

Brown Act Changes/Corrections

Changes to Chapter 3

General: Senate Bill 751 (Yee) requires that as of January 1, 2014, all votes and abstentions of members present in open session be publically reported at the meeting and in the minutes of the meeting.

Changes to Chapter 4

Regular Meetings: Government Code 54954.2 requires a board to post its agenda for a regular meeting at a location freely accessible to the public, at least 72 hours before the meeting. As amended by AB 1344 (Ch. 692, Statutes of 2011), Government Code 54954.2 now requires each district that has its own web site to also post its regular meeting agenda on the web site.

Special Meetings: Government Code 54956 requires a board to post its agenda for a special meeting at a location freely accessible to the public, at least 24 hours before the meeting. AB 1344 amended Government Code 54956 to now require any district that has its own web site to also post its special meeting agenda on the web site.

In addition, Government Code 54956 was amended to expressly prohibit the board from scheduling special meetings regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits for the chief executive officer or a department head, such as superintendents and assistant superintendents.

Emergency Meetings: In addition to meeting with law enforcement and the Attorney General, AB 246 (Bradford) permits the Governor to meet in closed session during an emergency meeting.

Changes to Chapter 7

Enforcement: Government Code 54960.2 was added by SB 1003 (Ch. 732, Statutes of 2012) to establish the procedures by which a district attorney or an interested party must follow before initiating litigation to determine whether the *past* actions of a legislative body complied with the Brown Act.

As established in SB 1003, before initiating litigation, a cease and desist letter must be submitted to the agency within nine months of the alleged violation clearly describing the past actions and the alleged violation by the legislative body. If the legislative body responds within 60 days by making an “unconditional commitment” to cease and desist as well as not repeat the challenged action, any case challenging the past action will be dismissed. If the legislative body does not respond with an unconditional commitment within the 60 days and litigation is initiated, or if an unconditional commitment letter is approved after litigation has been initiated, a successful plaintiff will be awarded attorney fees and costs consistent with Government Code 59960.5.

Correction to Chapter 2

Page 10 (regarding what is not considered a meeting and is therefore exempt from the Brown Act)

- attendance of a majority of members of the board at an open and publicized meeting of a standing board committee, provided that the board members who are **not** members of the standing committee attend only as observers.

acknowledgment

This publication is a joint effort of the California School Boards Association and Kronick, Moskovitz, Tiedemann and Girard, a professional law corporation.

The Appendix/Frequently Asked Questions about the Ralph M. Brown Act is a joint effort of the California School Boards Association and Atkinson, Andelson, Loya, Ruud and Romo.

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foreword

The California School Boards Association, through its member school districts, county offices of education and regional occupational centers/programs, receives numerous inquiries each year regarding the proper method of holding board meetings. Inevitably, these inquiries are answered by the Ralph M. Brown Act (California Government Code 54950 through 54963) or by provisions of the California Education Code.

A basic mandate of the Brown Act is that with limited exceptions, all meetings of a school board must be open to the public. Certain business may be discussed and even acted upon in closed sessions; however, these topics are specifically defined within the Brown Act and the Education Code. Unless the closed session is being held on one or more of those topics, the closed session cannot legally be held.

Violation of the Brown Act can have far-reaching consequences, including criminal prosecution. Therefore, board members should be careful to familiarize themselves with and adhere closely to the requirements of the Brown Act and Education Code. If there is any doubt as to the proper course of action in a given situation, boards should seek legal advice from their legal counsel.

note on this edition

This edition contains a summary of the Education Code's special rules on board meetings that are applicable to school districts. Where there is clear inconsistency between Education Code and Brown Act rules regarding board meetings, the Education Code will probably prevail. However, in complex situations such as these, legal counsel should always be consulted.

The Brown Act and Education Code are frequently amended by the state Legislature. In addition, California attorney general opinions and California court decisions define and redefine the limits to the Act. It is impossible to predict how the Act might be amended in the future, and we cannot revise this booklet as each amendment occurs. Board members are encouraged to consult the most recent version of the open meeting laws on a regular basis prior to carrying out any board action. Also, if the law's direction seems unclear, legal counsel should be consulted.

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chapter 1

Introduction

This review of the Brown Act and other open meeting laws has been prepared to help school board members understand the intent, as well as the letter of the law governing deliberations and actions taken by school board members in board meetings.

There are two sets of rules applicable to school districts that state the general requirement that board meetings must be open to the public:

- Government Code 54950 through 54963
(Title 5, Division 2, Chapter 9),
commonly referred to as the Ralph M. Brown Act; and

- Education Code 35140 through 35149
(Title 2, Division 3, Chapter 2, Article 3).
The intent behind these open meeting laws is clear: (Government Code 54950)

...the public commissions, boards and councils and 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.

In 2004, the voters approved Proposition 59, an amendment to the California Constitution (Article I, Section 3(b)), granting the public the right to access information concerning meetings and writings of local government bodies and officials, as long as the constitutional rights of privacy and due process are protected. The long-term effect of this amendment on the Brown Act is unclear, but it underscores the intent that the public has the constitutional right to public information.

Public confidence and trust are probably the greatest assets of any public official or agency. One cannot earn confidence by careless disregard or ignorance of the law. In their meetings and relationships, boards should use wisdom and good judgment to ensure deliberation and action that conform to the law.

The intent and purpose of the Brown Act is to ensure that "actions (of local legislative bodies) be taken openly and that their deliberations be conducted openly" (Government Code 54950). The general rule of the Act is contained in Section 54953 which declares "All meetings of the legislative body of a local agency shall be open and public..." Education Code 35145 also requires that, with limited exceptions, school board meetings must be open to the public.

These Government Code and Education Code sections make it clear that school board members must act and conduct all deliberations in open session meetings, unless the subject matter comes within a statutory exception allowing boards to hold a closed session. Exceptions to the public meeting standard are specifically limited as discussed herein.

chapter 2

Who must comply and what constitutes a “meeting?”

The statutory mandate that all board meetings be open to the public necessarily requires an analysis of what a “board” is and how a “meeting” is defined. The Brown Act requires the governing boards of local agencies to hold their meetings in public except under specified, limited circumstances where closed sessions are authorized.

Who must comply with the Brown Act?

The Brown Act imposes requirements on the “legislative bodies” of local agencies. School districts, community college districts, regional occupational programs, charter schools and joint power authorities (created as separate legal entities) are all local agencies (Government Code 54951). The governing boards of school and community college districts, regional occupational programs, joint power agencies, charter schools and county offices of education are “legislative bodies” (Government Code 54952).

The Brown Act also applies to any multimember body that governs a private corporation or entity that is either:

- created by the elected legislative body in order to exercise authority that may be delegated by the elected body to a private entity, or
- receives funds from a local agency, the membership of whose governing body includes a member of the local agency’s legislative body appointed to the governing body by the legislative body of the local agency.

These broad inclusions of entities other than the governing board are confusing. Legal counsel should be consulted to resolve any such issues.

In addition, the term “member of a legislative body of a local agency” includes any person elected to serve as a member of a legislative body who has not yet been sworn in or assumed the duties of the office. That person is directed by law to conform to the requirements of the Act and will be treated for purposes of enforcement of the Brown Act as if he/she had already assumed office (Government Code 54952.1).

A board may require that a copy of the Brown Act be given to each board member and to each person elected to the board before he/she takes office. An elected board may also require that a copy of the Brown Act be given to appointed members (Government Code 54952.7).

Committee meetings

Besides the actual governing board of a local agency, Government Code 54952 provides that the Brown Act applies to any commissions, committees, boards or other bodies of a local agency, whether permanent or temporary, decision-making or advisory, created by resolution or any other formal action of a legislative body. However, ad hoc, advisory committees composed solely of members of the legislative body who are less than a quorum of the legislative body are not legislative bodies. The exception is that any “standing committee” of a legislative body, irrespective of its composition, which has a continuing subject matter jurisdiction or a meeting schedule fixed by resolution or any other formal action of a legislative body, is a legislative body subject to the Act.

Education Code 35147 exempts the following specified committees and councils of school districts from the requirements of the Brown Act:

- a school-site council related to student retention, school or library improvement or school-based program coordination (Education Code 41507, 41572, 52852);
- a districtwide advisory committee established in a district with more than 50 pupils of limited English proficiency (Education Code 52176);
- a districtwide school advisory committee on compensatory education established pursuant to a compensatory education plan (Education Code 54425);

- a parent advisory council established in any district receiving migrant education funds or services (Education Code 54444.2);
 - a parent advisory committee mandated to continue in existence after “sunsetting” of its underlying programs, including economic impact aid and bilingual education (Education Code 62002.5);
 - a parent involvement committee or council that consults with the school district and participates in the planning, design, implementation and evaluation of programs implemented under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by Public Law 100-290 of 1988 (Education Code 11503).
-

While exempted from the requirements of the Brown Act, these committees and councils are subject to the special public notice and meeting rules contained in Education Code 35147. These special requirements are:

- All meetings are open to the public;
- Members of the public may address the council or committee during its meeting on any matter within its subject matter jurisdiction;
- Notice of the meeting must be posted at the school site or at another appropriate place accessible to the public at least 72 hours before the time set for the meeting;
- The notice of the meeting must contain the date, time and location of the meeting and an agenda specifying each item of business to be discussed or acted upon. No action can be taken on any item of business not on the posted agenda unless the council or committee members present, by unanimous vote, determine there is a need to take immediate action and the need for action came to the attention of the council or committee after the agenda was posted; and the agenda need not contain a description of questions or brief statements (made at a meeting by members of the council, committee or public) that do not have a significant effect on pupils or employees in the school or school district or that can be resolved solely by the provision of information.

If a committee or council violates any of the above procedural requirements, Education Code 35147 requires that it must, upon the demand of any person, reconsider the item at its next meeting after allowing the public to address the item.

What constitutes a “meeting?”

The Brown Act defines what constitutes a “meeting.” The following are “meetings” pursuant to Government Code 54952.2:

- any congregation of a majority of the legislative body in the same time and location to hear, discuss, deliberate, or take action on any matter within the board’s or agency’s jurisdiction;
 - any use of a series of communications outside of a meeting, directly or through intermediaries (such as telephones, e-mail, or personal intermediaries) by a majority of members of the board to discuss, deliberate, or take action on any item of business within the subject matter jurisdiction of the board.
-

Pursuant to Government Code 54952.2, the following are not “meetings” and are therefore exempt from the Brown Act:

- individual contacts or conversations of a board member with any other person;
- attendance of a majority of members of the board at a conference or similar gathering open to the public involving a discussion of public issues, or issues of interest to public education agencies, provided that a majority of the board members do not discuss among themselves, other than as part of the scheduled program, specific business within the agency’s jurisdiction. A meeting is “open to the public” even if the conference organizers charge a fee for attendance;
- attendance of a majority of members of the board 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 board members do not discuss among themselves, other than as part of the scheduled meeting, specific business within the board’s jurisdiction;
- attendance of a majority of members of the board at an open and publicized meeting of another body of the local agency or at an open and publicized meeting of a legislative body of another local agency, provided that a majority of the board members do not discuss among themselves specific business within the board’s jurisdiction;
- attendance of a majority of members of the board at a purely social or ceremonial event, provided that the majority of the board

members do not discuss among themselves specific business within the board's jurisdiction;

- attendance of a majority of members of the board at an open and publicized meeting of a standing board committee, provided that the board members who are members of the standing committee attend only as observers.

In determining whether a "meeting" of a legislative body is taking place, the formality or informality of the meeting cannot be used as a guideline. The main concern is whether a majority of the full board is present and whether deliberations on public business within the responsibilities of the board are taking place.

Retreats, in which a majority of the board meets to discuss long-range planning, team building or other governance matters, are considered a "meeting" and thus are subject to the requirements of the Act.

The mere presence of a majority of the board members at a social function does not create a meeting, but if a majority of the board is present, members should not discuss, deliberate or act upon school matters.

The Brown Act does not preclude all board members from attending conferences or workshops to increase their effectiveness as board members and to keep abreast of developments in education. However, such conferences cannot be used to circumvent the Act. Thus, once again, if a majority of the board is present, board members should not discuss, deliberate or act upon school matters, except as part of the scheduled program.

A majority of the board members at an open and publicly noticed meeting of one of their own standing committees does not create a majority of the board as long as those board members do not sit on the standing committee. But note that, as stated above, all standing committees are legislative bodies subject to the open meeting requirements. Those board members who do not sit on the standing committee must attend only as observers. According to the attorney general (81 *Ops.Cal.Atty.Gen.* 156 (1998)), those board members attending as "observers" may not ask questions or make statements, and they must sit in the areas designated for members of the public.

The Act, in Government Code 54953.1, specifically allows members of a board to give testimony in private before the grand jury, either as individuals or as a body.

Serial meetings

A serial meeting is any use of a series of communications, directly or through intermediaries (such as telephone, e-mail, or a third-party) by a majority of members of the board to discuss, deliberate, or take action on any item of business within the subject matter jurisdiction of the board (Government Code 54952.2). This definition of a "serial meeting" was amended in 2008.

An exception exists to allow district employees to engage in separate conversations or communications outside of a meeting with board members in order to answer questions or provide information regarding a district Issue as long as that person does not communicate to members the comments or positions of any other member (Government Code 54952.2). In many districts, the superintendent may meet individually with board members before a board meeting to answer questions about the agenda or provide board members a weekly written report or advisory memo. These briefings or reports are still permissible, as long as the superintendent does not communicate to board members the comments or positions of any other member.

However, this exception does not authorize a collective briefing where a majority of the board meet with staff in advance of the meeting to discuss the agenda. Any briefing, involving a majority of the board, meeting at the same time and place, must be open to the public and satisfy the Brown Act meeting and agenda requirements.

Seriatim meetings occur when members speak individually to other members and, by contacting each other, one by one, a majority of board members reach a decision on a proposed action or obtains information about the other members' views on a particular subject without the public's access. Two versions of seriatim meetings are the "hub-spoke" meeting and the "daisy-chain" meeting.

The hub-spoke version of a meeting occurs when one board member, or a representative of a board member, individually contacts other members to discuss an item of business or a transaction. The daisy-chain meeting occurs when one member calls another to discuss business and the second member calls a third to discuss the conversation, and so on (see *Stockton Newspapers Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 103).

The Attorney General has opined that Government Code 54952.2 prohibits a majority of the board from sending e-mails to each other to develop a collective concurrence as to action to be taken by the board even if the e-mails are (1) sent to the secretary and chairperson, (2) posted on the district's Web site, and (3) distributed at the next meeting. Although the attorney general recognized that those three conditions would allow the deliberations to be conducted, to some extent, "in public," the e-mails were prohibited by the Brown Act because all debate would be completed before the meeting, and members of the public who did not have Internet access would be excluded from the debate (84 *Ops.Cal.Atty.Gen.* 30 (2001)),

Therefore, when using technology, it is important that board members remember that the purpose of the Brown Act is to ensure that board deliberations are made in public. If a majority of the board posts information in a chat room or on a blog about a district issue, the Brown Act could be violated.

chapter 3

General meeting requirements and types of meetings

General requirements for meetings

■ General

All board meetings must be open and public (except where closed meetings are specifically authorized; see Chapter 5) and meet the requirements of the Americans with Disabilities Act, and all persons (not just local residents) must be permitted to attend (Government Code 54953, 54953.2). In addition, meetings may not be held in a facility that prohibits admittance to a person based on a prohibited category of discrimination (i.e., race, gender, religion).

Secret ballots may not be used for preliminary or final action; this is true in both open and closed sessions (Government Code 54953).

■ Conditions of attendance

No person may be required to give his/her name or provide other information as a condition of attendance at a board meeting. Any sign-in sheet, attendance list or other similar document must state that signing it is voluntary and not a condition of attendance and that all persons may attend the meeting regardless of whether they sign, register or complete the document (Government Code 54953.3).

■ Video and audio taping of meetings; broadcasting meetings

Anyone attending an open meeting of a legislative body may record it with an audio or videotape recorder or still or motion picture camera or may broadcast the meeting, unless the board makes a reasonable finding that noise, illumination or obstruction of view will persistently disrupt the meeting (Government Code 54953.5, Government Code 54953.6).

If the district makes a tape or film record of an open session for any purpose, it becomes a public record that may not be destroyed for 30 days and must be available to the public for viewing or auditing on an agency recorder without charge (Government Code 54953.5).

■ Teleconferencing

Meetings by teleconferencing are permitted through video or audio technologies, or through a combination of the two. Teleconferencing may be used for all purposes during any meeting. Agendas must be posted at each teleconference site, each teleconference location must be identified in the meeting notice and agenda, and each teleconference location must be accessible to the public. The agenda must provide the opportunity for the public to address the board directly at each teleconference location (Government Code 54953).

As a condition of a teleconferenced board meeting, at least a quorum of the board must participate from within the district boundaries (Government Code 54953).

According to the attorney general, a city is not required under the Americans with Disabilities Act to provide, as an accommodation for a disabled city council member who was unable to attend a regularly scheduled meeting, a teleconference connection to the member's house where the public would not be permitted to be present. According to the attorney general, Government Code 54953 requires that members of the public must be permitted to be present at any teleconferenced location (84 *Ops.Cal.Atty.Gen.* 181 (2001)).

■ Location of meetings

Meetings of the governing board of a school district shall be held within the boundaries of the district except under the circumstances enumerated in Government Code 54954. Some of these circumstances include:

- Attending a conference on nonadversarial collective bargaining techniques;
- Interviewing members of the public residing in another district with reference to the trustees' potential employment of an employee of that other district;
- Interviewing a potential employee from another district;
- Visiting the office of the district's legal counsel for a closed session on pending litigation, when doing so would reduce legal fees or costs;

- Participating in meetings or discussions of multiagency significance, provided that the meeting is held within one of the participating agencies' boundaries, with all participating agencies giving the notice required by law;
- Complying with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the district is a party;
- Inspecting real or personal property which cannot conveniently be brought into the district, provided that the topic of the meeting is limited to items directly related to the property;
- Meeting with elected federal or state officials, when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the district.

A joint powers authority must meet in the territory of one of its members or as authorized under the conditions listed above. If the JPA has members throughout the state, a special rule applies — the JPA can meet in any facility in the state that doesn't discriminate or charge an admission fee (Government Code 54954).

■ Public opportunity to address the board

Every regular meeting agenda must provide an opportunity for the public to address the board on items of public interest within the board's jurisdiction prior to or during the board's consideration of the item (Government Code 54954.3). However, no action may be taken on an item raised by the public unless the item is on the agenda or special authorization exists. The agenda need not provide an opportunity for public comment on any item that has already been considered by a committee composed exclusively of board members at a public meeting where all members of the public were given an opportunity to address the committee before or during the committee's consideration, unless the item has been substantially changed (as determined by the board) since the committee heard it (Government Code 54954.3).

The agenda for a special meeting must provide an opportunity for members of the public to directly address the board concerning any item on that meeting's agenda prior to or during consideration of that item (Government Code 54954.3).

The board may adopt reasonable regulations regarding public input, including but not limited to regulations limiting the time for each speaker and the total time on each topic (Government Code 54954.3). The board may not prohibit public criticism of policies, procedures, programs or services of the district, or the acts or omissions of the board (Government Code 54954.3). In *Baca v. Moreno Valley Unified School District* (1996) 936 F.Supp. 719, the court found that the board cannot censor in advance public speech that includes criticisms about a specific employee or require that such discussions not take place in public. If a person makes slanderous statements (i.e., purportedly factual statements as opposed to pure opinion), the board may warn the person that such discussion is out of order and that the person's statements may no longer be subject to privilege and could place the person at risk of civil liability. However, other provisions of law may insulate the speaker against a charge of slander.

The board may remove persons who willfully cause a disruption of a meeting so that the meeting cannot be conducted in an orderly fashion. If removal of the disruptive persons is not sufficient to restore order, then the board may order the room cleared, except for members of the media, and continue the meeting. Only items appearing on the agenda may be considered at such a meeting (Government Code 54957.9). However, a board should be cautious before removing persons because of disruptive speech and ensure that a person is not being removed based on the content of the speech in violation of the speaker's right to freedom of speech. Examples of disruptive conduct might include conduct that is extremely loud or disturbing, or that creates a health or safety risk. In *McMahon v. Albany Unified School District* (2003) 104 Cal.App.4th 1275, a court held that a speaker's constitutional rights were not violated when he was removed from a board meeting after dumping a substantial amount of garbage on the floor of the meeting room. The speaker had come to the board meeting to complain about high school students littering, but did not stop dumping garbage when admonished by the board president. The key is that the board was not preventing the speech because it disagreed with the content, rather it was the behavior itself that was disruptive and led to the individual's removal from the meeting.

Types of meetings

■ Regular meetings

Time and place of regular meetings

The law requires that the governing board of each school district fix the time and place for its regular meetings, and that this action is proper notice to all members of the board of the regular meetings (Education Code 35140, Government Code 54954). If a regular meeting falls on a holiday, it will be held on the next business day. If a fire, flood, earthquake or other emergency renders the regular meeting place unsafe, the meetings may be held elsewhere as designated by the presiding officer or designee by the most rapid means available to all news media that have requested, in writing, notice of special meetings (Government Code 54954).

The governing board of any union or joint union high school district shall hold its regular meetings either monthly or quarterly; the governing board of any other high school district shall hold its regular meetings monthly (Education Code 35141). The times at which the regular meetings of the governing board of a high school district are to be held should be prescribed by the rules and regulations adopted by such board for its own government (Education Code 35142).

■ Organizational meetings

The governing board of each school district shall hold an annual organizational meeting (Education Code 35143). The date of the annual organizational meeting is determined by the date on which elected board members take office following a regular election (the first Friday in December, pursuant to Elections Code 10554). The meeting must occur within 15 days of that date. In years for which there is no election, the meeting still must be held during the same 15-day period. Governing boards have the authority to determine which day during the 15-day period to hold the organizational meeting (Education Code 35143).

At the annual organizational meeting, the governing board of each high school district, union high school district and joint union high school district shall organize by electing a president from among its members, and a clerk. At the annual organizational meeting, each city board of education shall organize by electing a president from among its members. At the annual meeting, the governing board of each other type of school district, except a community college district, shall elect one of its members clerk of the board (Education Code 35143).

■ Special meetings

Special meetings are designed to allow boards to deliberate and/or act prior to the next regular board meeting. Special meetings usually take place in order to meet time deadlines. As long as the president or majority of the board calls the meeting, proper notice is given and the agenda is posted in a timely manner (see Chapter 4), a special meeting is proper. The call and notice of the meeting must be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public during the entire 24 hours. No business other than the business on the agenda can be considered at special meetings by the governing board (Government Code 54956, Education Code 35144).

■ Emergency meetings

Emergency meetings of the board are governed by Government Code 54956.5. In summary, emergency meetings may be held under circumstances where either of the following situations arises and requires prompt action due to the disruption or threatened disruption of public facilities:

- An emergency is a work stoppage, crippling activity or other activity that severely impairs public health or safety, as determined by a majority of the members of the board.
- A dire emergency is a crippling disaster, mass destruction, terrorist act or threatened terrorist activity that poses immediate and significant peril.

Emergency meetings may be held by the board without complying with either the 24-hour notice or posting requirement, though all other special meeting restrictions apply. For other rules applicable to emergency meetings, see the statute and discussion in Chapter 4.

■ Adjourned/continued meetings

If the business of a board has not been completed at a regular or special meeting, or at an adjourned regular or adjourned special meeting, the board may adjourn (i.e., continue) that meeting to a subsequent time and place so long as proper notice of the adjournment (including the new time and place) is conspicuously posted within 24 hours after the time of the adjournment (Government Code 54955). In addition, Government Code 54955.1 also provides for the continuance of “hearings” by a legislative body, subject to the same notice requirements as adjourned meetings, unless the hearing is “continued to a time less than 24 hours after the time specified in the order of notice of hearing,” in which case a copy of the order or notice of continuance of hearing must be posted immediately after the meeting at which the order or declaration of continuance was adopted or made.

chapter 4

Agenda and posting requirements

Agenda descriptions

Government Code 54954.2 does not define how specific the agenda descriptions must be; it provides only that the agenda description must contain a “brief general description” of an item. It further states that the description generally does not need to exceed 20 words. However, guidance may be taken from relevant court decisions. In *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196, the court, commenting on the specificity required for a school board agenda, provided: “[I]t is imperative that the agenda of the board’s business be made public and in some detail so that the general public can ascertain the nature of such business. It is a well-known fact that public meetings of local governing bodies are sparsely attended by the public at large unless an issue vitally affecting their interests is to be heard. To alert the general public to such issues, adequate notice is a requisite.”

In *Moreno v. City of King* (2005) 127 Cal.App. 4th 17, the court held that a special meeting agenda must also contain a brief general description of each item to be discussed. Thus, an agenda description must provide the public with sufficient notice so citizens may have time to determine if they want to attend the meeting.

Public testimony

The Brown Act also provides an exception for discussion of matters not on the agenda where such matters are raised by the public, i.e. the “public testimony” exception (Government Code 54954.2). Specifically, Government Code 54954.3 requires that every agenda for a regular meeting provide an opportunity for members of the public to directly address the governing board on any item of interest to the public before or during the governing board’s consideration of the item. However, the governing board, without complying with special procedures, cannot act on the item raised by the public since it did not appear on the agenda.

Public testimony is limited to matters that are within the governing board’s power to act. Further, the public testimony “right” does not extend to any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting where the public was provided the opportunity to address the committee on the item before or during the committee’s consideration of the item (Government Code 54954.3).

It should also be noted that Education Code 35145.5 permits the public to place matters on board agendas and to address the board regarding all items on the agenda and on matters within the subject matter jurisdiction of the board. The board is required to adopt regulations which ensure that the public can address the board regarding agenda items.

The public’s authority to address the board at meetings is not without limit. Government Code 54954.3 authorizes boards to adopt reasonable regulations regarding the method in which such public testimony shall be carried out. The regulations may include limitations on the total amount of time allocated for public testimony on a particular issue and/or for each individual speaker. The regulations may not limit public criticism of policies, procedures, programs or services of the agency, or acts or omissions of the board (see Chapter 3).

Members of the governing board or their staff may briefly respond to statements made or questions posed during the public testimony period. However, no action may be taken by the board where the item is not on the agenda unless one of the three exceptions described in the next section exists. In addition, members of the board or their staff may ask a question for clarification, make a brief announcement, provide a reference to staff or other resources for factual information, or request staff to report back to the body at a subsequent meeting concerning any matter. In addition, board members or the board’s staff may make a brief report on their own activities. Finally, a member of the board or the board itself, subject to board rules and procedures, may take action to direct that a matter of business be placed on a future agenda (Government Code 54954.2).

Regular meetings

■ Agenda and posting requirements

As discussed previously, Education Code 35140 and Government Code 54954 require a governing board to determine the time and place of its regular meetings. At least 72 hours prior to the regular meeting, the board must post an agenda containing a brief description of each item of business to be transacted or discussed at the meeting (Government Code 54954.2). The agenda must specify the time and location of the regular meeting and must be posted in a location freely accessible to members of the public during the entire 72-hour period. The attorney general has opined, in 78 *Ops.Cal.Atty.Gen.* 327 (1995), that the term “freely accessible” requires that the agenda be posted in a location where it can be read by the public at any time during the 72 hours immediately preceding the meeting. In that same opinion, the attorney general also stated that weekend hours may be counted as part of the 72-hour period.

Where teleconferencing is to be used by the board to take public comment or testimony, or for board deliberations, agendas shall be posted at each teleconference location (Government Code 54953).

The agenda must include information regarding how, to whom and when requests for disability-related modifications or accommodations, including auxiliary aids or services, may be made by persons with disabilities who need such modifications or accommodations to

participate in the meeting (Government Code 54954.2).

Government Code 54957.5 requires that the agenda also specify the address or location where members of the public can view open session agenda items that have been distributed to the board less than 72 hours before the meeting. Such agenda items must also be made available for public inspection and may also be posted on the district's Web site. Generally, this inspection concerns agenda packet or back-up materials that are distributed to the board after the agenda has been posted.

Any person may request that a copy of the agenda or a copy of all of the materials constituting the agenda packet be mailed to him/her. The materials shall be mailed at the time the agenda is posted or upon distribution of the agenda to a majority of the board, whichever occurs first. Upon request, the district must also make the agenda and/or agenda packet available in appropriate alternative formats to persons with disabilities, as required by the Americans with Disabilities Act (Government Code 54954.1).

Requests for agendas or agenda packets must be in writing. Such requests are valid for the calendar year in which they are filed and must be renewed following January 1 of each year (Government Code 54954.1).

■ Items not appearing on regular meeting agenda

Government Code 54954.2 states that, except in certain specified instances described below, no action or discussion may be undertaken on any item not appearing on the posted agenda. Because no prior notice would be provided to the public under these unusual circumstances, a board must take care to fully comply with all conditions for any such action. Limited authority to act on nonagendized items applies only to regular meetings; no such action can occur at a special meeting.

In all cases where a board desires to act on a matter that is not on the regular meeting agenda (under Government Code 54954.2), a board must first publicly identify the new item prior to discussing it. This means it must state publicly what would be a legally sufficient description of the new item. Then, in the following instances and under the following conditions, the board may take action on items of business not on the posted agenda:

- upon determination by a majority vote of the board that an "emergency situation" exists. Government Code 54956.5 defines what constitutes an "emergency situation" (see Emergency meetings below);
- upon a determination by a two-thirds vote of the board members 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 district (not just the board) after the agenda was posted; or
- the item was posted on the meeting agenda for a prior regular meeting of the board occurring not more than five calendar days prior to the current meeting, and then continued at that prior meeting to the meeting at which action is being taken.

Special meetings

Under Education Code 35144 and Government Code 54956, a special meeting of the board may be called only by the presiding officer of the board or by a majority of the board members. When a special meeting is called, written notification of the special meeting must be given to each member of the board and to each local newspaper of general circulation and radio or television station requesting notice in writing. Such notice must be received at least 24 hours prior to the special meeting. In addition, the call and notice must be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public during the 24-hour period.

The call and notice of a special meeting must specify the time and place of the meeting and the specific business to be transacted or discussed. A board member has the right to waive the notice requirement by filing with the board's clerk or secretary a "written waiver of notice" prior to or at the time of the meeting, or by telegram. Such notice may also be waived if the member is present at the convening of the meeting (Government Code 54956).

The agenda must also provide an opportunity for the public to address the board regarding any special meeting agenda item prior to or during board consideration of that item (Government Code 54954.3). While there is limited authority for a board to act on nonagendized business at regular meetings, no business which is not specifically included in the agenda may be considered or acted upon in special meetings.

Emergency meetings

In emergency situations entailing threatened or actual disruption of public facilities, the board may hold emergency meetings without compliance with the special meeting 24-hour notice requirement or the 24-hour posting requirement (Government Code 54956.5). Emergency situations are defined in Government Code 54956.5 as follows:

- An emergency such as a work stoppage, crippling activity or other activity that severely impairs public health or safety or both, as determined by a majority of members of the board; or
- A dire emergency such as a crippling disaster, mass destruction, terrorist act or threatened terrorist activity that poses peril so immediate and significant that requiring the board to provide one-hour notice before holding the meeting may endanger the public health or safety, or both, as determined by a majority of the members of the board.

While the 24-hour notice or posting requirement is not required for these emergency meetings, the presiding officer or designee must still give newspapers and radio or television stations that have requested in writing notice of special meetings a one-hour notice by telephone if the telephones are operating. If the telephones are not working, notice must be given to the media that the emergency meeting was held, the purpose of the meeting, and the action taken during the meeting as soon as possible after the meeting. In the case of a dire emergency, notice must be provided to the newspapers and radio or television stations requesting such notice at or near the time that the presiding officer or designee notifies the rest of the board of the meeting (Government Code 54956.5).

The board may meet in closed session during an emergency meeting to meet with law enforcement officials for the emergency purposes specified in Government Code 54957, if agreed to by a two-thirds vote of the board members present. If less than two-thirds of the members are present, then the board must agree by a unanimous vote of the members present (Government Code 54956.5).

The minutes of an emergency meeting, a list of persons whom the board notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting must be posted in a public place as soon as possible after the meeting and left posted for a minimum of 10 calendar days (Government Code 54956.5).

Adjourned/continued meetings

Regular or special meetings may be adjourned (i.e., continued) to a later time and place as specified in the order of adjournment. An adjourned regular meeting is considered a regular meeting for purposes of the Brown Act. Less than a quorum of the governing body may determine to adjourn such meetings. A copy of the order of adjournment shall be placed on or near the door of the place where the regular or special meeting was adjourned within 24 hours after the time of the adjournment (Government Code 54955).

In the event that all board members are absent from any regular or adjourned regular meeting, the clerk or secretary of the board may adjourn the meeting to a stated place and time. The clerk or secretary shall further provide notice for the adjourned meeting pursuant to the special meeting notice requirements, discussed above, absent a waiver (Government Code 54955).

chapter 5

Closed sessions

A closed session is an exception to the general rule that board meetings must be open and public. The Legislature has declared that business affecting the public may be conducted behind closed doors only in narrowly-defined circumstances. Closed sessions may be held at regular, special and emergency meetings. In *Luca v. Board of Trustees* (1971) 18 Cal.App.3d 988, the court held that if a board has the right to consider a matter in closed session, it may also act upon such matter in closed session. (But see the student expulsion discussion below.) However, the board is required to publicly report certain actions (not all actions — only those specified by law) taken in closed session and the vote or abstention of every member present. The required content of the public report is specified in Government Code 54957.1 for each type of closed session.

Attendance in closed session

Closed sessions may involve only the members of the board and others individuals who have an official role in advising the board (98 *Ops.Cal.Atty.Gen.* 1011 (1999)). Examples include an attorney providing legal advice, a supervisor involved in personnel disciplinary matters, or a witness if the board is hearing complaints or charges against an employee. According to the Attorney General, a meeting cannot be “semi-closed and if individuals without an official role in the meeting (including staff) are invited into the closed while the remainder of the public is excluded, then the meeting should be held in open session.

Education Code 48918 provides special rules for expulsion hearings. Whether the expulsion hearing is held in closed or public session, the board may meet in closed session to deliberate and determine whether or not the student should be expelled. If the board admits any other person to this closed session, the parent/guardian, the student, and the counsel of the student shall also be allowed to attend the closed session.

Types of closed sessions

The Brown Act and Education Code delineate the circumstances under which a legislative body of a local agency may meet in closed session and limit legislative bodies to the types of closed sessions identified (Government Code 54962). The Brown Act and Education Code authorize closed sessions for the following:

1. Real estate negotiation. A board is permitted to hold a closed session with its negotiator (who may or may not be a member of that body) prior to the purchase, sale, exchange or lease of real property, including the renewal or renegotiation of leases, by or for the district for the purpose of giving instructions to its negotiator regarding the price and terms of payment. Before going into closed session, however, the board must disclose in public session the identity of its negotiators and the property or properties that the negotiations may concern, as well as the person (not the person's agent) or persons with whom the negotiator may negotiate (Government Code 54956.8). Closed sessions regarding a contemplated eminent domain (condemnation) proceeding are authorized under the "pending litigation" closed session (see below).
2. Pending litigation. A board may meet, on advice of its legal counsel, to confer with or receive advice from counsel regarding pending litigation when public discussion would prejudice the district's position in the litigation. This is the exclusive authorized use of closed sessions under the attorney-client privilege (Government Code 54956.9). However, the Brown Act does not restrict privileged communications outside board meetings (such as an advice letter) between legal counsel and the board or its members, and it does not require disclosure of such privileged written communications.

Under Government Code 54956.9, litigation is "pending" if:

- a) an adjudicatory proceeding, including eminent domain, has already been initiated in a court, administrative agency or arbitration, if the district is a party; or
- b) on counsel's advice, the board decides that a point has been reached where, based on existing facts and circumstances, there is "significant exposure" to litigation against the district, or the board is meeting solely to determine whether a closed session is authorized under the significant exposure provision;
- c) based on existing facts and circumstances, the agency has decided or is deciding whether to initiate litigation.

As stated above, the "significant exposure" determination must be based on "existing facts and circumstances." These are limited to:

- facts and circumstances that might result in litigation against the district, but which the board believes are not yet known to potential plaintiffs. Such facts and circumstances need not be publicly specified;
- facts and circumstances, including but not limited to an accident, disaster, incident or transactional occurrence that might result in litigation against the district and that are already known to a potential plaintiff or plaintiffs. Such facts and circumstances must be publicly disclosed before the closed session or specified on the board meeting agenda;
- receipt of a tort claim or written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection in the same manner as other public district material;
- a threat of litigation regarding a matter within the district's jurisdiction made by a person in an open and public board meeting; or
- a threat of litigation regarding a matter within the district's jurisdiction made by a person outside an open and public board meeting. The threat could be made directly to a district official or employee or could be communicated to the official or employee by someone else. In either event, the district official or employee receiving knowledge of the threat must have made a contemporaneous or other record of the threat prior to the board meeting. That record must be available for public inspection in the same manner as other public agenda material. The record need not identify alleged victims of unlawful or tortious sexual conduct or anyone making the threat (of litigation) on their behalf, or identify an employee who is the alleged perpetrator unless the identity of the person has already been publicly disclosed.

In the circumstances described above, the possibility that litigation may occur cannot be purely speculative. The assessment of the board and its legal counsel of the pendency of litigation must be grounded on specific facts and circumstances that exist at the time of the closed session. The determination as to whether a closed session is authorized because of pending litigation is complex, and districts should rely on the advice of legal counsel.

Government Code 54956.9 requires that the board, prior to holding a closed session under the "pending litigation" exception, follow certain procedures. First, the district must state on the agenda or publicly announce which one of the subdivisions of the statute authorizing closed sessions on "pending litigation" (i.e., which subdivision of section 54956.9) authorizes the closed session. If it is authorized under Government Code 54956.9 a) above, the statement shall identify the title of or otherwise specifically identify the litigation to be discussed, unless the board states that to do so would jeopardize the district'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.

3. Joint powers agency issues. The board may meet in closed session to discuss liability claims and other information acquired during a JPA's closed session. The joint powers authority, created for the purposes of insurance pooling, or a local agency member of the JPA, or the local agency self-insurance authority or a local agency member of the authority, may hold 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 (Government Code 54956.95).

When a JPA has so authorized, a school board member serving on a board of a JPA may disclose confidential information received during the JPA board's closed session in order to allow the district board to discuss and take action on the JPA issue in a district closed session. The JPA board must first adopt a provision authorizing such disclosure, either through a policy or the JPA agreement (Government Code 54956.96).

4. Public security. A board may meet in closed session with the attorney general, district attorney, district counsel, sheriff, police chief or their deputies, 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 facilities (Government Code 54957).

The board may meet in closed session during an emergency meeting to meet with law enforcement officials for the emergency purposes specified in Government Code 54957 if agreed to by a two-thirds vote of the board members present. If less than two-thirds of the members are present, then the board must agree by a unanimous vote of the members present (Government Code 54956.5).

5. Personnel exception. A board may meet in closed session to consider (including taking action on) the appointment, employment, evaluation of performance, discipline or dismissal of a public employee. "Public employee" includes an officer or an independent contractor who functions as an officer or employee, but does not include any other independent contractor, any elected official or any member of a legislative body (Government Code 54957). Thus action on individuals who are not considered "public employees" must be done in open session — including considering a complaint against a member of the board itself. In this "personnel" type of closed session, the board is prohibited from discussing the district's funds, funding priorities or budget.

A court has held that the term "employment" does not mean only the initial hiring decision, but also allows the board to discuss an employee's return from leave of absence (*Travis v. Board of Trustees CSU* (2008) 161 Cal.App.4th 335).

A board may also meet in closed session to hear complaints or charges against a public employee by any person, including another employee. However, before the board holds a closed session to consider "specific" complaints or charges brought against an employee by another person or employee, the employee must be given written notice of his/her right to have the complaint or charges heard by the board in open (public) session rather than in closed session. The notice must be delivered personally or by mail at least 24 hours in advance of the time for holding the closed session. Failure to give the required notice makes any disciplinary or other action taken by the board against that employee based on those complaints or charges null and void (Government Code 54957).

The determination as to whether a closed session is being held to hear "specific complaints or charges" is complex, and districts should rely on the advice of legal counsel. For example, in *Furtado v. Sierra Community College District* (1998) 68 Cal.App.4th 876, the court held that the term "specific complaints or charges" does not include negative comments in an employee's performance evaluation.

In another opinion, *Bell v. Vista Unified School District* (2001) 82 Cal.App.4th 672, the court determined that a presentation to the board by a district staff member regarding an employee's violation of a California Interscholastic Federal rule constituted a "complaint or charge," thus the employee was entitled to 24-hour notice.

The board may also meet in closed session to discuss a district 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 (Government Code 54957.10).

6. Labor negotiations. Pursuant to Government Code 54957.6, the board may meet in closed session with the board's designated representatives regarding salaries, salary schedules or compensation paid in the form of fringe benefits for the district's represented and unrepresented employees. For school districts, the Educational Employment Relations Act also governs employee relations, and special meeting and notice provisions apply; see section entitled Special collective bargaining considerations below.

When the negotiations are with "represented" employees, all matters within the statutory scope of representation (negotiations) may be considered; when negotiations are with "unrepresented" employees, only salaries, salary schedules or compensation in the form of fringe benefits may be considered. The Brown Act prohibits discussion of the local agency's available funds, funding priorities, or budget in these closed sessions, except insofar as such discussions relate to providing instructions to the board's negotiators. (The term "employee" includes any officer or an independent contractor who functions as an officer or employee, but not an elected official, member of a legislative body or other independent contractors.) (Government Code 54957.6)

The purpose of this type of closed session is for the board to review its position and instruct its representatives. The sessions may occur prior to and during consultations and discussions with represented employee groups and unrepresented employees. Closed

sessions are also permitted with state conciliators who have intervened in the proceedings (Government Code 54957.6).

The law prohibits, in this type of closed session, final action on the proposed compensation of one or more unrepresented employees.

7. Education Code authority for closed session to consider particular student matters. The Education Code (35146, 48912 and 48918), not the Brown Act, authorizes closed sessions to consider discipline of any student or to consider any action involving a student where disclosure of information would violate the privacy of student records protected from disclosure by state or federal law.

Pursuant to Education Code 35146, closed sessions for student discipline (except expulsion) are mandatory unless the parents or student (after proper notice) otherwise request, in which case the business must be conducted in public. Even here, however, matters conflicting with the privacy rights of students who are not the subject of the discipline must still be discussed in closed session. In cases of expulsion, Education Code 48918 provides that the board meet in closed session, unless the student submits a written request at least five days before the date of the hearing that the hearing be held in open session. Regardless of whether a K-12 expulsion hearing is conducted in closed or open (public) session, the board may “deliberate” in private to determine whether the student should be expelled. However, the parent or guardian, the pupil and their legal counsel must be allowed to attend that “deliberation” portion of the closed session if the board permits anyone else who is not a board member to be present during the closed session deliberations.

Also, unlike personnel matters, final board action in a student discipline case must be taken, not just announced, in public session. A board that has tentatively decided a student’s case in closed session should reconvene in public session and vote publicly (Education Code 35146 and 48918).

8. Education Code authority for closed session to review assessment instruments. Education Code 60617 authorizes the board to meet in closed session to review the contents of any student assessment instrument used as part of the statewide testing system. Before any such meeting, the board must agree by resolution to accept any terms or conditions established by the state Board of Education for this review.
9. Review of audit report from Bureau of State Audits. Government Code 52956.75 authorizes the board to meet in closed session to discuss its response to a confidential, final draft audit report from the Bureau of State Audits.

After public release of the report by the bureau, any board meeting to discuss the report must be conducted in open session. A member of the Legislature may request that the Bureau of State Audits conduct an audit of school districts. This audit is separate from the annual audit that districts must conduct pursuant to Education Code 41020.

Special collective bargaining considerations

The Educational Employment Relations Act (EERA; Rodda Act, Government Code 3540 et seq.) excludes certain proceedings from the requirements of the Brown Act and the board meeting statutes in the Education Code. These proceedings include (Government Code 3549.1):

- any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization;
- any meeting of a mediator with either party or both parties to the meeting and negotiating process;
- any hearing, meeting or investigation conducted by a fact finder or arbitrator; and
- any closed session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

Government Code 3547 requires that all “initial” proposals of public employers and exclusive representatives be presented at a public meeting. The board cannot meet or negotiate such proposals until a “reasonable” time has elapsed that would provide the public with the opportunity to learn about the proposals and comment on them. After such a “reasonable” period of time, the board shall adopt its initial proposal at an open session meeting. New subjects of meeting and negotiating arising after presentation of initial proposals must be made public within 24 hours.

The EERA also requires that a school district, prior to entering into a written agreement, disclose to the public at an open meeting the major provisions of any tentative agreement with an exclusive bargaining representative. Such disclosure includes, but is not limited to, the costs that would be incurred by the district under the agreement for current and subsequent fiscal years (Government Code 3547.5). The disclosure should be made in a written statement made available to the public prior to the board meeting and posted with the agenda, and it should be on the agenda as an information item preceding the agenda item on which the board will take action on the tentative agreement.

Closed session agendas

A closed session may be conducted only during a meeting that has been called with proper notification. Government Code 54954.2 also requires that brief agenda descriptions be provided concerning matters to be heard in closed session. To this end, Government Code 54954.5 provides sample

formats for agenda descriptions for closed session items. The law does not require use of these particular formats, but if a district uses them, it will be exempt from liability based on a challenge to the adequacy of the agenda item.

The following include several "safe harbor" agenda descriptions provided by that section. Please refer to Section 54954.5 for additional examples.

1. For closed session items concerning real property transactions pursuant to Government Code 54956.8:

CLOSED SESSION: *CONFERENCE WITH REAL PROPERTY NEGOTIATORS*

Property: (Specify street address or, if no street address, the parcel number or other unique reference of the realty.)

Agency negotiator: (Specify name of negotiators attending the closed session. If the designated representative or negotiator is unable to attend the closed session, an agent or designee may participate in his/her place. However, the name of the agent or designee must be announced at an open session held prior to the closed session.)

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

2. For closed session items concerning conferences with legal counsel regarding existing litigation pursuant to Government Code 54956.9:

CLOSED SESSION: *CONFERENCE WITH LEGAL COUNSEL — EXISTING LITIGATION — Subdivision (a) of Government Code 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.)

3. For closed session items concerning conferences with legal counsel regarding anticipated litigation pursuant to Government Code 54956.9:

CLOSED SESSION: *CONFERENCE WITH LEGAL COUNSEL — ANTICIPATED LITIGATION — Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9*

(Specify number of potential cases. In addition to this information, 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.)

or

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

4. For closed session items discussed by joint powers agency pursuant to Government Code 54956.95:

CLOSED SESSION: *LIABILITY CLAIMS*

Claimant: (Specify name of claimants (unless unspecified pursuant to section 54961).)

Agency claimed against: (Specify name.)

5. For closed session items concerning a threat to public services discussed pursuant to Government Code 54957:

CLOSED SESSION: *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.)

6. For closed session discussions concerning personnel matters pursuant to Government Code 54957:

CLOSED SESSION: *PUBLIC EMPLOYEE APPOINTMENT*

Title: (Specify description of position to be filled.)

CLOSED SESSION: *PUBLIC EMPLOYMENT*

Title: (Specify description of position to be filled.)

CLOSED SESSION: *PUBLIC EMPLOYEE PERFORMANCE EVALUATION*

Title: (Specify position title of employee being reviewed.)

CLOSED SESSION: *PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE*

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

7. For closed session items concerning labor negotiations discussed pursuant to Government Code 54957.6:

CLOSED SESSION: *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 his/her place; 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 the organization representing employee(s) in question.)

or

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

8. For closed session items concerning joint powers agency confidential issues pursuant to Government Code 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY: (Specify by name.)

Discussion will concern: (Specify closed session description used by the joint powers agency). Name of local agency representative on joint powers agency board:

(Specify name.)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

Announcement in public of purpose of closed session before going into closed session

Prior to holding any closed session, the board must orally disclose in public session the item(s) to be discussed in that particular 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 or may be an oral statement of the same information. In the closed session, the board may consider only those matters covered in its statement (Government Code 54957.7).

Announcement in public of actions taken in closed session

With limited exceptions, the law allows the board to act (vote) in closed session on legitimate closed session matters. The Brown Act requires that when the board takes action on a matter in closed session, certain types of actions taken in closed session must be reported in public session, usually at the public portion of the same meeting after the closed session action. The descriptions below are keyed to the closed session authorizations described above.

1. Approval of agreement concluding real estate negotiations pursuant to Government Code 54956.8. If the board's own vote makes the agreement final, the board must report in open session at the public meeting in which the closed session is held, the approval, the substance of the agreement and the vote (including abstentions) of every member present. If final approval requires approval by another party, the district must disclose the fact of that approval, the substance of the agreement and the vote (including abstentions) of every board member present to anyone who inquires, as soon as the other party has approved the agreement and informed the district of that approval (Government Code 54957.1).
2. Approval to legal counsel to defend, appeal or not appeal, or appear in litigation as "friend of the court" pursuant to Government Code 54956.9. Report the action in open session at the public meeting in which the closed session is held, including the vote (including abstentions) of every board member present. The report must also identify, if known, the adverse parties and the substance of the litigation (Government Code 54957.1).
3. Approval to legal counsel to initiate or intervene in a lawsuit pursuant to Government Code 54956.9. The announcement need not identify the action, defendants or other particulars, but must state that direction to sue or intervene has been given and that the action, the defendants and the details will be disclosed to anyone inquiring after the lawsuit is commenced unless doing so would jeopardize the district's ability to serve process on one or more unserved parties, or doing so would jeopardize its ability to conclude existing settlement negotiations to its advantage. The vote (including abstentions) of every board member present must be reported. (Government Code 54957.1).

4. Approval given to legal counsel to settle pending litigation pursuant to Government Code 54956.9. If the board's action accepts a signed offer from the other party(ies) and makes the settlement final, report in open session at the meeting during which the closed session is held, the approval, the substance of the agreement and the vote (and abstentions) of all board members present. If final approval rests with the other party or with the court, report the fact of approval, the substance of the agreement and the vote (and abstentions) of all board members present to anyone who inquires once the settlement is final (Government Code 54957.1).
5. Disposition of claims pursuant to Government Code 54956.95. Report "as soon as reached" and include the name of the claimant(s), name of the district claimed against, substance of claim, monetary settlement agreed upon by the district and the claimant, and the vote (including abstentions) of all board members present (Government Code 54957.1).
6. Action taken to appoint, employ, dismiss, accept the resignation of or otherwise affect the employment status of an employee pursuant to Government Code 54957. Report at the public meeting during which the closed session is held, the title of the position and the action and vote (and abstentions) of all board members present. However, do not report a dismissal or the nonrenewal of an employment contract until the first public meeting following exhaustion of administrative remedies, if any (Government Code 54957.1).
7. Approval of an agreement concluding labor negotiations with represented employees pursuant to Government Code 54957.6. Report after the agreement is final and has been accepted or ratified by the other party. Identify the items approved and the other parties to the negotiations, also the vote (including abstentions) of all board members present (Government Code 54957.1).

How does the district make the required reports of closed session actions? Report orally or in writing. If a member of the public is present when the closed session ends, and has either made a standing request for notice of meetings (under Government Code 54954.1 or 54956) or has submitted a written request within 24 hours of the posting of the agenda of the meeting at which the closed session was held, give that person copies of contracts, settlement agreements, or other documents finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to these documents requiring retyping, they may be retyped during normal business hours before being released, but the presiding officer or designee must orally summarize the amendments for any other person present who requests the information. In addition, any person who requests may inspect the documents on the next business day after the meeting or, in the case of substantial amendments, when all necessary retyping is done (Government Code 54957.1).

It is recommended that the superintendent and clerk of the board review Government Code 54957.1 for all the details of closed session action public reporting requirements.

Confidentiality of closed session discussions

Government Code 54963 specifies that a person may not disclose confidential information acquired during his/her presence in a closed session, unless a majority of the board authorizes the disclosure. For this purpose, "confidential information" means a communication made in a closed session that is specifically related to the reason the board is meeting in closed session. Remedies that the board may pursue for a willful disclosure include injunctive relief in a court of law (i.e., injunction or restraining order), referral of the board member to the grand jury or disciplinary action against an employee. However, action may not be taken against the person making the disclosure if such disclosure was part of an investigation by a grand jury or the district attorney's office, part of a whistleblower action, or merely an opinion as to the legality of board action in closed session.

An exception exists for board members who are also serving on a board of a joint powers agency. See Types of closed sessions above.

chapter 6

Records of meetings and public access to documents

Records of open meetings

Education Code 35145 provides that minutes must be taken of all actions taken by the governing board. Education Code 35163 also requires that every official board action be affirmed by a formal vote of the members of the board and kept in a journal of its proceedings.

With limited exceptions, documents such as the minutes and agendas constitute public records that are available to the public for inspection (Education Code 35145, Government Code 54957.5). In fact, all writings distributed to the board at an open session meeting for

consideration of an open session matter constitute public records, and are subject to public inspection. Such writings must be made available, upon request, for public inspection at the meeting if prepared by the school district or governing board, or after the meeting if prepared by some other person. The writings must also be made available in appropriate alternative formats upon request by a person with a disability. Except for persons with disabilities, the board has the discretion to charge a standard fee or deposit for copies made which covers the direct costs of duplication (Government Code 54957.5).

Certain documents remain exempt from public disclosure as public records, including, but not limited to:

- initiative, referendum and recall petitions calling for special elections to fill board vacancies (Government Code 6253.5);
- preliminary drafts, notes or interagency or intra-agency memoranda not retained by the agency in the ordinary course of business, provided that the public interest in non-disclosure outweighs the public interest in disclosure (Government Code 6254);
- records pertaining to pending litigation (Government Code 6254);
- personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy (Government Code 6254);
- contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the district relative to the acquisition of property (Government Code 6254); and
- documents protected by privilege (Government Code 6254).

As discussed previously, any person attending a board meeting has the right to record the proceedings on a tape or audio recorder, or by still or motion picture camera or to broadcast the meeting, unless the board reasonably finds that such a recording is, or would be, persistently disruptive of the meeting (Government Code 54953.5, Government Code 54953.6).

Records of closed sessions

Education Code 35145 requires that minutes of actions taken by the board be kept for all public meetings; it does not address closed sessions. Government Code 54957.2 provides that a governing board may by resolution designate a clerk, officer or employee to attend and maintain minutes of each closed session. The minutes of closed sessions are not public records and are not subject to disclosure under the Public Records Act. Only members of the governing board or persons designated by court order may have access to closed session minutes, or to a court if some violation is alleged to have occurred. Actions taken in closed session, when announced in public session, should be incorporated into the minutes of the meeting.

Consult legal counsel before making it a practice to keep closed session minutes.

chapter 7

Enforcement, penalties and remedies

Enforcement

Existing law contains authority for the district attorney or any interested person to file a lawsuit to stop or prevent violations or threatened violations of the Brown Act by the governing board. A lawsuit may also be filed to determine the applicability of the Brown Act to actions or future action, to determine the validity of any rule or action taken by the governing board to penalize or otherwise discourage the expression of one or more of its members, or to compel the board (upon a court finding that the board has violated certain Brown Act requirements) to tape record its closed sessions (Government Code 54960).

Another statute, Government Code 54960.1, authorizes the district attorney or any interested person to file a lawsuit for the purpose of having specified types of board action declared null and void; other specified board actions are exempt from being declared null and void. Actions taken pursuant to the following statutes may be invalidated:

- Government Code 54953, regarding open meeting and teleconferencing
- Government Code 54954.2 and 54954.5, regarding notice and agenda requirements for regular meetings and closed sessions

- Government Code 54954.6, regarding tax hearings
- Government Code 54956, regarding special meetings
- Government Code 54956.5, regarding emergency meetings

Prior to instituting such an action, the district attorney or interested person must demand in writing that the legislative body “cure or correct” the action allegedly made in violation of the Brown Act. The demand must be made within 90 days from the date action was taken, unless the alleged violation was an agenda description in violation of Government Code 54954.2. Under the latter circumstances, the demand to cure or correct must be made within 30 days from the date of the action. The demand must be in writing and clearly describe the challenged action and nature of the alleged violation.

Within 30 days of receipt of the demand, the board must cure or correct the challenged action and inform the demanding party in writing of the cure or correction, or inform the demanding party of its decision not to cure and correct the action. If the board takes no action within the 30-day period, the inaction is deemed a decision not to cure or correct. Within 15 days after the expiration of the 30-day period, or within 15 days after receiving the notification of the board’s decision to not cure and correct, the demanding party must initiate the lawsuit described above or thereafter be barred from suing (Government Code 54960.1).

Ultimately, during any judicial action to determine if a Brown Act violation occurred, if the court determines that the legislative body took action to cure or correct the alleged violation, the lawsuit will be dismissed with prejudice. Also, the fact that the board took action to cure or correct is not admissible as evidence of a violation of the Brown Act.

Penalties and remedies

Each member of a board who attends a meeting of the board where action is taken in violation of any provisions of the Brown Act, and who 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, is guilty of a misdemeanor (Government Code 54959). Thus, the Brown Act only provides for criminal penalties where a meeting is conducted at which “action is taken” and the board member had the actual or implied “wrongful intent” to deprive the public of information. What circumstances may be found to produce the requisite wrongful intent will be assessed on a case-by-case basis.

Finally, if a plaintiff successfully challenges a board based upon alleged violations of Brown Act provisions, a court may (and probably must) award court costs and reasonable attorney fees to the plaintiff. However, where the plaintiff’s legal action against the district is “clearly frivolous and totally lacking in merit,” the defendant legislative body would be entitled to recovery of costs and attorney fees from the plaintiff (Government Code 54960.5).

chapter 8

Conclusion

The Brown Act (contained in the Government Code) and Education Code regulate how governing boards and other defined entities conduct their business, including their meetings. The discussion in this book is necessarily general; each case must be analyzed on its individual facts. Whenever there is a compliance question or any question as to whether a meeting or a portion of a meeting must be held in open or closed session, it is best to contact the legal counsel to ensure compliance with the law.

appendix A

Frequently asked questions about the Ralph M. Brown Act

Definition of “meeting”

Q1: May all board members attend a social function together without violating provisions of the law regulating meetings?

- A1: YES. As long as the board members do not discuss, deliberate or act on what can be characterized as district business, no “meeting” has occurred.
- Q2: May all board members attend a California School Boards Association conference together without violating the law? May the members ride in the same car or have dinner together?
- A2: YES. See A1.
- Q3: May all board members attend a National School Boards Association conference together?
- A3: YES. See A1.

Types of meetings

- Q4: Does a strike by school employees justify the call for an emergency meeting without complying with the 24-hour notice requirement for special meetings?
- A4: YES. Work stoppages or other activities that severely impair public health or safety, as determined by the school board, authorize an emergency meeting without complying with the 24-hour notice requirement.
- Q5: May an emergency meeting be called due to a strike take place in closed session?
- A5: NO. The board may only meet in closed session during an emergency meeting for the purpose of meeting with law enforcement officials on matters posing a threat to the security of public services or facilities and only when two-thirds of the board members present agree to the closed session. The emergency meeting for the strike can take place if conducted in open session and if the board has made the required finding regarding severe impairment of public health or safety.
- Q6: Can the board have a nonagendized study session before a regular meeting?
- A6: NO. Except meetings involving collective bargaining positions in which the board’s designated representative is meeting with the board to discuss and receive instructions regarding the board’s bargaining positions or other collective bargaining matters, a study session, financial briefing or any other session of this type is a meeting and must be agendized.
- Q7: A toxic chemical has been discovered in the water supply of a school district. Can the board have a special meeting only after a 24-hour notice of a special meeting?
- A7: NO. Under the law, emergency circumstances may justify an emergency meeting of the board of trustees with less than a 24-hour notice. This would come within the scope of the definition of emergency circumstances, as long as the board makes the required findings.
- Q8: Can some members of the board attend a meeting with county officials to discuss selling a piece of district property?
- A8: YES. But if a majority of the board is attending the meeting, then the meeting needs to be agendized and the meeting would be subject to the same requirements as any other “regular” meeting.
- Q9: Due to a delivery snafu, a board member did not receive the notice and agenda of a special meeting at least 24 hours before the meeting. Must the meeting be cancelled?
- A9: NO. As long as the affected board member files a written waiver of notice either prior to or at the meeting. The notice may also be dispensed with as to any member who is actually present at the meeting when it convenes.

Public comment

- Q10: In public session, a member of the public comes to the podium and states that Superintendent Bill Smith is an incompetent idiot. Does the board have the right to require that, if this person wants to complain about the superintendent further, it can be done in closed session?
- A10: NO. Under the *Baca v. Moreno Valley* decision, a legislative body cannot censor in advance public speech that includes criticisms about a specific employee or require that such discussions not take place in public. If a person makes slanderous statements (i.e., purportedly factual statements as opposed to pure opinion) the board may warn the person that such discussion is out of order and that the person’s statements may no longer be subject to privilege and could place the person at risk of civil liability.
- Q11: Can the board have a policy of circulating a sign-in sheet among the persons attending a meeting?
- A11: YES. But see A12 and A13.

Q12: Can the board require, as a condition of attending the board meeting, that members of the public identify themselves on the sign-in sheet?

A12: NO. The Brown Act prohibits the board from requiring, as a condition of attendance, signing in on an attendance sheet.

Q13: If a sign-in sheet is circulated, is it enough to say that signing in is voluntary?

A13: NO. The Brown Act requires that if the board does circulate a sign-in sheet, the sign-in sheet must state on its face that signing it is voluntary AND that all may attend the meeting regardless of whether one signs in. Both statements must appear.

Q14: May a member of the board participate as a member of the public during the general comment portion of a board meeting?

A14: PROBABLY YES, so long as a quorum still exists without that board member. While there is no legal prohibition against this since a board member is also a member of the public, it should be discouraged since board members need to work with the whole board as part of the governance team.

Agendas

Q15: Is “consideration of service levels” a sufficient agenda description to adopt a resolution to reduce particular kinds of certificated services for the next year?

A15: PROBABLY NO. The cases interpreting the law require that each matter to be acted on in public session be acted on under a relatively specific agenda item description. It would appear that this agenda description is not sufficiently specific (i.e., it does not give the public actual notice of what the board will be considering acting upon).

Q16: Can the board impose requirements on itself that allow the public greater access to board meetings than are required by the Brown Act?

A16: YES. The board can allow even greater access to board meetings than is required by the law, subject to the confidentiality of personnel matters.

Closed sessions

Q17: Can the board meet in closed session without having an agenda item saying “closed session?”

A17: NO. The agenda must contain a brief general description of each item of business to be transacted, including items to be discussed in closed session. Government Code 54954.5 provides “safe harbor” language for closed session agenda items.

Q18: Can the board discuss in closed session what salary to pay a particular employee?

A18: YES. Government Code 54957.6 allows a board to discuss in closed session with the board’s designated representative matters concerning salaries, salary schedules and fringe benefits. The board may conduct these discussions relative to represented (bargaining unit members) and unrepresented (management, confidential and supervisory) employees.

Q19: Can the board decide in closed session the duties of a particular position?

A19: NO. As a general matter, the duties assigned to positions are a policy matter outside the “personnel” exception to the public meeting law.

Q20: Can any “action taken” in closed session be reported out in public session at the next public meeting, along with the roll call vote thereon?

A20: NO. Legally specified types of action taken must be reported at the meeting during which the closed session occurs as required by Government Code 54957.1. The board must reconvene in open session prior to adjournment to make the disclosure. The only exceptions to this requirement are set forth in Government Code 54957.1.

Q21: May an employee be fired in closed session?

A21: YES. The law specifically allows a school district to dismiss a public employee in closed session. Of course, such a dismissal is an “action taken” to dismiss a public employee and, therefore, must be reported out in the public portion of the meeting, along with the specific roll call vote thereon, unless the employee has an administrative process remaining to challenge the dismissal.

Q22: Can the board review complaints about the board president in closed session?

A22: NO. Complaints about board officers and other board members may not be discussed in closed session. Because board members are not considered “employees,” such complaints must be handled in open session. This situation should be distinguished from one of the exceptions to the open meeting requirement that allows the board to hear in closed session complaints or charges against a public

employee made by another employee or any other person.

Q23: Can the board replace the president of the board in closed session?

A23: NO. Election of officers must be conducted in open session.

Q24: Can the board discuss any and all legal matters with its attorney in closed session?

A24: NO. The Brown Act does not permit the board to meet with its attorney over "all" legal matters. The board may legally meet with its attorney in closed session, "to confer with, or receive advice from its legal counsel regarding pending litigation when discussion in open session" would prejudice the board's position in the litigation. Government Code 54956.9 lists a specific definition of "pending litigation."

Q25: Can the board hear a complaint about an employee in closed session without first informing the employee that he/she is going to be the subject of a complaint so that the employee may have the matter heard in open session?

A25: NO. The law requires that an employee must be given 24 hours written notice before the board hears complaints or charges against him or her, but only requires that the employee be given the option of having the matter heard in open session. The board cannot meet in closed session to hear complaints or charges against an employee unless it has given the 24-hour notice. Failure to give the required notice voids any disciplinary or other action taken by the board based on the complaints or charges.

Q26: Before releasing a probationary certificated employee, must the board give the employee 24 hours prior written notice that it will be considering the action and give the employee the option of having the matter heard in open session?

A26: NO. Unless the release is based on specific complaints or charges against the employee, (see A25) the board is not required to give the employee prior notice or hear the matter in open session. Consideration of performance evaluation is not considered a complaint or charge.

Q27: Does the board always have the option of hearing complaints about employees in closed or open session?

A27: NO. If it is the kind of complaint or charge against an employee that is a legitimate subject for a closed session, the board may hear the complaint in closed session unless the employee that is the subject of the complaint requests that the complaints be heard by the board in open session. In the latter event, the board has no discretion; it must hear the complaints in open session. If the employee does not exercise his option, the district has the option of closed or open session. As noted above, the board must give the employee 24 hours prior written notice that it will be hearing the complaint or charge.

Q28: When a board member is the subject of a complaint, can that board member request that the complaint be heard in closed session?

A28: NO. See A22 above. An elected board member is not an employee or official entitled to a 24-hour written notice of a hearing on a specific complaint or charge made by an employee or another person. Complaints against board members must be aired in open session subject only to duly adopted time and place limitations (*Baca v. Moreno Valley*).

Q29: Can the board have a closed session for personnel matters before a regular meeting?

A29: NO. The board may, however, adjourn immediately into closed session for legitimate personnel considerations after starting the meeting in open session and allowing public comment on items on the closed session agenda, provided the closed session is properly agendized.

Q30: When the closed session is at the beginning of the meeting, must the board first meet in open session before adjourning to closed session?

A30: YES. The law requires that, prior to holding a closed session, the board disclose in open session the items to be discussed in closed session.

Q31: Can the board have a meeting with its bargaining representatives in closed session before a regular meeting?

A31: YES. The Rodda Act contains a broad exemption from the public meeting law for various types of collective bargaining matters. The board's meeting with its bargaining representatives to discuss board positions in collective bargaining is within that exception.

Q32: If a classified employee is fired in closed session, can the announcement simply say: "Tonight in closed session, a classified employee was dismissed. The vote was 3-2 to approve the termination?"

A32: NO. Such an announcement is too general. The law requires that if such action is taken in closed session, the action must be reported out in the public session of that meeting (unless administrative remedies have not been exhausted) and report the vote or abstention of every member present. The report must identify the position of the employee.

Q33: Must the general purpose of the closed session be disclosed in public if the action to be taken in closed session is an action other than to appoint, employ or dismiss a public employee?

- A33: YES. The purpose of the closed session must be stated in the agenda and the presiding officer must, in open session, disclose the item(s) to be discussed in the closed session. It is sufficient to reference the item(s) by agenda number or letter. See Government Code 54954.5 for “safe harbor” language in describing closed session items.
- Q34: Can the issue of whether to reduce or discontinue particular kinds of certificated services be acted on in closed session?
- A34: PROBABLY NO. The decision to reduce or discontinue particular kinds of services is generally a policy matter to which the public has a right to give its input and listen to the deliberations.
- Q35: Can the board in closed session act on the decision of a Commission on Professional Competence to terminate a permanent certificated employee for cause?
- A35: NO. This is a trick question. Under the law, the decision of a Commission on Professional Competence to terminate a permanent, certificated employee for “cause” is not a matter to be acted on by a board of trustees. The decision of the Commission on Professional Competence in this respect is, under the statute, the decision of the governing board. If the board disagrees with the decision of a Commission on Professional Competence, it must seek a review of that decision through filing a Petition for Writ of Administrative Mandamus in superior court. If properly agendized, a closed session would be permissible to discuss that potential litigation.
- Q36: Can the board ask an impartial third party to assist it in closed session to hear a complaint against an employee?
- A36: NO. As a general rule, only those persons who have a line responsibility or specific need to be present in order to effectively deal with the complaint have a right to be present. The board should not allow disinterested third parties to attend closed sessions.
- Q37: In a legitimate closed session, may the superintendent and all of his/her cabinet remain in attendance?
- A37: PROBABLY NO. See A36.
- Q38: The board has attorneys working on several different legitimate closed session matters. May all of these attorneys remain in a closed session until all of the matters they are dealing with have been disposed of?
- A38: PROBABLY NO. See A36.
- Q39: Can the board in closed session interview applicants for board legal counsel?
- A39: If the board’s legal counsel is to be an employee of the district, the answer is YES. If the board’s legal counsel is to be an independent contractor, such as an attorney in private practice, the answer is NO. The appointment or employment of a public officer or employee is a legitimate subject of closed session. An attorney in private practice retained by the board is not a public officer or employee.
- Q40: Can a board member reveal confidential personnel information that was part of a closed session discussion to a third party?
- A40: PROBABLY NO. A board member may not disclose confidential information acquired by his/her presence in a closed session unless a majority of the board authorizes the disclosure or if the disclosure was part of an investigation by the grand jury or district attorney’s office, part of a whistleblower action or an opinion as to the legality of the board action in closed session.
- Q41: Can the entire superintendent’s cabinet (assistant superintendents) attend every closed session?
- A41: NO. A closed session cannot be “semi-closed.” Only staff with an official role in the proceeding should be admitted into the closed session. For example, the assistant superintendent of personnel may need to be included in the closed session on employee discipline, but then leave the meeting when the discussion turns to real estate negotiations.

Board committees

- Q42: Does the Brown Act apply to a committee created by board action and consisting of two board members and a teacher?
- A42: YES. Board advisory committees must provide public notice of meetings and conduct meetings in accordance with the Brown Act. However, because these committees are exempted from the requirement to provide a time and place for holding regular meetings, in practice these committee meetings are often treated as “special” meetings for which 24-hour notice is provided.
- Q43: Does the Brown Act apply to a board advisory committee consisting of less than a majority of the board?
- A43: NO. The Brown Act does not apply to advisory committees composed solely of less than a majority of the board. However, standing committees which have a continuing subject matter jurisdiction are subject to the Brown Act, regardless of the committee’s composition.
- Q44: Does the Brown Act apply if other members of the board who are not part of the advisory committee attend the committee meeting as observers?

A44: NO. However, according to the attorney general, those “observers” may not ask questions or make statements, and they must sit in the area designated for members of the public.

Minutes

Q45: Must the board take minutes for all closed sessions?

A45: NO. The keeping of minutes for closed session matters is discretionary; however, districts should consult with legal counsel prior to deciding whether to keep closed session minutes. Minutes are required for all open session actions.

Q46: Can members of the public have access to the tape of the board meeting that is created by the secretary to help compile the minutes?

A46: YES. Any tape or film record of an open meeting made by the district is a public record which may not be destroyed for 30 days and must be made available for public inspection on a district recorder without charge.

Newly elected board members

Q47: Are newly elected board members subject to the Brown Act before they are sworn in?

A47: YES. Newly elected board members are subject to the Brown Act as soon as they’re elected, even if they have not yet been sworn in.

Q48: Can newly elected board members attend the CSBA conference if they haven’t been sworn in yet?

A48: YES. See A2. The CSBA conference is not a “meeting” under the Brown Act, so board members do not need to be sworn in to attend. However, because newly elected board members are subject to the Brown Act, if a majority of the board is attending, district business cannot be discussed, unless it is part of the regularly scheduled program.

Enforcement

Q49: If a matter is acted on in closed session that must, by law, be acted on in public session, is the closed session action void?

A49: YES, if a suit is filed challenging the action in a timely manner. Other provisions of law require that the public agenda of any board meeting contain a relatively specific statement of the matter to be acted on by the board of trustees. Earlier cases have held that where the board acted on an agenda item that was insufficiently specific, the action is void. Therefore, assuming there was nothing on the agenda that identified the specific action to be taken in closed session and that action was, by law, required to be taken in public session, the action would be void.

Q50: Can a board member be charged with a crime if he or she mistakenly brings up a matter in closed session that must, under the law, be handled in public session?

A50: NO. Government Code 54959 provides that only intentional violation of the law will bring about criminal liability. The key word in the facts of the question is “mistakenly.”

E-mail

Q51: May a board member communicate with another board member on board business by e-mail via home or office computers?

A51: YES. Board members should, however, proceed with caution when using such communication. With the exception of teleconferencing, any use of direct communication, personal intermediaries or technological devices by a majority of members to discuss, deliberate, or take action on any matter of district business is a prohibited “serial” meeting. Typically, a serial meeting is a series of communications, each of which involves less than a majority of the legislative body, but which taken as a whole involves a majority of the body’s members. For purposes of the Brown Act, e-mail is subject to the same conditions and the same rules of confidentiality as other forms of communication, such as individual conversations and telephone calls. However, the ease with which e-mails can be shared and forwarded requires extra caution. E-mails may also raise issues under the Public Records Act.

Q52: Can a board member participate in the district’s chat room where employees and members of the public participate anonymously and discuss issues of district business?

A52: MAYBE. Depending on how many members are participating, a chat room is a technological device that may lead to a serial meeting. See A51.

appendix B

GOVERNMENT CODE

Title 5. Local Agencies

Division 2. Cities, Counties, and Other Agencies

Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies

Chapter 9. Meetings

§ 54950. Declaration of public policy

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

§ 54950.5. Title of act

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

§ 54951. "Local agency"

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

§ 54952. "Legislative body"

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

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

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

(c)

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

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

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

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

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

§ 54952.1. Conduct and treatment of electee

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. Multimember body with delegated authority as “legislative body”

(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. “Action taken”

As used in this chapter, “action taken” means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

§ 54952.7. Copy of chapter

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. Requirement that meetings be open and public; Teleconferencing; Teleconference meetings by health authority

(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 roll call.

(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, except as provided in subdivision (d). 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. Grand jury testimony

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. Meetings to conform to Americans With Disabilities Act

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. Registration of attendance

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 54953.5. Recording proceedings

(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. Restrictions on broadcasts of proceedings

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. Access to meetings beyond minimal standards

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. Rules for conduct of business; Time and place of meetings

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

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

- (1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.
- (2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.
- (3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.
- (4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.
- (5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- (6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- (7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

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

- (1) Attend a conference on nonadversarial collective bargaining techniques.
- (2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the 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. Request for notice; Renewal; Annual Fee

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

§ 54954.2. Posting of agenda; Actions not on agenda

(a)

- (1) 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.
- (2) 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.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

§ 54954.3. Public testimony at regular meetings

- (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.*
- (b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.*
- (c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.*

§ 54954.4. Legislative findings and declarations relating to reimbursements; Legislative intent; Review of claims

- (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. Description of closed session items

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/DISSMISSAL/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.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY BUREAU OF STATE AUDITS

§ 54954.6. Public meeting on general tax or assessment; Notice

(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 XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.*

§ 54955. Adjournment of meetings

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

§ 54955.1. Continuance of hearing

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

§ 54956. Special meetings; Notice

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

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

§ 54956.5. Emergency meetings; Notice

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

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

(b)

- (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.
- (2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

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

members present.

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

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

§ 54956.6. Fees

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

§ 54956.7. Closed sessions regarding application from person with criminal record

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.

§ 54956.75. Closed session for response to final draft audit report

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

§ 54956.8. Closed sessions regarding real property negotiations

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

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

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

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

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

§ 54956.81. Closed sessions regarding purchase or sale of pension fund investments

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

§ 54956.86. Closed session for health plan member

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. Disclosure of records and information; Meetings in closed session

- (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. Closed sessions concerning pending litigation; Lawyer-client privilege

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

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

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

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

- (a) *Litigation, to which the local agency is a party, has been initiated formally.*
- (b)
- (1) *A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.*
 - (2) *Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.*
 - (3) *For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:*

- (A) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.
- (B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.
- (C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.
- (D) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.
- (E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.
- (F) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

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

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

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

§ 54956.95. Closed sessions regarding liability

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

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

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

§ 54956.96. Disclosure of specified information in closed session of joint powers agency; Authorization of designated alternate to attend closed session; Closed session of legislative body of local agency member

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

- (1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

- (A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability

implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

§ 54957. Closed session regarding public security, facilities, employees, national security, examination of witness

(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. Public report of action taken in closed session; Form; Availability; Actions for injury to interests

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

(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 follows:

(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.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(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 subdivision (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.

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

§ 54957.2. Minute book for closed sessions

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

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

§ 54957.5. Agendas and other writings as public records

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open 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, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

(b)

(1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) 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.

(d) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 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.

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

§ 54957.6. Closed sessions regarding employee matters

(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. Disclosure of items to be discussed at closed session

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

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

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

§ 54957.8. Closed sessions of multijurisdictional drug law enforcement agencies

(a) For purposes of this section, "multijurisdictional law enforcement agency" means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

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

§ 54957.9. Authorization to clear room where meeting willfully interrupted; Readmission

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

§ 54957.10. Closed sessions regarding application for early withdrawal of deferred compensation plan funds

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. Application of chapter

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. Criminal penalty for violation of chapter

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. Proceeding to prevent violation of chapter; Recording closed sessions; Procedure for discovery of tapes

(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. Proceeding to determine validity of action; Demand for correction

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

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

(c)

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

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

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

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

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

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

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

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

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

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

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

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

§ 54960.5. Costs and attorney fees

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

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

§ 54961. Meeting place with discriminatory admission policies; Identification of victim of sexual or child abuse

(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 ancestry or any characteristic listed or defined in Section 11135, 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. Prohibition against closed sessions except as expressly authorized

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, 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. Disclosure of confidential information acquired in closed session prohibited; Disciplinary action for violation

(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 grand jury.

(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.