Code section 54952, as amended by Chapter 1138/93, as this section affects school districts, from the other allegations in Brown Act Reform Test Claim. Santa Clara agrees to add Kern and San Diego as co-claimants on Brown Act Reform Test Claim concerning

the requirements imposed upon school districts by Government Code section 54952, as amended by Chapter 1138/93.

Kern agrees to consolidate the portions of Brown Act Reform Test Claim concerning the requirements imposed upon school districts by Government Code section 54952, as amended by Chapter 1138/93, with the Schoolsite Councils Test Claim. Kern agrees to add San Diego as co-claimant with respect to the Schoolsite Councils Test Claim and the consolidated portion of Brown Act Reform Test Claim.

DESIGNATION OF CONTACT PERSON

Santa Clara, Kern, and San Diego designate James A. Cunningham, Legislative Mandate Specialist, San Diego Unified School District, 4100 Normal Street, Room 3159, San Diego, California, 92103, as the contact person with respect to the Schoolsite Councils Test Claim and the consolidated portion of Brown Act Reform Test Claim.

Dated September 3, 1998.

County of Santa Clara

By: Champa Manlan
Champa Manlan, SB 90 Coordinator

Kern High School District

By: _____
Ron Fontaine, Categorical Consultant

San Diego Unified School District

By: _____
Richard J. Knott, Deputy Controller

the requirements imposed upon school districts by Government Code section 54952, as amended by Chapter 1138/93.

Kern agrees to consolidate the portions of Brown Act Reform Test Claim concerning the requirements imposed upon school districts by Government Code section 54952, as amended by Chapter 1138/93, with the Schoolsite Councils Test Claim. Kern agrees to add San Diego as co-claimant with respect to the Schoolsite Councils Test Claim and the consolidated portion of Brown Act Reform Test Claim.

DESIGNATION OF CONTACT PERSON

Santa Clara, Kern, and San Diego designate James A. Cunningham, Legislative Mandate Specialist, San Diego Unified School District, 4100 Normal Street, Room 3159, San Diego, California, 92103, as the contact person with respect to the Schoolsite Councils Test Claim and the consolidated portion of Brown Act Reform Test Claim.

Dated September 3, 1998.

County of Santa Clara

By: _____
Champa Manlan, SB 90 Coordinator

Kern High School District

By: Ron Fontaine
Ron Fontaine, Categorical Consultant

San Diego Unified School District

By: Richard J. Knott
Richard J. Knott, Deputy Controller

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
(916) 445-0278
E-mail: csminfo@csm.ca.gov

June 23, 2000

Mr. James Webb
County of Santa Clara
Controller-Treasurer Division
County Government Center, East Wing, 2nd Floor
70 West Hedding St.
San Jose, CA 95110

RE: *Brown Act Reform* - CSM-4469
County of Santa Clara, Claimant
Statutes of 1994, Chapter 32
Statutes of 1993, Chapter 1136
Statutes of 1993, Chapter 1137

Dear Mr. Webb:

On March 17, 2000, a letter was sent to you advising that the above named test claim has been inactive since 1998, when a portion of this test claim was consolidated with the test claim originally filed by Kern High School District on *Schoolsite Councils* (CSM-4501). This letter further explained that if a request to reactivate the claim was not received, the test claim would be scheduled for dismissal. To date, no request to activate the claim has been submitted and no application was received from another party to take over the claim. Therefore, this test claim will be scheduled for dismissal at the Commission's hearing on August 24, 2000.

Written Comments

The County of Santa Clara, interested parties, and state agencies may file written comments regarding the dismissal of this test claim by July 25, 2000. The Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties (on the enclosed mailing list), and to be accompanied by a proof of service on those parties.

Commission Hearing

The dismissal of this test claim is scheduled for hearing on August 24, 2000 at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance of the hearing if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear.

Please call Shirley Opie at (916) 323-8211 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

c: Mailing List
f:\mandates\4469\dismissltr

Claim Number	CSM-4469	**Claimant**	Claim of County of Santa Clara
Subject	54952, 54954.2, 54957.1, and 54957.7 1136/93, 1137/93, 1138/93, 32/94		
Issue	Brown Act Reform		

Mr. David Wellhouse,
Wellhouse & Associates

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244
FAX: (916) 368-5723

Claim Number	CSM-4469	**Claimant**	Claim of County of Santa Clara
	54952, 54954.2, 54957.1, and 54957.7		
Subject	1136/93, 1137/93, 1138/93, 32/94		
	Brown Act Reform		

Mr. Paul Minney,
Girard & Vinson

1676 N. California Blvd. Suite 450 — *Tel:* (925) 746-7660
Walnut Creek CA 94596 — *FAX:* (925) 935-7995

Mr. Joseph D. Mullender, Jr.,
Attorney at Law

89 Rivo Alto Canal — *Tel:* (562) 439-6376
Long Beach CA 90803 — *FAX:* (626) 962-7102

Mr. Tom Newton,
California Newspaper Publisher's Assoc.

930 G Street — *Tel:* (916) 288-6000
Sacramento CA 95814 — *FAX:* (916) 288-6002

:cutive Officer,
City of Los Angeles

Office of the City Clerk City Hall Room 607 — *Tel:* (213) 485-4466
Los Angeles CA 90012 — *FAX:* (213) 473-5212

Mr. Keith B. Petersen, President
Sixten & Associates

5252 Balboa Avenue Suite 807 — *Tel:* (858) 514-8605
San Diego CA 92117 — *FAX:* (858) 514-8645

Mr. James Webb, SB 90 Coordinator
County of Santa Clara
Controller - Treasurer Department
70 West Hedding Street East Wing 2nd Floor — *Tel:* (408) 299-2541
San Jose CA 95110 — *FAX:* (408) 289-8629

Claim Number	CSM-4469	**Claimant**	Claim of County of Santa Clara
Subject	54952, 54954.2, 54957.1, and 54957.7 1136/93, 1137/93, 1138/93, 32/94		
Issue	Brown Act Reform		

Ms. Pam Erlandson, Revenue Office
City of Monterey
Finance
City Hall — *Tel:*
Monterey CA 93940 — *FAX:*

Ms. Marcia C. Faulkner, Manager, Reimbursable Projects
County of San Bernadino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor — *Tel:* (909) 386-8850
San Bernardino CA 92415-0018 — *FAX:* (909) 386-8830

Mr. Scott Hill, Deputy Superintendent (E-8)
Department of Education
Administration Branch
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Sacramento CA 95814 — *FAX:* (916) 657-4975

Mr. Leonard Kaye, Esq.,
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603 — *Tel:* (213) 974-8564
Los Angeles CA 90012 — *FAX:* (213) 617-8106

Mr. James Lombard (A-15), Principal Analyst
Department of Finance
915 L Street Room 8020 — *Tel:* (916) 445-8913
Sacramento CA 95814 — *FAX:* (916) 327-0225

Ms. Christine Ma, Financial Services Manager
City of Milbrae
621 Magnolia Ave. — *Tel:*
Millbrae CA 94030 — *FAX:*

List Date: 05/02/1996 **Mailing Information**

Mailing List

Claim Number CSM-4469 **Claimant** Claim of County of Santa Clara

54952, 54954.2, 54957.1, and 54957.7

Subject 1136/93, 1137/93, 1138/93, 32/94

Issue Brown Act Reform

Ms. Betty Anderson,
California State Assembly
Office of Bill Morrow
27126-"A Paseo Espada Suite 1625 *Tel:* (949) 489-9838
San Juan Capistrano CA 92675 *FAX:* (949) 489-8354

Ms. Ann Blackwood,
California Special District Assoc.

915 L Street Suite 1000 *Tel:*
Sacramento CA 95814 *FAX:*

Mr. Daniel Carrigg,
League of California Cities

1400 K Street, #400 *Tel:*
Sacramento CA 95814 *FAX:*

Mr. Jack Dilles, Finance Director
City of Scotts Valley

One Civic Center Drive *Tel:* (831) 438-2324
Scotts Valley CA 95066 *FAX:* (831) 438-2793

Mr. William A. Doyle, Mandated Cost Administrator
San Jose Unified School District

1153 El Prado Drive *Tel:* (408) 997-2500
San Jose CA 95120 *FAX:* (408) 997-3171

STATE OF CALIFORNIA GRAY DAVIS, Governor

COMMISSION ON STATE MANDATES
300 I STREET, SUITE 950
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

March 17, 2000

Mr. James Webb
County of Santa Clara
Controller-Treasurer Division
County Government Center, East Wing, 2nd Floor
70 West Hedding St.
San Jose, CA 95110

RE: *Brown Act Reform* - CSM-4469
County of Santa Clara, Claimant
Statutes of 1994, Chapter 32
Statutes of 1993, Chapter 1136
Statutes of 1993, Chapter 1137

Dear Mr. Webb:

The above named test claim was filed with the Commission on December 29, 1994. In 1998, a portion of this Test Claim was consolidated with the test claim originally filed by Kern High School District on *Schoolsite Councils* (CSM-4501). There has been no activity on the remainder of the test claim filed on the *Brown Act Reform*.

If you choose to withdraw this claim, please refer to California Code of Regulations, Title 2, Chapter 2.5, Article 3, Section 1183.08. If you choose *not* to withdraw this claim, please submit a request to re-activate this claim. Upon receipt, we will establish a schedule for hearing the claim.

If no action is taken, this claim will be scheduled for dismissal.

The Commission has initiated a rulemaking action on dismissal of claims that have been inactive for more than one year. The public comment period on the proposed regulations will close on June 29, 2000.

Please call Shirley Opie at (916) 323-8211 if you have any questions.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

cc: Mailing List

f:\mandates\4469\statusltr

EXHIBIT I

RECEIVED

AUG 09 2000

COMMISSION ON STATE MANDATES

CITY OF NEWPORT BEACH

REVENUE DIVISION
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915
(714) 644-3141 • FAX (714) 644-3073

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

August 7, 2000

Re: *Brown Act Reform*
CSM-4469

Dear Ms. Higashi:

Enclosed herewith please find our request to be substituted as test claimant in the place and stead of the County of Santa Clara. I would request that your records be changed to reflect the substitution. Additionally, we have requested that this matter be set for hearing as soon as practicable on the Commission's calendar.

We understand that Commission's staff has tentatively set this matter to be heard on the Commission's calendar for dismissal on August 24, 2000. We request that this matter be deleted from the Commission's calendar, or in the alternative, that Commission's staff not request that this matter be dismissed.

Unfortunately, I was not on the list of individuals initially notified of the Commission's intent to dismiss this test claim. Accordingly, until it was brought to my attention recently, I was unaware that this matter was to be set for dismissal. Upon ascertaining that the test claim was set for dismissal, I had a conversation with the SB-90 Coordinator for Santa Clara County who agreed that we could substitute and take this test claim forward.

Accordingly, I request that this matter not be set for dismissal, but instead be placed on the active list and set for hearing. Additionally, if there are any outstanding issues on this test claim, I would appreciate it if you could bring them to my attention.

Very truly yours,

Glen Everroad, Revenue Manager
City of Newport Beach

Enc.

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECEIVED
AUG 09 2000
COMMISSION ON
STATE MANDATES

SUBSTITUTION OF TEST CLAIMANT AND REQUEST FOR HEARING	))))	No. CSM-4469 *Brown Act Reform*

The County of Santa Clara filed a test claim numbered CSM-4469, and nominated *Brown Act Reform* with the Commission on State Mandates on or about December 29, 1994. The *Brown Act Reform* test claim alleges that Government Code, Sections 54952, 54954.2, 54957.1, and 54957.7, as amended by Chapter 1136, Statutes of 1993, Chapter 1137, Statutes of 1993, Chapter 11348, Statutes of 1993, and Chapter 32, Statutes of 1994, imposed a reimbursable state mandated new program or higher level of service on local government. On October 25, 1995, the Commission staff granted Santa Clara County's request to continue the *Brown Act Reform* test claim pending resolution of various procedural issues. The hearing on the *Brown Act Reform* test claim was not rescheduled for hearing, and the Commission's staff has indicated its intention to dismiss said test claim if same is not activated.

Substitution of Test Claimant

Pursuant to subdivision (b) of Section 1181.1 of the Commission's regulations, the County of Santa Clara hereby substitutes the City of Newport Beach as the test claimant for the above-referenced test claim.

Request for Hearing

The City of Newport Beach hereby requests that the above-referenced test claim be removed from the Commission's inactive test claim list, not be dismissed as requested by Commission's staff, and be set for hearing.

Dated: August 3, 2000

Respectfully submitted,

James Webb, SB-90 Coordinator
County of Santa Clara

The foregoing substitution of test claimant is accepted.

Dated: August____, 2000

Glen Everroad, Revenue Manager
City of Newport Beach

DECLARATION OF SERVICE

State of California
County of Sacramento

I am at all times herein mentioned, over the age of eighteen years, and not a party to nor interested in the within matter. I am employed by DMG-MAXIMUS, INC. My business address is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841, County of Sacramento, State of California.

That on the 9th day of August, 2000, I served the Substitution of Test Claimant and Request for Hearing, CSM-4469, Brown Act Reform, on the interested parties by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United State mail at Sacramento, California, addressed as set forth in the Attachment 1, attached hereto and incorporated herein by reference.

That I am readily familiar with the business practice of DMG-MAXIMUS, INC. for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United State mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 9th day of August, 2000 at Sacramento, California.

Declarant

ATTACHMENT 1

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance
915 L Street, Room 8020
Sacramento, CA 95814

Ms. Carol Berg, Ph.D.
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Mr. Paul Abelson
County of Contra Costa
Auditor-Controller's Office
625 Court Street, Room 103
Martinez, CA 94553

Ms. Ann Blackwood
California Special District Assoc.
915 L Street
Sacramento, CA 95814

Mr. Bruce Brugmann
Fresno Unified School District
Tulare & M Streets
Fresno, CA 93721

Ms. Chris Cetti
County of Sacramento
General Accounting
700 H Street, Room 4650
Sacramento, CA 95814-1276

Mr. James Webb
SB-90 Coordinator
County of Santa Clara
Department of Finance
Controller-Treasurer
70 West Hedding Street
Sam Jose, CA 95110

Mr. Glenn Engle
State Controller's Office
3301 C Street, Room 501
Sacramento, CA 95814

Mr. Gene Erbin
California State Assembly
Assembly Judiciary
State Capitol, Room 60005
Sacramento, CA 95814

Ms. Marcia C. Faulkner
Reimbursable Projects Manager
County of San Bernardino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Mr. James B. Lindholm, Jr.
County Counsel
County of San Luis Obispo
County Government Center, Room 386
San Luis Obispo, CA

Mr. Keith B. Petersen, Mandated Cost Consultant
San Diego Unified School District
4100 Normal Street, Room 2243
San Diego, CA 92103-2682

Mr. Ernie Silva
League of California Cities
1400 K Street
Sacramento, CA 95814

Mr. Andy Glass, Accounting Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Ms. Patricia Healy
City of Los Angeles
Office of the City Clerk
City Hall, Room 395
Los Angeles, CA 90012

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Richard Whitmore, Deputy Superintendent
Department of Education
Administration Branch
721 Capitol Mall, Room 524
Sacramento, CA 95814

EXHIBIT J

RECEIVED
SEP 25 2000
COMMISSION ON STATE MANDATES

BROWN ACT REFORM

CMS-4469

Chapters 1136, 1137 and 1138, Statutes of 1993

Chapter 23, Statutes of 1994

Supplemental Filing

City of Newport Beach, Test Claimant

This Supplemental Filing is submitted on behalf of test claimant, City of Newport Beach, which has recently assumed claimant status from the County of Santa Clara. This filing is to supplement the filing of the County of Santa Clara, and is in light of the changes in interpretation by the Commission's Staff since the filing of the original test claim.

It should first be noted that although the original Brown Act contained definitions of what constitutes a "legislative body" in various sections of the Government Code, much confusion and difference in interpretation remained as to what bodies were subject to the Brown Act. The purpose of the test claim legislation was, among other things, to clarify what bodies were subject to the Brown Act. As a result of the test claim legislation, **all** commissions, committees, boards or other bodies became subject to the Brown Act, whether created by charter, ordinance, resolution or formal action of a legislative body. Thus, the entities covered by the Brown Act were substantially increased.

With the changes, new public officials became subject to the Brown Act from the date of their election to the date when they were sworn in. This change increases the individuals subject to the Brown Act.

The definition of meeting was added to the Brown Act. With Government Code, Section 54952.2, not only are personal "meetings" covered, but also the utilization of communication through intermediaries and technological devices through which concurrence in an action occurs. This definition in essence means that more meetings are subject to the Brown Act, thus triggering the notice and agenda requirements.

The provisions concerning closed sessions, also sometimes referred to as executive sessions were also amended. Both regular and special meeting notices must now include a description of the matters to be discussed, and must follow a prescribed statutory format. First of all, the matter to be discussed must be disclosed in open session. If the matter involves real estate negotiations, the property must be identified as well as the persons with whom the negotiator may negotiate must be disclosed in open session. If the closed session involves pending litigation, there must be a disclosure of which subdivision of Government Code, Section 54956.9 authorizes the closed session and the matter must be described by title or otherwise, unless to do so would jeopardize service of process or settlement negotiations. This includes situations wherein litigation has formally been initiated, where there is a significant exposure to litigation, to

determine whether there is a significant exposure to litigation, and to determine whether to initiate litigation.

Closed sessions are permitted to consider the appointment, employment, performance evaluation, and dismissal of an employee or to hear complaints about the employee. Complaints may be considered in closed session, unless the employee in question requests the matter to be heard in open session. If a complaint is to be considered, the employee must be afforded in advance written notice of the right to have the complaints or charges heard in open rather than closed session. The notice is required to be delivered to the employee personally or by mail not less than 24 hours prior to the closed session.

With the amendments, the definition of employee has been expanded. Independent contractors functioning as officers or employees are covered, as well as officers. However, budget considerations cannot be taken into account. Closed session is also permitted to instruct labor negotiators meeting and conferring with represented as well as unrepresented employees.

If an appointment is to be considered, the description of the position to be filled must be noted. Also, if there is an employee performance evaluation, the position title must be stated.

At the conclusion of the closed session, action taken to appoint, employ, dismiss, accept the resignation of, or other action which has affected the employment status of a public employee must be reported at the public meeting when the closed session was held. The title of the position is to be stated, as well as any change in compensation. If, however, the employee has administrative remedies, the dismissal or nonrenewal of the employment contract is to be deferred until the meeting after the exhaustion of administrative remedies.

Another requirement was added to closed session items. After closed session, the legislative body must reconvene into open session prior to adjournment. There must, under certain circumstances, be a report of action taken as a result of the closed session. For example, approval to defend, seek or refrain from seeking appellate review or relief, to enter into litigation as amicus must be reported at the open session at the meeting after the closed session is held. Additionally, approval of final settlement must be reported if the legislative body has accepted a settlement offer during the closed session.

The Brown Act now extends to Joint Powers Agencies which have insurance, and must disclose in the agenda the claimant and the name of the agency against which the claim was filed.

If contracts, settlement agreements and other documents receive final approval or are adopted during closed session, they must be made available the day following the meeting. However, if substantial retyping is necessary, they must be made available

when retyping is completed. If retyping is necessary, the presiding officer or his or her designee must orally summarize the substance of the amendments made.

Given the technical changes and the increase in scope of the Brown Act, I am informed and believe that most public entities were involved in training. It was incumbent that all the city attorneys know of the changes, and be able to advise their respective councils, boards and committees of the changes and their ramifications. Additionally, I am informed and believe that same was similarly true of counties and special districts.

To that end, the League of California Cities held a training session for city attorneys. Filed contemporaneously herewith is a true and correct copy of the training material entitled *The Public's Right to Know: Providing Advice Under the Brown Act and Public Records Act*, February 1994. This booklet is informative for not only describing the changes wrought to the Brown Act, but for summaries that are illustrative of the changes. Given the substantial changes to closed session, Appendix A contains a checklist on what must be disclosed concerning closed session actions. Appendix C outlines the changes to the Brown Act. Appendix D contains a redlined version of the changes in the Brown Act.

Additionally, the County Counsel's Office of the County of Fresno wrote and gave a training to the Board of Supervisors as well as to various boards and commissions. The analyses provided to the Board of Supervisors which was given at an open session training on March 22, 1994 is also filed contemporaneously herewith.

It is hoped that the analyses provided by the attached documentation will assist Commission's Staff in their analysis of the changes resulting from the test claim legislation.

CERTIFICATION

DECLARATION OF GLEN EVERROAD

I, Glen Everroad, make the following declaration under oath:

I am the Revenue Manager for the City of Newport Beach, and as part of my duties, I filed the substitution of test claimant. Also, as part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

That I have reviewed the Supplemental Filing on Brown Act Reform, and based upon my information and belief, I believe it to be true and correct, and hereby certify same.

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true. This declaration is executed this 22 day of September, 2000, at Newport Beach, California.

Glen Everroad, Revenue Manager

DECLARATION OF SERVICE

State of California
County of Sacramento

I am at all times herein mentioned, over the age of eighteen years, and not a party to nor interested in the within matter. I am employed by DMG-MAXIMUS, INC. My business address is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841, County of Sacramento, State of California.

That on the 25th day of September, 2000, I served Supplemental Filing, including attachments, CSM-4469, Brown Act Reform, on the interested parties by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United State mail at Sacramento, California, addressed as set forth in the Attachment 1, attached hereto and incorporated herein by reference.

That I am readily familiar with the business practice of DMG-MAXIMUS, INC. for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United State mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 25th day of September, 2000 at Sacramento, California.

Declarant

ATTACHMENT 1

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance
915 L Street, Room 8020
Sacramento, CA 95814

Ms. Carol Berg, Ph.D.
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Mr. Paul Abelson
County of Contra Costa
Auditor-Controller's Office
625 Court Street, Room 103
Martinez, CA 94553

Mr. Bruce Brugmann
Fresno Unified School District
Tulare & M Streets
Fresno, CA 93721

Ms. Chris Cetti
County of Sacramento
General Accounting
700 H Street, Room 4650
Sacramento, CA 95814-1276

Mr. James Webb
SB-90 Coordinator
County of Santa Clara
Department of Finance
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70 West Hedding Street
San Jose, CA 95110

Mr. Glenn Engle
State Controller's Office
3301 C Street, Room 501
Sacramento, CA 95814

Mr. Gene Erbin
California State Assembly
Assembly Judiciary
State Capitol, Room 60005
Sacramento, CA 95814

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4100 Normal Street, Room 2243
San Diego, CA 92103-2682

Mr. Ernie Silva
League of California Cities
1400 K Street
Sacramento, CA 95814

Mr. Andy Glass, Accounting Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Ms. Patricia Healy
City of Los Angeles
Office of the City Clerk
City Hall, Room 395
Los Angeles, CA 90012

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Richard Whitmore, Deputy Superintendent
Department of Education
Administration Branch
721 Capitol Mall, Room 524
Sacramento, CA 95814

DECLARATION OF BARBARA BOOTH GRUNWALD

REGARDING FRESNO COUNTY COUNSEL'S EXPENSES

I, Barbara Booth Grunwald, declare as follows:

1. I am an attorney licensed to practice in the State of California. I have been employed by the County of Fresno as a deputy county counsel since 1991.

2. In 1993 and 1994 I spent numerous hours reviewing the amendments made by the Legislature to the Brown Act. I prepared various analyses of the amendments and presented several workshops regarding the amendments.

3. One of these workshops was presented on March 22, 1994 to the Fresno County Board of Supervisors. A true and correct copy of the Agenda Item for this workshop is attached as Exhibit A.

4. At the workshop, I reviewed a lengthy written analysis of the changes made by the 1993 statutes. A true and correct copy of this 55-page analysis, plus a 7-page checklist regarding closed session listings, is attached as Exhibit B.

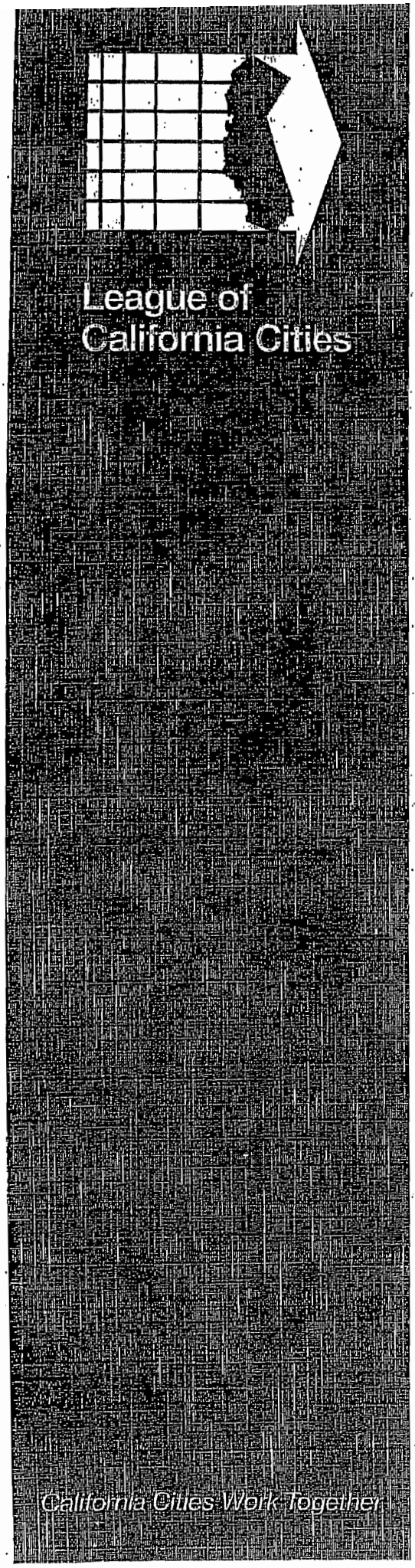
5. The workshop also included a copy of the Brown Act. A true and correct copy of the statute as presented to the Board of Supervisors is attached as Exhibit C.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed on August 28, 2000, at Fresno, California.

Barbara Booth Grunwald

BARBARA BOOTH GRUNWALD



The Public's Right to Know: Providing Advice Under the Brown Act and Public Records Act

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Continuing Education Seminar For Municipal Attorneys

February 1994

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City Attorneys Department
1994 Continuing Education Seminar

The Public's Right to Know: Providing Advice Under the Brown Act and Public Records Act

Program Materials and Practice Guide

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PROGRAM

Thursday, February 3, 1994
Hilton Hotel, Oakland Airport
1 Hegenberger Road
Oakland, CA 94612
510/635-5000

Thursday, February 10, 1994
Hilton Hotel, Burbank Airport
2500 Hollywood Way
Burbank, CA 91505
818/840-6476

9 a.m. to 3:30 p.m.

8 - 9:30 a.m.	REGISTRATION OPEN
9 - 10 a.m.	GENERAL SESSION Overview of New Brown Act Requirements
10 - 10:15 a.m.	Break
10:15 - 11:15 a.m.	BREAK-OUT SESSIONS TO DISCUSS SERIES OF HYPOTHETICALS
11:30 a.m. - 12:30 p.m.	PANEL DISCUSSION OF HYPOTHETICALS (and questions/discussion from floor)
12:30 - 1:30 p.m.	LUNCH
1:45 - 3:30 p.m.	GENERAL SESSION: Difficult questions under the Public Records Act

Total MCLE Hours: 4.75