HIV Health Services Planning Council
Sacramento TGA

Policy and Procedure Manual

Section 3 – Legislation

SECTION	SECTION / POLICY TITLE	CURRENT VERSION	PREVIOUS REVISIONS
3	**LEGISLATION**		
	Ryan White CARE Act Brown Act Pamphlet 2003 Brown Act Legal Code Brown Act Guide Summary of the Brown Act	2009 2003 2004 2016 2022	2000,1995,1990

Calendar No. 182

111TH CONGRESS
1ST SESSION

S. 1793

To amend title XXVI of the Public Health Service Act to revise and extend the program for providing life-saving care for those with HIV/AIDS.

IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2009

Mr. HARKIN, from the Committee on Health, Education, Labor, and Pensions, reported the following original bill; which was read twice and placed on the calendar

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A BILL

To amend title XXVI of the Public Health Service Act to revise and extend the program for providing life-saving care for those with HIV/AIDS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Ryan White HIV/AIDS Treatment Extension Act of 2009".

(b) REFERENCES.—Except as otherwise specified, whenever in this Act an amendment is expressed in terms

of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

SEC. 2. REAUTHORIZATION OF HIV HEALTH CARE SERVICES PROGRAM.

(a) ELIMINATION OF SUNSET PROVISION.—

(1) IN GENERAL.—The Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Public Law 109–415; 120 Stat. 2767) is amended by striking section 703.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if enacted on September 30, 2009.

(3) CONTINGENCY PROVISIONS.—Notwithstanding section 703 of the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Public Law 109–415; 120 Stat. 2767) and section 139 of the Continuing Appropriations Resolution, 2010—

(A) the provisions of title XXVI of the Public Health Service Act (42 U.S.C. 300ff et seq.), as in effect on September 30, 2009, are hereby revived; and

(B) the amendments made by this Act to title XXVI of the Public Health Service Act (42 U.S.C. 300ff et seq.) shall apply to such title as

so revived and shall take effect as if enacted on September 30, 2009.

(b) PART A GRANTS.—Section 2610(a) (42 U.S.C. 300ff–20(a)) is amended by striking "and $649,500,000 for fiscal year 2009" and inserting "$649,500,000 for fiscal year 2009, $681,975,000 for fiscal year 2010, $716,074,000 for fiscal year 2011, $751,877,000 for fiscal year 2012, and $789,471,000 for fiscal year 2013".

(c) PART B GRANTS.—Section 2623(a) (42 U.S.C. 300ff–32(a)) is amended by striking "and $1,285,200,000 for fiscal year 2009" and inserting "$1,285,200,000 for fiscal year 2009, $1,349,460,000 for fiscal year 2010, $1,416,933,000 for fiscal year 2011, $1,487,780,000 for fiscal year 2012, and $1,562,169,000 for fiscal year 2013".

(d) PART C GRANTS.—Section 2655 (42 U.S.C. 300ff–55) is amended by striking "and $235,100,000 for fiscal year 2009" and inserting "$235,100,000 for fiscal year 2009, $246,855,000 for fiscal year 2010, $259,198,000 for fiscal year 2011, $272,158,000 for fiscal year 2012, and $285,766,000 for fiscal year 2013".

(e) PART D GRANTS.—Section 2671(i) (42 U.S.C. 300ff–71(i)) is amended by inserting before the period at the end ", $75,390,000 for fiscal year 2010, $79,160,000

for fiscal year 2011, $83,117,000 for fiscal year 2012, and $87,273,000 for fiscal year 2013".

(f) DEMONSTRATION AND TRAINING GRANTS UNDER PART F.—

(1) HIV/AIDS COMMUNITIES, SCHOOLS, AND CENTERS.—Section 2692(c) (42 U.S.C. 300ff–111(c)) is amended—

(A) in paragraph (1)—

(i) by striking "is authorized" and inserting "are authorized"; and

(ii) by inserting before the period at the end ", $36,535,000 for fiscal year 2010, $38,257,000 for fiscal year 2011, $40,170,000 for fiscal year 2012, and $42,178,000 for fiscal year 2013" ; and

(B) in paragraph (2)—

(i) by striking "is authorized" and inserting "are authorized"; and

(ii) by inserting before the period at the end ", $13,650,000 for fiscal year 2010, $14,333,000 for fiscal year 2011, $15,049,000 for fiscal year 2012, and $15,802,000 for fiscal year 2013".

(2) MINORITY AIDS INITIATIVE.—Section 2693 (42 U.S.C. 300ff–121) is amended—

(A) in subsection (a), by striking "and $139,100,000 for fiscal year 2009." and inserting "$139,100,000 for fiscal year 2009, $146,055,000 for fiscal year 2010, $153,358,000 for fiscal year 2011, $161,026,000 for fiscal year 2012, and $169,077,000 for fiscal year 2013. The Secretary shall develop a formula for the awarding of grants under subsections (b)(1)(A) and (b)(1)(B) that ensures that funding is provided based on the distribution of populations disproportionately impacted by HIV/AIDS.";

(B) in subsection (b)(2)—

(i) In subparagraph (A)—

(I) in the matter preceding clause (i), by striking "competitive,"; and

(II) by adding at the end the following:

"(iv) For fiscal year 2010, $46,738,000.

"(v) For fiscal year 2011, $49,075,000.

"(vi) For fiscal year 2012, $51,528,000.

"(vii) For fiscal year 2013, $54,105,000.";

(ii) in subparagraph (B)—

(I) in the matter preceding clause (i), by striking "competitive"; and

(II) by adding at the end the following:

"(iv) For fiscal year 2010, $8,763,000.

"(v) For fiscal year 2011, $9,202,000.

"(vi) For fiscal year 2012, $9,662,000.

"(vii) For fiscal year 2013, $10,145,000.";

(iii) in subparagraph (C), by adding at the end the following:

"(iv) For fiscal year 2010, $61,343,000.

"(v) For fiscal year 2011, $64,410,000.

"(vi) For fiscal year 2012, $67,631,000.

"(vii) For fiscal year 2013, $71,012,000.";

(iv) in subparagraph (D), by striking "$18,500,000" and all that follows through the period and inserting the following: "the following, as applicable:

"(i) For fiscal year 2010, $20,448,000.

"(ii) For fiscal year 2011, $21,470,000.

"(iii) For fiscal year 2012, $22,543,000.

"(iv) For fiscal year 2013, $23,671,000.";

(v) in subparagraph (E), by striking "$8,500,000" and all that follows through the period and inserting the following: "the following, as applicable:

"(i) For fiscal year 2010, $8,763,000.

"(ii) For fiscal year 2011, $9,201,000.

"(iii) For fiscal year 2012, $9,662,000.

"(iv) For fiscal year 2013, $10,144,000."; and

(vi) by adding at the end the following:

"(g) SYNCHRONIZATION OF MINORITY AIDS INITIATIVE.—For fiscal year 2010 and each subsequent fiscal year, the Secretary shall incorporate and synchronize the schedule of application submissions and funding availability under this section with the schedule of application submissions and funding availability under the corresponding provisions of this title XXVI as follows:

"(1) The schedule for carrying out subsection (b)(1)(A) shall be the same as the schedule applicable to emergency assistance under part A.

"(2) The schedule for carrying out subsection (b)(1)(B) shall be the same as the schedule applicable to care grants under part B.

"(3) The schedule for carrying out subsection (b)(1)(C) shall be the same as the schedule applicable to grants for early intervention services under part C.

"(4) The schedule for carrying out subsection (b)(1)(D) shall be the same as the schedule applicable to grants for services through projects for HIV-related care under part D.

"(5) The schedule for carrying out subsection (b)(1)(E) shall be the same as the schedule applicable to grants and contracts for activities through education and training centers under section 2692.".

(3) HHS REPORT.—Not later than 6 months after the publication of the Government Accountability Office Report on the Minority Aids Initiative described in section 2686, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a Departmental plan for using funding under section 2693 of the Public Health Service Act (42 U.S.C. 300ff-93) in all relevant agencies to build capacity, taking into consideration the best practices included in such Report.

(g) GAO REPORT.—Section 2686 (42 U.S.C. 300ff-86) is amended to read as follows:

"SEC. 2686. GAO REPORT.

"The Comptroller General of the Government Accountability Office shall, not less than 1 year after the date of enactment of the Ryan White HIV/AIDS Treatment Extension Act of 2009, submit to the appropriate committees of Congress a report describing Minority AIDS Initiative activities across the Department of Health and Human Services, including programs under this title and programs at the Centers for Disease Control and Prevention, the Substance Abuse and Mental Health Services Administration, and other departmental agencies. Such report shall include a history of program activities within each relevant agency and a description of activities con-

ducted, people served and types of grantees funded, and shall collect and describe best practices in community outreach and capacity-building of community based organizations serving the communities that are disproportionately affected by HIV/AIDS.".

SEC. 3. EXTENDED EXEMPTION PERIOD FOR NAMES-BASED REPORTING.

(a) PART A GRANTS.—Section 2603(a)(3) (42 U.S.C. 300ff–13(a)(3)) is amended—

(1) in subparagraph (C)—

(A) in clause (ii)—

(i) in the matter preceding subclause (I), by striking "2009" and inserting "2012"; and

(ii) in subclause (II), by striking "or 2009" and inserting "or a subsequent fiscal year through fiscal year 2012";

(B) in clause (iv), by striking "2010" and inserting "2012";

(C) in clause (v), by inserting "or a subsequent fiscal year" after "2009";

(D) in clause (vi)(II), by inserting after "5 percent" the following: "for fiscal years before fiscal year 2012 (and 6 percent for fiscal year 2012)";

(E) in clause (ix)(II)—

(i) by striking "2010" and inserting "2013"; and

(ii) by striking "2009" and inserting "2012"; and

(F) by adding at the end the following:

"(xi) FUTURE FISCAL YEARS.—For fiscal years beginning with fiscal year 2013, determinations under this paragraph shall be based only on living names-based cases of HIV/AIDS with respect to the area involved."; and

(2) in subparagraph (D)—

(A) in clause (i)—

(i) in the matter preceding subclause (I), by striking "2009" and inserting "2012"; and

(ii) in subclause (II), by striking "and 2009" and inserting "through 2012"; and

(B) in clause (ii), by striking "2009" and inserting "2012".

(b) PART B GRANTS.—Section 2618(a)(2) (42 U.S.C. 300ff–28(a)(2)) is amended—

(1) in subparagraph (D)—

(A) in clause (ii)—

(i) in the matter preceding subclause (I), by striking "2009" and inserting "2012"; and

(ii) in subclause (II), by striking "or 2009" and inserting "or a subsequent fiscal year through fiscal year 2012";

(B) in clause (iv), by striking "2010" and inserting "2012";

(C) in clause (v), by inserting "or a subsequent fiscal year" after "2009";

(D) in clause (vi)(II), by inserting after "5 percent" the following: "for fiscal years before fiscal year 2012 (and 6 percent for fiscal year 2012)";

(E) in clause (viii)(II)—

(i) by striking "2010" and inserting "2013"; and

(ii) by striking "2009" and inserting "2012"; and

(F) by adding at the end the following:

"(x) FUTURE FISCAL YEARS.—For fiscal years beginning with fiscal year 2013, determinations under this paragraph shall be based only on living names-based

cases of HIV/AIDS with respect to the State involved."; and

(2) in subparagraph (E), by striking "2009" each place it appears and inserting "2012".

SEC. 4. EXTENSION OF TRANSITIONAL GRANT AREA STATUS.

(a) ELIGIBILITY.—Section 2609 (42 U.S.C. 300ff–19) is amended—

(1) in subsection (c)(1)—

(A) in the heading, by striking "2007" and inserting "2011"; and

(B) by striking "2007" each place it appears and inserting "2011"; and

(C) by striking "2006" and inserting "2010";

(2) in subsection (c)(2)—

(A) in subparagraph (A)(ii), by striking "to have a" and inserting "subject to subparagraphs (B) and (C), to have a";

(B) by redesignating subparagraph (B) as subparagraph (C);

(C) by inserting after subparagraph (A) the following:

"(B) PERMITTING MARGIN OF ERROR APPLICABLE TO CERTAIN METROPOLITAN

AREAS.—In applying subparagraph (A)(ii) for a fiscal year after fiscal year 2008, in the case of a metropolitan area that has a cumulative total of at least 1,400 (and fewer than 1,500) living cases of AIDS as of December 31 of the most recent calendar year for which such data is available, such area shall be treated as having met the criteria of such subparagraph if not more than 5 percent of the total from grants awarded to such area under this part is unobligated as of the end of the most recent fiscal year for which such data is available."; and

(D) in subparagraph (C), as so redesignated, by striking "Subparagraph (A) does not apply" and inserting "Subparagraphs (A) and (B) do not apply"; and

(3) in subsection (d)(1)(B), strike "2009" and insert "2013".

(b) TRANSFER OF AMOUNTS DUE TO CHANGE IN STATUS AS TRANSITIONAL AREA.—Subparagraph (B) of section 2610(c)(2) (42 U.S.C. 300ff–20(c)(2)) is amended—

(1) by striking "(B)" and inserting "(B)(i) subject to clause (ii),";

(2) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(ii) for each of fiscal years 2010 through 2013, notwithstanding subsection (a)—

"(I) there shall be transferred to the State containing the metropolitan area, for purposes described in section 2612(a), an amount (which shall not be taken into account in applying section 2618(a)(2)(H)) equal to—

"(aa) for the first fiscal year of the metropolitan area not being a transitional area, 75 percent of the amount described in subparagraph (A)(i) for such area;

"(bb) for the second fiscal year of the metropolitan area not being a transitional area, 50 percent of such amount; and

"(cc) for the third fiscal year of the metropolitan area not being a transitional area, 25 percent of such amount; and

"(II) there shall be transferred and made available for grants pursuant to section 2618(a)(1) for the fiscal year, in addition to amounts available for such grants under section 2623, an amount equal to the total amount of the reduction for such fiscal year under subparagraph (A), less the amount transferred for such fiscal year under subclause (I).".

SEC. 5. HOLD HARMLESS.

(a) PART A GRANTS.—Section 2603(a)(4) (42 U.S.C. 300ff–13(a)(4)) is amended—

(1) in the matter preceding clause (i) in subparagraph (A)—

(A) by striking "2006" and inserting "2009"; and

(B) by striking "2007 through 2009" and inserting "2010 through 2013";

(2) by striking clauses (i) and (ii) in subparagraph (A) and inserting the following:

"(i) For fiscal year 2010, an amount equal to 95 percent of the sum of the amount of the grant made pursuant to paragraph (3) and this paragraph for fiscal year 2009:

"(ii) For each of the fiscal years 2011 and 2012, an amount equal to 100 percent of the amount of the grant made pursuant to paragraph (3) and this paragraph for fiscal year 2010.

"(iii) For fiscal year 2013, an amount equal to 92.5 percent of the amount of the grant made pursuant to paragraph (3) and this paragraph for fiscal year 2012."; and

(3) in subparagraph (C), by striking "2009" and inserting "2013".

(b) PART B GRANTS.—Section 2618(a)(2)(II) (42 U.S.C. 300ff–28(a)(2)(II)) is amended—

(1) in clause (i)(I)—

(A) by striking "2007" and inserting "2010"; and

(B) by striking "2006" and inserting "2009";

(2) by striking clause (ii) and redesignating clause (iii) as clause (ii);

(3) in clause (ii), as so redesignated—

(A) in the heading, by striking "2008 AND 2009" and inserting "2011 AND 2012";

(B) by striking "2008 and 2009" and inserting "2011 and 2012"; and

(C) by striking "2007" and inserting "2010";

(4) by inserting after clause (ii), as so redesignated, the following new clause:

"(iii) FISCAL YEAR 2013.—For fiscal year 2013, the Secretary shall ensure that the total for a State of the grant pursuant to paragraph (1) and the grant pursuant to subparagraph (F) is not less than 92.5 percent of such total for the State for fiscal year 2012."; and

(5) in clause (v), by striking "2009" and inserting "2013".

(c) TECHNICAL CORRECTIONS.—Title XXVI (42 U.S.C. 300ff–11 et seq.) is amended—

(1) in subparagraphs (A)(i) and (H) of section 2618(a)(2), by striking the term "subparagraph (G)" each place it appears and inserting "subparagraph (F)";

(2) in sections 2620(a)(2), 2622(c)(1), and 2622(c)(4)(A), by striking "2618(a)(2)(G)(i)" and inserting "2618(a)(2)(F)(i)";

(3) in sections 2622(a) and 2623(b)(2)(A), by striking "2618(a)(2)(G)" and inserting "2618(a)(2)(F)"; and

(4) in section 2622(b), by striking "2618(a)(2)(G)(ii)" and inserting "2618(a)(2)(F)(ii)".

SEC. 6. AMENDMENTS TO THE GENERAL GRANT PROVISIONS.

(a) ADMINISTRATION AND PLANNING COUNCIL.—Section 2602(b)(4) (42 U.S.C. 300ff-12(b)(4)) is amended—

(1) in subparagraph (A), by inserting ", as well as the size and demographics of the estimated population of individuals with HIV/AIDS who are unaware of their HIV status" after "HIV/AIDS";

(2) in subparagraph (B)—

(A) in clause (i), by striking "and" at the end after the semicolon;

(B) in clause (ii), by inserting "and" after the semicolon; and

(C) by adding at the end the following:

"(iii) individuals with HIV/AIDS who do not know their HIV status;"; and

(3) in subparagraph (D)—

(A) in clause (ii), by striking "and" at the end after the semicolon;

(B) in clause (iii), by inserting "and" after the semicolon; and

(C) by adding at the end the following:

"(iv) includes a strategy, coordinated as appropriate with other community strategies and efforts, including discrete goals, a timetable, and appropriate funding, for identifying individuals with HIV/AIDS who do not know their HIV status, making such individuals aware of such status, and enabling such individuals to use the health and support services described in section 2604, with particular attention to reducing barriers to routine testing and disparities in access and services among affected subpopulations and historically underserved communities;".

(b) TYPE AND DISTRIBUTION OF GRANTS.—Section 2603(b) (42 U.S.C. 300ff-13(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G), by striking "and" at the end after the semicolon;

(B) in subparagraph (H), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(I) demonstrates success in identifying individuals with HIV/AIDS as described in

clauses (i) through (iii) of paragraph (2)(A).";

and

(2) in paragraph (2)(A), by striking the period and inserting: ", and demonstrated success in identifying individuals with HIV/AIDS who do not know their HIV status and making them aware of such status counting one-third. In making such determination, the Secretary shall consider—

"(i) the number of individuals who have been tested for HIV/AIDS;

"(ii) of those individuals described in clause (i), the number of individuals who tested for HIV/AIDS who are made aware of their status, including the number who test positive; and

"(iii) of those individuals described in clause (ii), the number who have been referred to appropriate treatment and care.".

(c) APPLICATION.—Section 2605(b)(1) (42 U.S.C. 300ff-15(b)(1)) is amended by inserting ", including the identification of individuals with HIV/AIDS as described in clauses (i) through (iii) of section 2603(b)(2)(A)" before the semicolon at the end.

SEC. 7. INCREASE IN ADJUSTMENT FOR NAMES-BASED REPORTING.

(a) PART A GRANTS.—

(1) FORMULA GRANTS.—Section 2603(a)(3)(C)(vi) (42 U.S.C. 300ff-13(a)(3)(C)(vi)) is amended by adding at the end the following:

"(III) INCREASED ADJUSTMENT FOR CERTAIN AREAS PREVIOUSLY USING CODE-BASED REPORTING.—For purposes of this subparagraph for each of fiscal years 2010 through 2012, the Secretary shall deem the applicable number of living cases of HIV/AIDS in an area that were reported to and confirmed by the Centers for Disease Control and Prevention to be 3 percent higher than the actual number if—

"(aa) for fiscal year 2007, such area was a transitional area;

"(bb) fiscal year 2007 was the first year in which the count of living non-AIDS cases of HIV in such area, for purposes of this

section, was based on a names-based reporting system; and

"(cc) the amount of funding that such area received under this part for fiscal year 2007 was less than 70 percent of the amount of funding (exclusive of funds that were identified as being for purposes of the Minority AIDS Initiative) that such area received under such part for fiscal year 2006.".

(2) SUPPLEMENTAL GRANTS.—Section 2603(b)(2) (42 U.S.C. 300ff-13(b)(2)) is amended by adding at the end the following:

"(D) INCREASED ADJUSTMENT FOR CERTAIN AREAS PREVIOUSLY USING CODE-BASED REPORTING.—For purposes of this subsection for each of fiscal years 2010 through 2012, the Secretary shall deem the applicable number of living cases of HIV/AIDS in an area that were reported to and confirmed by the Centers for Disease Control and Prevention to be 3 percent higher than the actual number if the conditions

described in items (aa) through (cc) of subsection (a)(3)(C)(vi)(III) are all satisfied.".

(b) PART B GRANTS.—Section 2618(a)(2)(D)(vi) (42 U.S.C. 300ff-28(a)(2)(D)(vi)) is amended by adding at the end the following:

"(III) INCREASED ADJUSTMENT FOR CERTAIN STATES PREVIOUSLY USING CODE-BASED REPORTING.—For purposes of this subparagraph for each of fiscal years 2010 through 2012, the Secretary shall deem the applicable number of living cases of HIV/AIDS in a State that were reported to and confirmed by the Centers for Disease Control and Prevention to be 3 percent higher than the actual number if—

"(aa) there is an area in such State that satisfies all of the conditions described in items (aa) through (cc) of section 2603(a)(3)(C)(vi)(III); or

"(bb)(AA) fiscal year 2007 was the first year in which the count of living non-AIDS cases of

HIV in such area, for purposes of this part, was based on a names-based reporting system; and

"(BB) the amount of funding that such State received under this part for fiscal year 2007 was less than 70 percent of the amount of funding that such State received under such part for fiscal year 2006.".

SEC. 8. TREATMENT OF UNOBLIGATED FUNDS.

(a) ELIGIBILITY FOR SUPPLEMENTAL GRANTS.—Title XXVI (42 U.S.C. 300ff–11 et seq.) is amended—

(1) in section 2603(b)(1)(H) (42 U.S.C. 300ff–13(b)(1)(H)), by striking "2 percent" and inserting "5 percent"; and

(2) in section 2620(a)(2) (42 U.S.C. 300ff–29a(a)(2)), by striking "2 percent" and inserting "5 percent".

(b) CORRESPONDING REDUCTION IN FUTURE GRANT.—

(1) IN GENERAL.—Title XXVI (42 U.S.C. 300ff–11 et seq.) is amended—

(A) in section 2603(c)(3)(D)(i)(42 U.S.C. 300ff–13(c)(3)(D)(i)), in the matter following subclause (II), by striking "2 percent" and inserting "5 percent"; and

(B) in 2622(c)(4)(A) (42 U.S.C. 300ff–31a(c)(A)), in the matter following clause (ii), by striking "2 percent" and inserting "5 percent".

(2) AUTHORITY REGARDING ADMINISTRATION OF PROVISION.—Title XXVI (42 U.S.C. 300ff–11 et seq.) is amended—

(A) in section 2603(c) (42 U.S.C. 300ff-13(c), by adding at the end the following:

"(4) AUTHORITY REGARDING ADMINISTRATION OF PROVISIONS.—In administering paragraphs (2) and (3) with respect to the unobligated balance of an eligible area, the Secretary may elect to reduce the amount of future grants to the area under subsection (a) or (b), as applicable, by the amount of any such unobligated balance in lieu of cancelling such amount as provided for in paragraph (2) or (3)(A). In such case, the Secretary may permit the area to use such unobligated balance for purposes of any such future grant. An amount equal to such reduction shall be available for use as additional

amounts for grants pursuant to subsection (b), subject to subsection (a)(4) and section 2610(d)(2). Nothing in this paragraph shall be construed to affect the authority of the Secretary under paragraphs (2) and (3), including the authority to grant waivers under paragraph (3)(A). The reduction in future grants authorized under this paragraph shall be notwithstanding the penalty required under paragraph (3)(D) with respect to unobligated funds.";

(B) in section 2622 (42 U.S.C. 300ff-31a), by adding at the end the following:

"(e) AUTHORITY REGARDING ADMINISTRATION OF PROVISIONS.—In administering subsections (b) and (c) with respect to the unobligated balance of a State, the Secretary may elect to reduce the amount of future grants to the State under section 2618, 2620, or 2621, as applicable, by the amount of any such unobligated balance in lieu of cancelling such amount as provided for in subsection (b) or (c)(1). In such case, the Secretary may permit the State to use such unobligated balance for purposes of any such future grant. An amount equal to such reduction shall be available for use as additional amounts for grants pursuant to section 2620, subject to section 2618(a)(2)(H). Nothing in this paragraph shall be construed to affect the authority of the Secretary under sub-

sections (b) and (c), including the authority to grant waivers under subsection (c)(1). The reduction in future grants authorized under this subsection shall be notwithstanding the penalty required under subsection (c)(4) with respect to unobligated funds.";

(C) in section 2603(b)(1)(H) (42 U.S.C. 300ff-13(b)(1)(H)), by striking "canceled" and inserting "canceled, offset under subsection (c)(4),"; and

(D) in section 2620(a)(2) (42 U.S.C. 300ff-29a(a)(2)), by striking "canceled" and inserting "canceled, offset under section 2622(e),".

(c) CONSIDERATION OF WAIVER AMOUNTS IN DETERMINING UNOBLIGATED BALANCES.—

(1) PART A GRANTS.—Section 2603(c)(3)(D)(i)(I) (42 U.S.C. 300ff-14(c)(3)(D)(i)(I)) is amended by inserting after "unobligated balance" the following: "(less any amount of such balance that is the subject of a waiver of cancellation under subparagraph (A))".

(2) PART B GRANTS.—Section 2622(c)(4)(A)(i) (42 U.S.C. 300ff-31a(c)(4)(A)(i)) is amended by inserting after "unobligated balance" the following: "(less any amount of such balance that is the sub-

ject of a waiver of cancellation under paragraph (1))".

SEC. 9. APPLICATIONS BY STATES.

Section 2617(b) (42 U.S.C. Section 300ff-27(b)) is amended—

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(8) a comprehensive plan—

"(A) containing an identification of individuals with HIV/AIDS as described in clauses (i) through (iii) of section 2603(b)(2)(A) and the strategy required under section 2602(b)(4)(D)(iv);

"(B) describing the estimated number of individuals within the State with HIV/AIDS who do not know their status;

"(C) describing activities undertaken by the State to find the individuals described in subparagraph (A) and to make such individuals aware of their status;

"(D) describing the manner in which the State will provide undiagnosed individuals who

are made aware of their status with access to medical treatment for their HIV/AIDS; and

"(E) describing efforts to remove legal barriers, including State laws and regulations, to routine testing.".

SEC. 10. ADAP REBATE FUNDS.

(a) USE OF UNOBLIGATED FUNDS.—Section 2622(d) (42 U.S.C. 300ff-31a(d)) is amended by adding at the end the following: "If an expenditure of ADAP rebate funds would trigger a penalty under this section or a higher penalty than would otherwise have applied, the State may request that for purposes of this section, the Secretary deem the State's unobligated balance to be reduced by the amount of rebate funds in the proposed expenditure. Notwithstanding 2618(a)(2)(F), any unobligated amount under section 2618(a)(2)(F)(ii)(V) that is returned to the Secretary for reallocation shall be used by the Secretary for—

"(1) the ADAP supplemental program if the Secretary determines appropriate; or

"(2) for additional amounts for grants pursuant to section 2620.".

(b) TECHNICAL CORRECTION.—Subclause (V) of section 2618(a)(2)(F)(ii) (42 U.S.C. 300ff–28(a)(2)(F)(ii)) is amended by striking ", subject to subclause (VI)".

SEC. 11. APPLICATION TO PRIMARY CARE SERVICES.

(a) IN GENERAL.—Section 2671 (42 U.S.C. 300ff–71), as amended, is amended—

(1) by redesignating subsection (i) as subsection (j);

(2) in subsection (g), by striking "subsection (i)" and inserting "subsection (j)"; and

(3) by inserting after subsection (h) the following:

"(i) APPLICATION TO PRIMARY CARE SERVICES.—Nothing in this part shall be construed as requiring funds under this part to be used for primary care services when payments are available for such services from other sources (including under titles XVIII, XIX, and XXI of the Social Security Act).".

(b) PROVISION OF CARE THROUGH MEMORANDUM OF UNDERSTANDING.—Section 2671(a) (42 U.S.C. 300ff–71(a)) is amended by striking "(directly or through contracts)" and inserting "(directly or through contracts or memoranda of understanding)".

SEC. 12. NATIONAL HIV/AIDS TESTING GOAL.

Part E of title XXVI (42 U.S.C. 300ff-81 et seq.) is amended—

(a) by redesignating section 2688 as section 2689; and

(b) by inserting after section 2687 the following:

"SEC. 2688. NATIONAL HIV/AIDS TESTING GOAL.

"(a) IN GENERAL.—Not later than January 1, 2010, the Secretary shall establish a national HIV/AIDS testing goal of 5,000,000 tests for HIV/AIDS annually through federally-supported HIV/AIDS prevention, treatment, and care programs, including programs under this title and other programs administered by the Centers for Disease Control and Prevention.

"(b) ANNUAL REPORT.—Not later than January 1, 2011, and annually thereafter, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall submit to Congress a report describing, with regard to the preceding 12-month reporting period—

"(1) whether the testing goal described in subsection (a) has been met;

"(2) the total number of individuals tested through federally-supported and other HIV/AIDS prevention, treatment, and care programs in each State;

"(3) the number of individuals who—

"(A) prior to such 12-month period, were unaware of their HIV status; and

"(B) through federally-supported and other HIV/AIDS prevention, treatment, and

care programs, were diagnosed and referred into treatment and care during such period;

"(4) any barriers, including State laws and regulations, that the Secretary determines to be a barrier to meeting the testing goal described in subsection (a);

"(5) the amount of funding the Secretary determines necessary to meet the annual testing goal in the following 12 months and the amount of Federal funding expended to meet the testing goal in the prior 12-month period; and

"(6) the most cost-effective strategies for identifying and diagnosing individuals who were unaware of their HIV status, including voluntary testing with pre-test counseling, routine screening including opt-out testing, partner counseling and referral services, and mass media campaigns.

"(c) REVIEW OF PROGRAM EFFECTIVENESS.—Not later than 1 year after the date of enactment of this section, the Secretary, in consultation with the Director of the Centers for Disease Control and Prevention, shall submit a report to Congress based on a comprehensive review of each of the programs and activities conducted by the Centers for Disease Control and Prevention as part of the

Domestic HIV/AIDS Prevention Activities, including the following:

"(1) The amount of funding provided for each program or activity.

"(2) The primary purpose of each program or activity.

"(3) The annual goals for each program or activity.

"(4) The relative effectiveness of each program or activity with relation to the other programs and activities conducted by the Centers for Disease Control and Prevention, based on the—

"(A) number of previously undiagnosed individuals with HIV/AIDS made aware of their status and referred into the appropriate treatment;

"(B) amount of funding provided for each program or activity compared to the number of undiagnosed individuals with HIV/AIDS made aware of their status;

"(C) program's contribution to the National HIV/AIDS testing goal; and

"(D) progress made toward the goals described in paragraph (3).

"(5) Recommendations if any to Congress on ways to allocate funding for domestic HIV/AIDS prevention activities and programs in order to achieve the National HIV/AIDS testing goal.

"(d) COORDINATION WITH OTHER FEDERAL ACTIVITIES.—In pursuing the National HIV/AIDS testing goal, the Secretary, where appropriate, shall consider and coordinate with other national strategies conducted by the Federal Government to address HIV/AIDS.".

SEC. 13. NOTIFICATION OF POSSIBLE EXPOSURE TO INFECTIOUS DISEASES.

Title XXVI (42 U.S.C. 300ff-11 et seq.) is amended by adding at the end the following:

"PART G—NOTIFICATION OF POSSIBLE EXPOSURE TO INFECTIOUS DISEASES

"SEC. 2695. INFECTIOUS DISEASES AND CIRCUMSTANCES RELEVANT TO NOTIFICATION REQUIREMENTS.

"(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this part, the Secretary shall complete the development of—

"(1) a list of potentially life-threatening infectious diseases, including emerging infectious diseases, to which emergency response employees may be exposed in responding to emergencies;

"(2) guidelines describing the circumstances in which such employees may be exposed to such diseases, taking into account the conditions under which emergency response is provided; and

"(3) guidelines describing the manner in which medical facilities should make determinations for purposes of section 2695B(d).

"(b) SPECIFICATION OF AIRBORNE INFECTIOUS DISEASES.—The list developed by the Secretary under subsection (a)(1) shall include a specification of those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means.

"(c) DISSEMINATION.—The Secretary shall—

"(1) transmit to State public health officers copies of the list and guidelines developed by the Secretary under subsection (a) with the request that the officers disseminate such copies as appropriate throughout the States; and

"(2) make such copies available to the public.

"SEC. 2695A. ROUTINE NOTIFICATIONS WITH RESPECT TO AIRBORNE INFECTIOUS DISEASES IN VICTIMS ASSISTED.

"(a) ROUTINE NOTIFICATION OF DESIGNATED OFFICER.—

"(1) DETERMINATION BY TREATING FACILITY.—If a victim of an emergency is transported by emergency response employees to a medical facility and the medical facility makes a determination that the victim has an airborne infectious disease, the medical facility shall notify the designated officer of the emergency response employees who transported the victim to the medical facility of the determination.

"(2) DETERMINATION BY FACILITY ASCERTAINING CAUSE OF DEATH.—If a victim of an emergency is transported by emergency response employees to a medical facility and the victim dies at or before reaching the medical facility, the medical facility ascertaining the cause of death shall notify the designated officer of the emergency response employees who transported the victim to the initial medical facility of any determination by the medical facility that the victim had an airborne infectious disease.

"(b) REQUIREMENT OF PROMPT NOTIFICATION.—With respect to a determination described in paragraph (1) or (2) of subsection (a), the notification required in each of such paragraphs shall be made as soon as is prac-

ticable, but not later than 48 hours after the determination is made.

"SEC. 2695B. REQUEST FOR NOTIFICATION WITH RESPECT TO VICTIMS ASSISTED.

"(a) INITIATION OF PROCESS BY EMPLOYEE.—If an emergency response employee believes that the employee may have been exposed to an infectious disease by a victim of an emergency who was transported to a medical facility as a result of the emergency, and if the employee attended, treated, assisted, or transported the victim pursuant to the emergency, then the designated officer of the employee shall, upon the request of the employee, carry out the duties described in subsection (b) regarding a determination of whether the employee may have been exposed to an infectious disease by the victim.

"(b) INITIAL DETERMINATION BY DESIGNATED OFFICER.—The duties referred to in subsection (a) are that—

"(1) the designated officer involved collect the facts relating to the circumstances under which, for purposes of subsection (a), the employee involved may have been exposed to an infectious disease; and

"(2) the designated officer evaluate such facts and make a determination of whether, if the victim involved had any infectious disease included on the

list issued under paragraph (1) of section 2695(a), the employee would have been exposed to the disease under such facts, as indicated by the guidelines issued under paragraph (2) of such section.

"(c) SUBMISSION OF REQUEST TO MEDICAL FACILITY.—

"(1) IN GENERAL.—If a designated officer makes a determination under subsection (b)(2) that an emergency response employee may have been exposed to an infectious disease, the designated officer shall submit to the medical facility to which the victim involved was transported a request for a response under subsection (d) regarding the victim of the emergency involved.

"(2) FORM OF REQUEST.—A request under paragraph (1) shall be in writing and be signed by the designated officer involved, and shall contain a statement of the facts collected pursuant to subsection (b)(1).

"(d) EVALUATION AND RESPONSE REGARDING REQUEST TO MEDICAL FACILITY.—

"(1) IN GENERAL.—If a medical facility receives a request under subsection (c), the medical facility shall evaluate the facts submitted in the request and make a determination of whether, on the

basis of the medical information possessed by the facility regarding the victim involved, the emergency response employee was exposed to an infectious disease included on the list issued under paragraph (1) of section 2695(a), as indicated by the guidelines issued under paragraph (2) of such section.

"(2) NOTIFICATION OF EXPOSURE.—If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has been exposed to an infectious disease, the medical facility shall, in writing, notify the designated officer who submitted the request under subsection (c) of the determination.

"(3) FINDING OF NO EXPOSURE.—If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has not been exposed to an infectious disease, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the determination.

"(4) INSUFFICIENT INFORMATION.—

"(A) If a medical facility finds in evaluating facts for purposes of paragraph (1) that the facts are insufficient to make the determination described in such paragraph, the med-

ical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the insufficiency of the facts.

"(B)(i) If a medical facility finds in making a determination under paragraph (1) that the facility possesses no information on whether the victim involved has an infectious disease included on the list under section 2695(a), the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the insufficiency of such medical information.

"(ii) If after making a response under clause (i) a medical facility determines that the victim involved has an infectious disease, the medical facility shall make the determination described in paragraph (1) and provide the applicable response specified in this subsection.

"(e) TIME FOR MAKING RESPONSE.—After receiving a request under subsection (c) (including any such request resubmitted under subsection (g)(2)), a medical facility shall make the applicable response specified in subsection (d) as soon as is practicable, but not later than 48 hours after receiving the request.

"(f) DEATH OF VICTIM OF EMERGENCY.—

"(1) FACILITY ASCERTAINING CAUSE OF DEATH.—If a victim described in subsection (a) dies at or before reaching the medical facility involved, and the medical facility receives a request under subsection (c), the medical facility shall provide a copy of the request to the medical facility ascertaining the cause of death of the victim, if such facility is a different medical facility than the facility that received the original request.

"(2) RESPONSIBILITY OF FACILITY.—Upon the receipt of a copy of a request for purposes of paragraph (1), the duties otherwise established in this subpart regarding medical facilities shall apply to the medical facility ascertaining the cause of death of the victim in the same manner and to the same extent as such duties apply to the medical facility originally receiving the request.

"(g) ASSISTANCE OF PUBLIC HEALTH OFFICER.—

"(1) EVALUATION OF RESPONSE OF MEDICAL FACILITY REGARDING INSUFFICIENT FACTS.—

"(A) In the case of a request under subsection (c) to which a medical facility has made the response specified in subsection (d)(4)(A) regarding the insufficiency of facts, the public health officer for the community in which the

medical facility is located shall evaluate the request and the response, if the designated officer involved submits such documents to the officer with the request that the officer make such an evaluation.

"(B) As soon as is practicable after a public health officer receives a request under subparagraph (A), but not later than 48 hours after receipt of the request, the public health officer shall complete the evaluation required in such paragraph and inform the designated officer of the results of the evaluation.

"(2) FINDINGS OF EVALUATION.—

"(A) If an evaluation under paragraph (1)(A) indicates that the facts provided to the medical facility pursuant to subsection (c) were sufficient for purposes of determinations under subsection (d)(1)—

"(i) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

"(ii) the medical facility shall provide to the designated officer the applicable response specified in subsection (d).

"(B) If an evaluation under paragraph (1)(A) indicates that the facts provided in the request to the medical facility were insufficient for purposes of determinations specified in subsection (c)—

"(i) the public health officer shall provide advice to the designated officer regarding the collection and description of appropriate facts; and

"(ii) if sufficient facts are obtained by the designated officer—

"(I) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

"(II) the medical facility shall provide to the designated officer the appropriate response under subsection (c).

"SEC. 2695C. PROCEDURES FOR NOTIFICATION OF EXPOSURE.

"(a) CONTENTS OF NOTIFICATION TO OFFICER.—In making a notification required under section 2695A or section 2695B(d)(2), a medical facility shall provide—

"(1) the name of the infectious disease involved; and

"(2) the date on which the victim of the emergency involved was transported by emergency response employees to the medical facility involved.

"(b) MANNER OF NOTIFICATION.—If a notification under section 2695A or section 2695B(d)(2) is mailed or otherwise indirectly made—

"(1) the medical facility sending the notification shall, upon sending the notification, inform the designated officer to whom the notification is sent of the fact that the notification has been sent; and

"(2) such designated officer shall, not later than 10 days after being informed by the medical facility that the notification has been sent, inform such medical facility whether the designated officer has received the notification.

"SEC. 2695D. NOTIFICATION OF EMPLOYEE.

"(a) IN GENERAL.—After receiving a notification for purposes of section 2695A or 2695B(d)(2), a designated officer of emergency response employees shall, to the extent practicable, immediately notify each of such employees who—

"(1) responded to the emergency involved; and

"(2) as indicated by guidelines developed by the Secretary, may have been exposed to an infectious disease.

"(b) CERTAIN CONTENTS OF NOTIFICATION TO EMPLOYEE.—A notification under this subsection to an emergency response employee shall inform the employee of—

"(1) the fact that the employee may have been exposed to an infectious disease and the name of the disease involved;

"(2) any action by the employee that, as indicated by guidelines developed by the Secretary, is medically appropriate; and

"(3) if medically appropriate under such criteria, the date of such emergency.

"(c) RESPONSES OTHER THAN NOTIFICATION OF EXPOSURE.—After receiving a response under paragraph (3) or (4) of subsection (d) of section 2695B, or a response under subsection (g)(1) of such section, the designated officer for the employee shall, to the extent practicable, immediately inform the employee of the response.

"SEC. 2695E. SELECTION OF DESIGNATED OFFICERS.

"(a) IN GENERAL.—For the purposes of receiving notifications and responses and making requests under this subpart on behalf of emergency response employees, the public health officer of each State shall designate 1 official

or officer of each employer of emergency response employees in the State.

"(b) PREFERENCE IN MAKING DESIGNATIONS.—In making the designations required in subsection (a), a public health officer shall give preference to individuals who are trained in the provision of health care or in the control of infectious diseases.

"SEC. 2695F. LIMITATION WITH RESPECT TO DUTIES OF MEDICAL FACILITIES.

"The duties established in this subpart for a medical facility—

"(1) shall apply only to medical information possessed by the facility during the period in which the facility is treating the victim for conditions arising from the emergency, or during the 60-day period beginning on the date on which the victim is transported by emergency response employees to the facility, whichever period expires first; and

"(2) shall not apply to any extent after the expiration of the 30-day period beginning on the expiration of the applicable period referred to in paragraph (1), except that such duties shall apply with respect to any request under section 2695B(c) received by a medical facility before the expiration of such 30-day period.

"SEC. 2695G. MISCELLANEOUS PROVISIONS.

"(a) LIABILITY OF MEDICAL FACILITIES, DESIGNATED OFFICERS, AND PUBLIC HEALTH OFFICERS.—This subpart may not be construed to authorize any cause of action for damages or any civil penalty against any medical facility, any designated officer, or any other public health officer for failure to comply with the duties established in this subpart.

"(b) TESTING.—This subpart may not, with respect to victims of emergencies, be construed to authorize or require a medical facility to test any such victim for any infectious disease.

"(c) CONFIDENTIALITY.—This subpart may not be construed to authorize or require any medical facility, any designated officer of emergency response employees, or any such employee, to disclose identifying information with respect to a victim of an emergency or with respect to an emergency response employee.

"(d) FAILURE TO PROVIDE EMERGENCY SERVICES.—This subpart may not be construed to authorize any emergency response employee to fail to respond, or to deny services, to any victim of an emergency.

"(e) NOTIFICATION AND REPORTING DEADLINES.—In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been determined pursuant to section 319(a), individ-

uals or public or private entities are unable to comply with the requirements of this part, the Secretary may, notwithstanding any other provision of law, temporarily suspend, in whole or in part, the requirements of this part as the circumstances reasonably require. Before or promptly after such a suspension, the Secretary shall notify the Congress of such action and publish in the Federal Register a notice of the suspension.

"(f) CONTINUED APPLICATION OF STATE AND LOCAL LAW.—Nothing in this part shall be construed to limit the application of State or local laws that require the provision of data to public health authorities.

"SEC. 2695H. INJUNCTIONS REGARDING VIOLATION OF PROHIBITION.

"(a) IN GENERAL.—The Secretary may, in any court of competent jurisdiction, commence a civil action for the purpose of obtaining temporary or permanent injunctive relief with respect to any violation of this subpart.

"(b) FACILITATION OF INFORMATION ON VIOLATIONS.—The Secretary shall establish an administrative process for encouraging emergency response employees to provide information to the Secretary regarding violations of this subpart. As appropriate, the Secretary shall investigate alleged such violations and seek appropriate injunctive relief.

"SEC. 2695I. APPLICABILITY OF SUBPART.

"This subpart shall not apply in a State if the chief executive officer of the State certifies to the Secretary that the law of the State is substantially consistent with this subpart.".

Calendar No. 182

111TH CONGRESS
1ST SESSION

S. 1793

A BILL

To amend title XXVI of the Public Health Service Act to revise and extend the program for providing life-saving care for those with HIV/AIDS.

OCTOBER 15, 2009

Read twice and placed on the calendar

THE BROWN ACT

OPEN MEETINGS FOR LOCAL LEGISLATIVE BODIES

2003

CALIFORNIA ATTORNEY
GENERAL'S OFFICE

THE BROWN ACT

OPEN MEETINGS FOR LOCAL LEGISLATIVE BODIES

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State of California

Office of the Attorney General

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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.

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

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

Sincerely,

BILL LOCKYER
Attorney General

1300 I Street • Suite 1740 • Sacramento, California • 95814

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INTRODUCTION

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

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

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

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

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

SUMMARY OF KEY BROWN ACT PROVISIONS

COVERAGE

PREAMBLE:

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

GOVERNING BODIES:

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

SUBSIDIARY BODIES:

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

PRIVATE OR NONPROFIT CORPORATIONS OR ENTITIES:

Covered only if:

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

MEETING DEFINED

INCLUDES:

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

EXEMPTS:

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

LOCATIONS OF MEETINGS:

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

TELECONFERENCE MEETINGS:

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

PUBLIC RIGHTS

PUBLIC TESTIMONY:

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

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

REQUIRED NOTICES AND AGENDAS

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

CLOSED-SESSION MEETINGS

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

REMEDIES AND SANCTIONS

CIVIL REMEDIES:

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

CRIMINAL SANCTIONS:

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

GOVERNMENT CODE
SECTION 54950-54963

54950. 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. This chapter shall be known as the Ralph M. Brown Act.

54951. 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. As used in this chapter, "legislative body" means:

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

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

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

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

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

(2) Notwithstanding subparagraph (B) of paragraph (1), no board,

commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

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

54952.1. 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. (a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

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

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

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

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

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local

agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

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

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

54952.6. 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. 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. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

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

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

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location

shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

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

54953.1. The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

54953.2. All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

54953.3. 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. (a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30

days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a video or tape player made available by the local agency.

54953.6. 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. 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. (a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

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

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

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

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

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

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a

legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

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

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

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

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

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

(3) Interview a potential employee from another district.

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

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

54954.1. Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an

agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

54954.3. (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. (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. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items

were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

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

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

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

or

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

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

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

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

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

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

LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

title)
PUBLIC EMPLOYEE APPOINTMENT
Title: (Specify description of position to be filled)
PUBLIC EMPLOYMENT
Title: (Specify description of position to be filled)
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: (Specify position title of employee being reviewed)
PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

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

CONFERENCE WITH LABOR NEGOTIATORS
Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)
Employee organization: (Specify name of organization representing employee or employees in question)
or
Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

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

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

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

REPORT INVOLVING TRADE SECRET
Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)
Estimated date of public disclosure: (Specify month and year)
HEARINGS
Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

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

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

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

54954.6. (a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

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

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

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

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

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

(E) Standby or immediate availability charges.

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

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed.

Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

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

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

(B) The activity to be taxed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with

Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

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

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

(1) The property owners subject to the assessment.

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

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

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

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

54955. The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

54955.1. 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. A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

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

54956.5. (a) For purposes of this section, "emergency situation" means both of the following:

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

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

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

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services

are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

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

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

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

54956.6. 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. 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. Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

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

identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

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

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

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

54956.86. Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

54956.87. (a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

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

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade

secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

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

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

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

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.

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

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

(B) Facts and circumstances, including, but not limited to, an

accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

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

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

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

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

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

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

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

54956.95. (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. (a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

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

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

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

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

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is

final, as specified below:

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

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

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

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

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

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

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

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

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

(b) Reports that are required to be made pursuant to this section

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

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

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

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

54957.2. (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. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt

from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

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

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

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

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

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

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

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

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

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an

officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

54957.7. (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. 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. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

54957.10. Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

54958. 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. 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. (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. (a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

54960.5. 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. (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. Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

54963. (a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

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

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

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

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

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

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

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

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

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

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

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section

1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

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A GUIDE TO THE RALPH M. BROWN ACT

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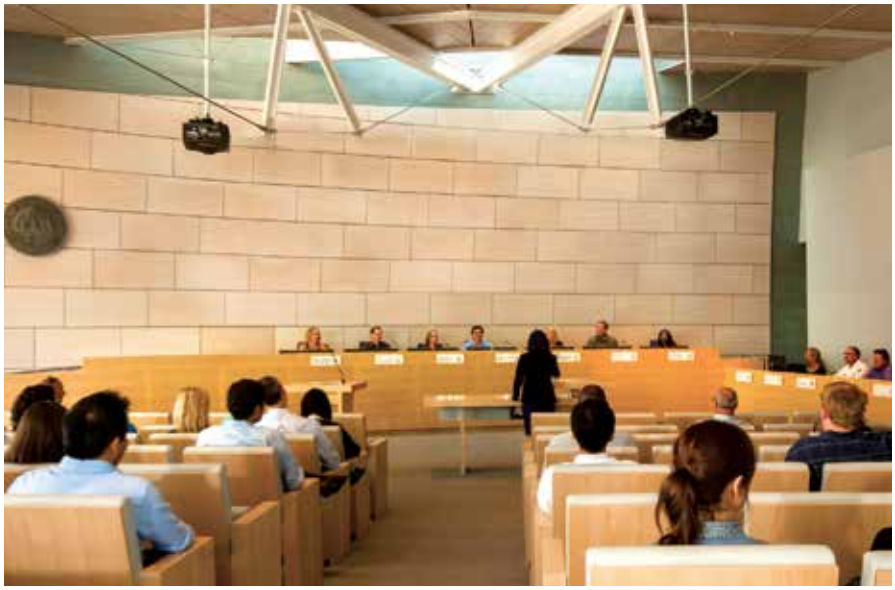

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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Chapter 1

IT IS THE PEOPLE'S BUSINESS

Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

"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."[1]

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

> *"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*[2]

PRACTICE TIP: The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

The Brown Act's other unchanged provision is a single sentence:

> *"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."*[3]

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.[5]

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately — such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

PRACTICE TIP: Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.[6] Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

PRACTICE TIP: The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on "Your Secret Government" that ran in May and June 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws — such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

ENDNOTES:

1 California Government Code section 54950

2 California Constitution, Art. 1, section 3(b)(1)

3 California Government Code section 54953(a)

4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).

5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533

6 California Government Code section 54953.7

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Chapter 2

LEGISLATIVE BODIES

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LEGISLATIVE BODIES

The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.[1]

What is a "legislative body" of a local agency?

A "legislative body" includes:

- **The "governing body** of a local agency" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]

PRACTICE TIP: The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.[7] Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

Q. On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11]
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[12] These include some nonprofit corporations created by local agencies.[13] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[14] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[15]

Q: The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

A: *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q: If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A: *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

PRACTICE TIP: It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[16]

What is not a "legislative body" for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[17] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[18]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[19]

  Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

  A. *No, because the committee has not been established by formal action of the legislative body.*

  Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

  A. *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.[20]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[21]
- County central committees of political parties are also not Brown Act bodies.[22]

ENDNOTES:

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127

2 California Government Code section 54952(a) and (b)

3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550

5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)

6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362

7 California Government Code section 54952.1

8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805

9 California Government Code section 54952(b)

10 79 Ops.Cal.Atty.Gen. 69 (1996)

11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793

12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)

13 California Government Code section 54952(c)(1)(A); International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287, 300; Epstein v. Hollywood Entertainment Dist. II Business Improvement District (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)

14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App.4th 287, 300 fn. 5

15 "*The Brown Act, Open Meetings for Local Legislative Bodies,*" California Attorney General's Office (2003), p. 7

16 California Government Code section 54952(d)

17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129

19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)

20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879

21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513

22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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Chapter 3

MEETINGS

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MEETINGS

The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "… and any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body."[1] The term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.[2]

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.[3]
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.[4]
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.[5]
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.[6]

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:[7]

Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

> **"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**
>
> *The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. *Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.*

Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency.[8] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*

Q. The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).[9]

Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. So long as no such business is discussed, there is no violation of the Brown Act.

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.[10] This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

Retreats or workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.[11]

Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting … use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."[12] The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a "daisy chain" or a "hub and spoke" sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body's subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one-by-one for for discussion, deliberation, or a decision on a proposed action.[13] Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[14]

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[16] Such a memo, however, may be a public record.[17]

> **The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"**
>
> **"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"**
>
> **"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."**
>
> **Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"**

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating

a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

> **The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."**

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[18] Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.

> **"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."**
>
> **"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"**
>
> **"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."**

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two of her colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

Q. The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

A. *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*

Q. A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?

A. *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply to all" button that may inadvertently result in a Brown Act violation.

Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[19] A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

> **Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.**

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

Q. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?

A. *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[20] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either

audio or video, or both."[21] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[22]

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction;
- Additional teleconference locations may be made available for the public;
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

A. *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[23]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[24]

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property that cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property;

Q. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- Meet with elected or appointed federal or California officials 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;
- Meet 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; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.[25]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[26] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[27]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[28]

Endnotes:

1 California Government Code section 54952.2(a)

2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870

3 California Government Code section 54954(a)

4 California Government Code section 54956

5 California Government Code section 54956.5

6 California Government Code section 54955

7 California Government Code section 54952.2(c)

8 California Government Code section 54952.2(c)(4)

9 California Government Code section 54952.2(c)(6)

10 California Government Code section 54953.1

11 "*The Brown Act,*" California Attorney General (2003), p. 10

12 California Government Code section 54952.2(b)(1)

13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95

14 California Government Code section 54952.2(b)(2)

15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518

16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

17 California Government Code section 54957.5(a)

18 California Government Code section 54952.2(b)(2)

19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)

20 California Government Code section 54953(b)(1)

21 California Government Code section 54953(b)(4)

22 California Government Code section 54953

23 California Government Code section 54954(b)

24 California Government Code section 54954(b)(1)-(7)

25 94 Ops.Cal.Atty.Gen. 15 (2011)

26 California Government Code section 54954(c)

27 California Government Code section 54954(d)

28 California Government Code section 54954(e)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location "freely accessible to members of the public."[1] The courts have not definitively interpreted the "freely accessible" requirement. The California Attorney General has interpreted this provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.[2] This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.[3] While posting an agenda on an agency's Internet website will not, by itself, satisfy the "freely accessible" requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[4]

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city's website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for "substantial compliance" with all agenda posting requirements, including posting to the agency website.[5] Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.[6] This inquiry requires a fact-specific examination of whether the agency or its legislative body made "reasonably effective efforts to notify interested persons of a public meeting" through online posting and other available means.[7] The Attorney General's opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.[8] The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "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."[9] Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.[10]

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

Q. The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street; and
- Consideration of contract with ABC Consulting.

Are these descriptions adequate?

A. *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read "consideration of a contract with ABC Consulting in the amount of $50,000 for traffic engineering services regarding traffic on Eighth Street."*

Q. The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

A. *Yes, so long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions. Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[11]

Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[12]

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[13] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[14] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[15]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[16] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[17]

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[18] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[19] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and to address the board on those items.[20]

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[21] Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[22] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[23]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings);
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

PRACTICE TIP: Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

> **"I'd like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.**
>
> **"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"**

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

> **"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go ahead tonight, even though it's not on the agenda."**

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:

- First, make two determinations: 1) that there is an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.[24] However, caution should be used to avoid any discussion or action on such items.

Council Member Jefferson: I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street — are there problems with this project?

City Manager Frank: The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.

Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.

It is clear from this dialogue that the Elm Street project was not on the council's agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

A number of Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[25]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[26] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[27]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[28]

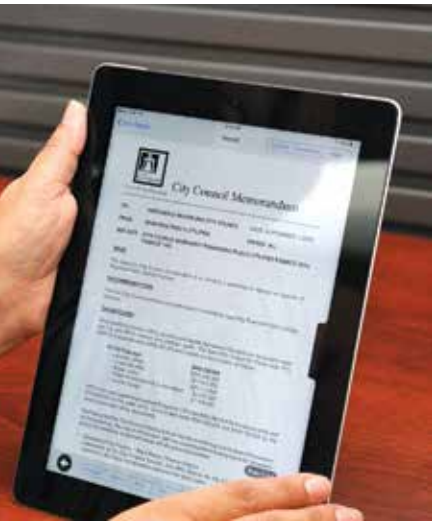
Action by secret ballot, whether preliminary or final, is flatly prohibited.[29]

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[30]

Q: The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A: *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt proceedings.[31] Ejection is justified only when audience members actually disrupt the proceedings.[32] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.[33]



Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[34] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[35]

Q: In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A: *No. The memorandum is a privileged attorney-client communication.*

Q: In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A. *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.[36] A writing distributed during a meeting must be made public:

- 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.[37]

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[38] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[39]

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[40]

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[41]

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[42]

Q. Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

A. *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.[43]

PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

A. *No, as long as the criticism pertains to job performance.*

Q. During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

A. *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*

The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[44]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.[45]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[46]

Endnotes:

1 California Government Code section 54954.2(a)(1)

2 78 Ops.Cal.Atty.Gen. 327 (1995)

3 88 Ops.Cal.Atty.Gen. 218 (2005)

4 California Government Code sections 54954.2(a)(1) and 54954.2(d)

5 California Government Code section 54960.1(d)(1)

6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262

7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432

8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8

9 California Government Code section 54954.2(a)(1)

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

11 California Government Code section 54954.1

12 California Government Code sections 54956(a) and (c)

13 California Government Code section 54955

14 California Government Code section 54954.2(b)(3)

15 California Government Code section 54955.1

16 California Government Code section 54956.5

17 California Government Code section 54952.3

18 Education Code sections 35144, 35145 and 72129

19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196

20 California Education Code section 35145.5

21 California Government Code section 54954.6

22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)

23 California Government Code section 54954.2(b)

24 California Government Code section 54954.2(a)(2)

25 California Government Code section 54953.3

26 California Government Code section 54961(a); California Government Code section 11135(a)

27 California Government Code section 54952.2(c)(2)

28 California Government Code section 54953(b)

29 California Government Code section 54953(c)

30 California Government Code section 54953(c)(2)

31 California Government Code section 54957.9.

32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption).

33 California Government Code section 54957.9

34 California Government Code section 54957.5

35 California Government Code section 54957.5(d)

36 California Government Code section 54957.5(b)

37 California Government Code section 54957.5(c)

38 California Government Code section 54953.5(b)

39 California Government Code section 54957.5(d)

40 California Government Code section 54953.5(a)

41 California Government Code section 54953.6

42 California Government Code section 54954.3(a)

43 California Government Code section 54954.3(c)

44 California Government Code section 54954.3(b); Chaffee v. San Francisco Public Library Com. (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)

45 California Government Code section 54954.3(a)

46 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 5

CLOSED SESSIONS

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CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.[1]

As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),[4] the Brown Act does not authorize closed sessions for other contract negotiations.

PRACTICE TIP: Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a "safe harbor" from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[8]

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.[9] The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[10]

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.[11] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.[12] A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.[13]

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.[14] The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.[15] For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.[16]

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.[17] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.[18]

Existing litigation

Q. May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?

A. *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[19]

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[20] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

Anticipated initiation of litigation by the local agency

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed

session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[21] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[22] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[23]

Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern[24] and the names of the parties with whom its negotiator may negotiate.[25]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.[26]

"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.

"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.

Public employment

The Brown Act authorizes a closed session "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."[27] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[28] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[29] That authority may be delegated to a subsidiary appointed body.[30]

PRACTICE TIP: Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[31] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[32] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[33] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[34]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[35]

Q. Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

A. *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[36] An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. Examples of the latter Include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[37] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

PRACTICE TIP: The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[38] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[39]

> **"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."**
>
> **"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**
>
> *This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[40] on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[41]

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

PRACTICE TIP: Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[42]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[43] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[44]

Public participation under the Rodda Act also takes another form.[45] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[46] The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[47]

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[48] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[49]

PRACTICE TIP: Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[50]

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[51]

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[52] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[53]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[54]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.[55]

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information which is not generally known to the public or competitors and which: 1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[56]

Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,[57] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[58] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[59] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[60] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[61]

PRACTICE TIP: Meetings are either open or closed. There is nothing "in between."[62]

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.[63]

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

A. *No, attendance in closed sessions is reserved exclusively for the agency's advisors.*

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[64] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[65] Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.[66]

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information received during a closed session regarding pending litigation,[67] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[68] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.[69]

PRACTICE TIP: There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.[70]

The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.[71] The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

ENDNOTES:

1 California Government Code section 54962

2 California Constitution, Art. 1, section 3

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).

4 California Government Code section 54957.1

5 California Government Code section 54954.5

6 California Government Code section 54954.2

7 California Government Code section 54954.5

8 California Government Code sections 54956.9 and 54957.7

9 California Government Code section 54957.1(a)

10 California Government Code section 54957.1(b)

11 California Government Code section 54957.2

12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707

13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).

15 82 Ops.Cal.Atty.Gen. 29 (1999)

16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471

17 "*The Brown Act,*" California Attorney General (2003), p. 40

18 California Government Code section 54956.9(g)

19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172

20 Government Code section 54956.9(e)

21 California Government Code section 54957.1

22 California Government Code section 54956.8

23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan Incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).

24 73 Ops.Cal.Atty.Gen. 1 (1990)

25 California Government Code sections 54956.8 and 54954.5(b)

26 California Government Code section 54957.1(a)(1)

27 California Government Code section 54957(b)

28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)

30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

31 California Government Code section 54957(b)(3)

32 88 Ops.Cal.Atty.Gen. 16 (2005)

33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860

34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).

35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87

36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17

37 California Government Code section 54957

38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165

39 California Government Code section 54957.1(a)(5)

40 California Government Code section 54957.6

41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not "employees" of the district).

42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)

43 California Government Code section 54957.1(a)(6)

44 California Government Code section 3549.1

45 California Government Code section 3540

46 California Government Code section 3547

47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

48 California Education Code section 72122

49 California Education Code section 60617

50 California Government Code section 54956.96

51 California Government Code section 54956.7

52 California Government Code section 54957

53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354

54 California Government Code section 54957.8

55 California Government Code section 54962

56 California Health and Safety Code section 32106

57 California Government Code section 54956.75

58 California Government Code section 54956.81

59 California Government Code section 54956.86

60 California Government Code section 54956.87

61 California Government Code section 54956.95

62 46 Ops.Cal.Atty.Gen. 34 (1965)

63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.

66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

67 80 Ops.Cal.Atty.Gen. 231 (1997)

68 76 Ops.Cal.Atty.Gen. 289 (1993)

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

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Chapter 6

REMEDIES

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Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.[1] Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;[2]
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendized items are acted on by the governing body during a meeting.[3] The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,[4] the challenger must show prejudice as a result of the alleged violation.[5] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[6]

Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.[7] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body, clearly describing the past action and the nature of the alleged violation.[8] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[9] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.[10]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[11] The unconditional commitment must be substantially in the form set forth in the Brown Act.[12] No legal action may thereafter be commenced regarding the past action.[13] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[14]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[15]

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- 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 under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[16] Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.[17]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[18] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[19]

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.[20]

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.[21]

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[22] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[23] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[24]

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[25] There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[26]

Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

ENDNOTES:

1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198

3 California Government Code section 54960.1 (b) and (c)(1)

4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319

5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561

6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118

7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)

8 Government Code Sections 54960.2(a)(1), (2)

9 Government Code Section 54960.2(b)

10 Government Code Section 54960.2(a)(4)

11 Government Code Section 54960.2(c)(2)

12 Government Code Section 54960.2(c)(1)

13 Government Code Section 54960.2(c)(3)

14 Government Code Section 54960.2(d)

15 Government Code Section 54960.2(e)

16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6

17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36

18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein

19 California Government Code section 54960.5

20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

21 California Government Code section 54959

22 California Government Code section 54952.6

23 61 Ops.Cal.Atty.Gen.283 (1978)

24 California Government Code section 54959

25 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

The Ralph M. Brown Act is California's "sunshine" law for local government. It is found in the California Government Code beginning at Section 54950. In a nutshell, it requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can keep control over their government.

A. Application of the Brown Act to "Legislative Bodies"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council) and any commission, committee, board or other body of the local agency, whether permanent or temporary, decision-making or advisory, that is created by formal action of a legislative body (Section 54952).

Standing committees of a legislative body, which consist solely of less than a quorum of the body, are subject to the requirements of the Act. Some common examples include the finance, personnel, or similar policy subcommittees of the city council or other city legislative body that have either some "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body. Standing committees exist to make routine and regular recommendations on a specific subject matter, they survive resolution of any one issue or matter, and are a regular part of the governmental structure.

The Brown Act does not apply to *ad hoc* committees consisting solely of less than a quorum of the legislative body, provided they are composed solely of members of the legislative body and provided that these ad hoc committees do not have some "continuing subject matter jurisdiction," and do not have a meeting schedule fixed by formal action of a legislative body. Thus, ad hoc committees would generally serve only a limited or single purpose, they are not perpetual and they are dissolved when their specific task is completed.

Standing committees may, but are not required to, have regular meeting schedules. Even if such a committee does not have a regular meeting schedule, its agendas should be posted at least 72 hours in advance of the meeting (Section 54954.2). If this is done, the meeting is considered to be a regular meeting for all purposes. If not, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply.

The governing boards of private entities are subject to the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the public agency, or (ii) the private entity receives funds from the local agency and the private entity's governing body includes a member of the legislative body who was appointed by the legislative body (Section 54952).

The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency who have not yet assumed the duties of office (Section 54952.1). Under this provision, the Brown Act is applicable to newly elected, but not-yet-sworn-in councilmembers.

B. Meetings

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act definition of the term "meeting" (Section 54952.2) is a very broad definition that encompasses almost every gathering of a majority of Council members and includes:

"Any congregation of a majority of 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."

In plain English, this means that a meeting is any gathering of a majority of members to hear *or* discuss any item of city business or potential city business.

There are six specific types of gatherings that are *not* subject to the Brown Act. We refer to the exceptions as: (1) the individual contact exception; (2) the seminar and conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of members falls within one of the exceptions discussed below, if a majority of members are in the same room and *merely listen* to a discussion of city business, then they will be participating in a Brown Act meeting that requires notice, an agenda, and a period for public comment.

1. The individual contact exception

Conversations, whether in person, by telephone or other means, between a member of a legislative body and any other person do not constitute a meeting (Section 54952.2(c)(1)). However, such contacts may constitute a "serial meeting" in violation of the Brown Act if the individual also makes a series of individual contacts with other members of the legislative body serving as an intermediary among them. An explanation of what constitutes a "serial meeting" follows below.

2. The seminar and conference exception

The attendance by a majority of members at a seminar or conference or similar educational gathering is also generally exempt from Brown Act requirements (Section 54952.2 (c)(2)). This exception, for example, would apply to attendance at a California League of Cities seminar. However, in order to qualify under this exception, the seminar or conference must be open to the public and be limited to issues of general interest to the public or to cities. Finally, this exception will not apply to a conference or seminar if a majority of members discuss among themselves items of specific business relating to their own city, except as part of the program.

3.. The community meeting exception

The community meeting exception allows members to attend neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings sponsored by an organization other than the city at which issues of local interest are discussed (Section 54952.2(c)(3)). However, members must observe several rules that limit this exception. First, in order to fall within this exception, the community meeting must be "open and publicized." Therefore, for example, attendance by a majority of a body at a homeowners association meeting that is limited to the residents of a particular development and only publicized among members of that development would not qualify for this exemption. Also, as with the other exceptions, a majority of members cannot discuss among themselves items of city business, except as part of the program.

4. The other legislative body exception

This exception allows a majority of members of any legislative body to attend meetings of other legislative bodies of the city or of another jurisdiction (such as the county or another city) without treating such attendance as a meeting of the body (Section 54952.2(c)(4)). Of course, as with other meeting exceptions, the members are prohibited from discussing city business among themselves except as part of the scheduled meeting.

5. The social or ceremonial occasion exception

As has always been the case, Brown Act requirements do not apply to attendance by a majority of members at a purely social or ceremonial occasion provided that a majority of members do not discuss among themselves matters of public business (Section 54942.2(c)(5)).

6. The standing committee exception

This exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the standing committee without making the gathering a meeting of the full legislative body itself. The exception is only applicable if the attendance of the members of the legislative body who are not standing committee members would create a gathering of a majority of the legislative body; if not, then there is no "meeting." If their attendance does establish a quorum of the parent legislative body, the members of the legislative body who are not members of the standing committee may only attend as "observers" (Section 54952.2(c)(6)). This means that members of the legislative body who are not members of the standing committee should not speak at the meeting, sit in their usual seat on the dias or otherwise participate in the standing committee's meeting.

With a very few exceptions, all meetings of a legislative body must occur within the boundaries of the local governmental agency (Section 54954). Exceptions to this rule which allow the City Council to meet outside the City include meeting outside the jurisdiction to comply with a court order or attend a judicial proceeding, to inspect real or personal property, to attend a meeting with another legislative body in that other body's jurisdiction, to meet with a state or federal representative to discuss issues affecting the local agency over which the other officials have jurisdiction, to meet in a facility outside of, but owned by, the local agency, or to visit the office of the local agency's legal counsel for an authorized closed session. These are meetings and in all other respects must comply with agenda and notice requirements.

"Teleconferencing" may be used as a method for conducting meetings whereby members of the body may be counted towards a quorum and participate fully in the meeting from remote locations (Section 54953(b)). The following requirements apply: the remote locations may be connected to the main meeting location by telephone, video or both; the notice and agenda of the meeting must identify the remote locations; the remote locations must be posted and accessible to the public; all votes must be by roll call; and the meeting must in all respects comply with the Act, including participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. No person can compel the legislative body to allow remote participation. The teleconferencing rules only apply to members of the legislative body; they do not apply to staff members, attorneys or consultants who can participate remotely without following the posting and public access requirements.

All actions taken by the legislative body in open session and the vote of each member thereon must be disclosed to the public at the time the action is taken. (Section 54953(c)(2)).

C.Serial Meetings

In addition to regulating all gatherings of a majority of members of a legislative body, the Brown Act also addresses some contacts between individual members of legislative bodies. On the one hand, the Brown Act specifically states that nothing in the Act is intended to impose Brown Act requirements on individual contacts or conversations between a member of a legislative body and any other person (Section 54952.2(c)(1)). However, the Brown Act also prohibits a series of such individual contacts if they result in a "serial meeting" (Section 54952.2(b)).

Section 54952.2(b)(1) prohibits a majority of members of a legislative body outside of a lawful meeting from directly or indirectly using a series of meetings to discuss, deliberate or take action on any item of business within the subject matter jurisdiction of the body. Paragraph (b)(2) expressly provides that substantive briefings of members of a legislative body by staff are permissible, as long as staff does not communicate the comments or positions of members to any other members.

A serial meeting is a series of meetings or communications between individuals in which ideas are exchanged among a majority of a legislative body (i.e., three council members) through either one or more persons acting as intermediaries or through use of a technological device (such as a telephone answering machine, or e-mail or voice mail), even though a majority of members never gather in a room at the same time. Serial meetings commonly occur in one of two ways; either a staff member, a member of the body, or some other person individually contacts a majority of members of a body and shares ideas among the majority ("I've talked to Councilmembers A and B and they will vote 'yes.' Will you?") or, without the involvement of a third person, member A calls member B, who then calls member C, and so on, until a majority of the body has reached a collective concurrence on a matter.

We recommend the following guidelines be followed to avoid inadvertent violation of the serial meeting rule. These rules of conduct apply **only** when a majority of a legislative body is involved in a series of contacts or communications. The types of contacts considered include contacts with local agency staff members, constituents, developers, lobbyists and other members of the legislative body.

1. Contacts with staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. To avoid an illegal serial meeting through a staff briefing:

a. Individual briefings of a majority of members of a legislative body should be "unidirectional," in that information should flow from staff to the member and the member's participation should be limited to asking questions and acquiring information. Otherwise, multiple members could separately give staff direction thereby causing staff to shape or modify its ultimate recommendations in order to reconcile the views of the various members, resulting in an action outside a meeting.

b. Members should not ask staff to describe the views of other members of the body, and staff should not volunteer those views if known.

c. Staff may present its viewpoint to the member, but should not ask for the member's views and the member should avoid providing his or her views unless it is absolutely clear that the staff member is not discussing the matter with a quorum of the legislative body.

2. Contacts with constituents, developers and lobbyists

As with staff, a constituent or lobbyist can also inadvertently become an intermediary who causes an illegal serial meeting. Constituents' unfamiliarity with the requirements of the Act aggravate this potential problem because they may expect a member of a legislative body to be willing to commit to a position in a private conversation in advance of a meeting. To avoid serial meetings via constituent conversations:

a. First, state the ground rules "up front." Ask if the constituent has or intends to talk with other members of the body about the same subject; if so, make it clear that the constituent should not disclose the views of other members during the conversation.

b. Explain to the constituent that you will not make a final decision on a matter prior to the meeting. For example: "State law prevents me from giving you a commitment outside a meeting. I will listen to what you have to say and give it consideration as I make up my mind."

c. Do more listening and asking questions than expressing opinions.

d. If you disclose your thoughts about a matter, counsel the constituent not to share them with other members of the legislative body.

3. Contacts with fellow members of the same legislative body

Direct contacts concerning local agency business with fellow members of the same legislative body, whether through face-to-face or telephonic conversations, notes or letters, electronic mail or staff members, are the most obvious means by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of agency business with another member of the body outside of a meeting; as long as the communication does not involve a quorum of the body, no "meeting" has occurred. There is, however, always the risk that one participant in the communication will disclose the views of the other participant to a third or fourth member, creating an illegal serial meeting. Therefore, we recommend you avoid discussing local agency business with a quorum of the body or communicating the views of other members outside a meeting.

These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act's goal of achieving open government. If you have questions about compliance with the Act in any given situation, please ask for advice.

D. Notice and Agenda Requirements

Two key provisions of the Brown Act that ensure that the public's business is conducted openly are the requirements that legislative bodies post agendas prior to their meetings (Sections 54954.2, 54955 and 54956) and that no action or discussion may occur on items or subjects not listed on the posted agenda (Section 54954.2(a)(2)). Limited exceptions to the rule against discussing or taking action on an item not on a posted agenda are discussed below.

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings (Section 54954(a)). Meeting agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting (Section 54954.2(a)). The description need not exceed 20 words. Each agenda must be posted in a place that is freely accessible to the public and must be posted on the agency's website, if it has one. After January 1, 2019, additional online posting requirements apply. Agenda posting requirements differ depending on the type of meeting to be conducted.

If the meeting is a "regular meeting" of the legislative body (i.e., occurs on the body's regular meeting day, without a special meeting call), the agenda must be posted 72 hours in advance of the meeting (Section 54954.2(a)). For "special meetings," the "call" of the meeting and the agenda (which are typically one and the same) must be posted at least 24 hours prior to the meeting (Section 54956). Each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as fax, electronic mail or U.S. mail) at least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and if they have, that notice must be given at the same time notice is provided to members of the legislative body. A special meeting may not be held to discuss salaries, salary schedules or compensation paid in the form of fringe benefits of a local agency "executive" as defined in Government Code section 3511(d). However, the budget may be discussed in a special meeting. Section 54956(b).

Both regular and special meetings may be adjourned to another time. Notices of adjourned meetings must be posted on the door of the meeting chambers where the meeting occurred within 24 hours after the meeting is adjourned (Section 54955). If the adjourned meeting occurs more than five days after the prior meeting, a new agenda for that adjourned meeting must be posted 72 hours in advance of the adjourned meeting (Section 54954.2(b)(3)).

The Brown Act requires the local agency to mail the agenda or the full agenda packet to any person making a written request no later than the time the agenda is posted or is delivered to the members of the body, whichever is earlier. The agency may charge a fee to recover its costs of copying and mailing. Any person may make a standing request to receive these materials, in which event the request must be renewed annually. Failure by any requestor to receive the agenda does not constitute grounds to invalidate any action taken at a meeting (Section 54954.1).

If materials pertaining to a meeting are distributed less than 72 hours before the meeting, they must be made available to the public as soon as they are distributed to the members of the legislative body. Further, the agenda for every meeting of a legislative body must state where a person may obtain copies of materials pertaining to an agenda item delivered to the legislative body within 72 hours of the meeting. (Section 54957.5).

A legislative body that has convened a meeting and whose membership is a quorum of another legislative body (for example, a city council that also serves as the governing board of a housing authority) may convene a meeting of that other legislative body, concurrently or in serial order, only after an oral announcement of the amount of compensation or stipend, if any, that each member will receive as a result of convening the second body. No announcement need be made if the compensation is set by statute or if no additional compensation is paid to the members. (Section 54952.3(a)).

E. Public Participation

1. Regular Meetings

The Brown Act mandates that agendas for regular meetings allow for two types of public comment periods. The first is a general audience comment period, which is the part of the meeting where the public can comment on any item of interest that is within the subject matter jurisdiction of the local agency. This general audience comment period may come at any time during a meeting (Section 54954.3).

The second type of public comment period is the specific comment period pertaining to items on the agenda. The Brown Act requires the legislative body to allow these specific comment periods on agenda items to occur prior to or during the City Council's consideration of that item (Section 54954.3).

Some public entities accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Other public entities provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda. Either method is permissible, though public comment on *public hearing* items must be taken during the hearing. Caution should also be taken with consent calendars. The body should have a public comment period for consent calendar items before the body acts on the consent calendar, unless it permits members of the audience to "pull" items from the calendar.

The Brown Act allows a body to preclude public comments on an agenda item in one situation, where the item was considered by a committee of the body which held a meeting where public comments on that item were allowed. So, if the body has standing committees (which are required to have agendized and open meetings with an opportunity for the public to comment on items on that committee's agenda) and the committee has previously considered an item, then at the time the item comes before the full body, the body may choose not to take additional public comments on that item. However, if the version presented to the body is different from the version presented to, and considered by, the committee, the public must be given another opportunity to speak on that item at the meeting of the full body (Section 54954.3).

2. Public Comments at Special Meetings

The Brown Act requires that agendas for special meetings provide an opportunity for members of the public to address the body concerning any item listed on the agenda prior to the body's consideration of that item (Section 54954.3). Unlike regular meetings, in a special meeting the body does not have to allow public comment on any non-agenda matter.

3. Limitations on the Length and Content of the Public's Comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. For example, typical time limits restrict speakers to three or five minutes. A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance (Section 54954.3(b)). However, we do not recommend setting total time limits per item for any quasi-judicial matter such as a land use application or business license or permit application hearing. Application of a total time limit to a quasi-judicial matter could result in a violation of the due process rights of those who were not able to speak to the body during the time allotted.

The Act precludes the body from prohibiting public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the city council (Section 54954.3 (c)). This does not mean that a member of the public may say anything. If the topic of the public's comments is not within the subject matter jurisdiction of the agency, the member of the public can be cut off.

The body also may adopt reasonable rules of decorum for its meetings which preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of public meetings. Also, the right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body.

The use of profanity may be a basis for stopping a speaker. However, it will depend upon what profane words or comments are made and the context of those comments in determining whether it rises to the level of impeding the orderly conduct of a meeting. While terms such as "damn" and "hell" may have been disrupting words thirty years ago, today's standards seem to accept a stronger range of foul language. Therefore, if the chair is going to rule someone out of order for profanity, the chair should make sure the language is truly objectionable *and* that it causes a disturbance or disruption in the proceeding before the chair cuts off the speaker.

4. Discussion of Non-Agenda Items

A body may not *take action or discuss* any item that does not appear on the posted agenda (Section 54954.2).

There are two exceptions to this rule. The first is if the body determines by majority vote that an emergency situation exists. The term "emergency" is limited to work stoppages or crippling disasters (Section 54956.5). The second exception is if the body finds by a two-thirds vote of those present, or if less than two-thirds of the body is present, by unanimous vote, that there is a need to take immediate action on an item and the need for action came to the attention of the local agency subsequent to the posting of the agenda (Section 54954.2 (b)). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required.

In addition to these exceptions, there are several *limited* exceptions to the no discussion on non-agenda items rule. Those exceptions are:

- Members of the legislative body or staff may briefly respond to statements made or questions posed by persons during public comment periods;
- Members or staff may ask questions for clarification and provide a reference to staff or other resources for factual information;
- Members or staff may make a brief announcement, ask a question or make a brief report on his or her own activities;
- Members may, subject to the procedural rules of the legislative body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and
- The legislative body may itself as a body, subject to the rules of procedures of the legislative body, take action to direct staff to place a matter of business on a future agenda.

The body may not discuss non-agenda items to any significant degree under these exceptions. The comments *must* be brief. These exceptions do not allow long or wide-ranging question and answer sessions between the public and city council or between legislative body and staff.

When the body is considering whether to direct staff to add an item to a subsequent agenda, these exceptions do not allow the body to discuss the merits of the matter or to engage in a debate about the underlying issue.

To protect the body from problems in this area, legislative bodies may wish to adopt a rule that any one member may request an item to be placed on a subsequent agenda, so that discussion of the merits of the issue can be easily avoided. If the legislative body does not wish to adopt this rule, then the body's consideration and vote on the matter must take place with virtually no discussion.

It is important to follow these exceptions carefully and interpret them narrowly because the city would not want to have an important and complex action tainted by a non-agendized discussion of the item.

5. The public's right to photograph, videotape, tape-record and broadcast open meetings

The public has the right to videotape or broadcast a public meeting or to make a motion picture or still camera record of such meeting (Section 54953.5). However, a body may prohibit or limit recording of a meeting if the body finds that the recording cannot continue without noise, illumination, or obstruction of a view that constitutes, or would constitute, a disruption of the proceedings (Section 54953.5). These grounds would appear to preclude a finding based on nonphysical grounds such as breach of decorum or mental disturbance.

Any audio or video tape record of an open and public meeting that is made, for whatever purpose, by or at the direction of the city is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act. The city must not destroy the tape or film record of the open and public meeting for at least 30 days following the date of the taping or recording. Inspection of the audiotape or videotape must be made available to the public for free on equipment provided by the city (Section 54953.5).

If a member of the public requests a duplicate of the audio or videotape, the city must provide such copy. If the city has an audiotape or videotape duplication machine, the city must provide the copy on its own machine. If the city does not have such a machine, the city must send it out to a business that can make a copy. The city may charge a fee to cover the cost of duplication.

The Brown Act requires written material distributed to a majority of the body by *any person* to be provided to the public without delay. If the material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting (Section 54957.5).

One problem in applying this rule arises when written materials are distributed directly to a majority of the body without knowledge of City staff, or even without the members knowing that a majority has received it. The law still requires these materials to be treated as public records. Thus, it is a good idea for at least one member of the body to ensure that staff gets a copy of the document so that copies can be made for the city's records and for members of the public who request a copy.

F. Closed Sessions

The Brown Act allows a legislative body during a meeting to convene a closed session in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as "executive sessions," a holdover term from the Brown Act's early days. Examples of business which may be conducted in closed session include personnel evaluations or labor negotiations, pending litigation, and real estate negotiations (See Sections 54956.7 through 54957 and Sections 54957.6 and 54957.8). Political sensitivity of an item is not a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. And, there is a "bonus" of sorts for using prescribed language to describe litigation closed sessions in that legal challenges to the adequacy of the description are precluded (Section 54954.5). This so-called "safe harbor" encourages cities to use a very similar agenda format. The legislative body must identify the City's negotiator in open session before going into closed session to discuss either real estate negotiations or labor negotiations.

The legislative body must reconvene the public meeting after a closed session and publicly report specified closed session actions and the vote taken on those actions (Section 54957.1). There are limited exceptions for certain kinds of litigation decisions, and to protect the victims of sexual misconduct or child abuse.

Contracts, settlement agreements or other documents that are finally approved or adopted in closed session must be provided at the time the closed session ends to any person who has made a standing request for all documentation in connection with a request for notice of meetings (typically members of the media) and to any person who makes a request within 24 hours of the posting of the agenda, if the requestor is present when the closed session ends (Section 54957.1).

The Brown Act also includes detailed requirements describing when litigation is considered "pending" for the purposes of a closed session (Section 54956.9). These requirements involve detailed factual determinations that will probably be made in the first instance by the City Attorney.

Roberts v. City of Palmdale, 5 Cal.4th 363 (1993), a California Supreme case, affirms the confidentiality of attorney-client memoranda. See also Section 54956.9(b)(3)(F) with respect to privileged communications regarding pending litigation.

Closed sessions may be started in a location different from the usual meeting place as long as the location is noted on the agenda and the public can be present when the meeting first begins. Moreover, public comment on closed session items must be allowed before convening the closed session.

One perennial area of confusion is whether a body may discuss salary and benefits of an individual employee (such as a city manager) as part of an evaluation session under Section 54957. It may not. However, the body may designate a negotiator to negotiate with that employee and meet with its negotiator in closed session under Section 54957.6 to provide directions. The employee in question may not be present in such a closed session.

G. Enforcement

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, and orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body (Section 54960.1). The provision relating to efforts to penalize expression may come up in the context of measures by the legislative body to censure or penalize one of its members for breaching confidentiality or other violations. This area of law is charged with difficult free speech and attorney-client privilege issues. The tape recording of closed sessions is not required unless the court orders such taping after finding a closed session violation (Section 54960).

Prior to filing suit to invalidate an action taken in violation of the Brown Act, the complaining party must make a written demand on the legislative body to cure or correct the alleged violation. The written demand must be made within 90 days after the challenged action was taken in open session unless the violation involves the agenda requirements under Section 54954.2, in which case the written demand must be made within 30 days. The legislative body is required to cure or correct the challenged action and inform the party who filed the demand of its correcting actions, or its decision not to cure or correct, within 30 days. A suit must be filed by the complaining party within 15 days after receipt of the written notice from the legislative body, or if there is no written response, within 15 days after the 30-day cure period expires.

Any person may also seek declaratory and injunctive relief to find a past practice of a legislative body to constitute a violation of the Brown Act (Section 54960). In order to do so, the person must first send a "cease and desist" letter to the local agency, requesting that the practice cease. If the agency replies within a designated time, and disavows the practice, no lawsuit may be initiated. However, if the agency fails to reply or declares its intent to continue the practice, the lawsuit seeking to declare the practice a violation of the Brown Act may be filed, and attorney fees will be granted in the event the practice is found to violate the Act.

A member of a legislative body will not be criminally liable for a violation of the Brown Act unless the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act (Section 54959). This standard became effective in 1994 and is a different standard from most criminal standards. Until it is applied and interpreted by a court, it is not clear what type of evidence will be necessary to prosecute a Brown Act violation.

Under Section 54963, it is a violation of the Brown Act for any person to disclose confidential information acquired in a closed session. This section enumerates several nonexclusive remedies available to punish persons making such disclosures and to prevent future disclosures.

H. Conclusion

The Brown Act contains many rules and some ambiguities; it can be confusing and compliance can be difficult. In the event that you have any questions regarding any provision of the law, you should contact your City Attorney.

Please contact either of today's presenters if you would like more details on these issues and how your agency can address them:

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