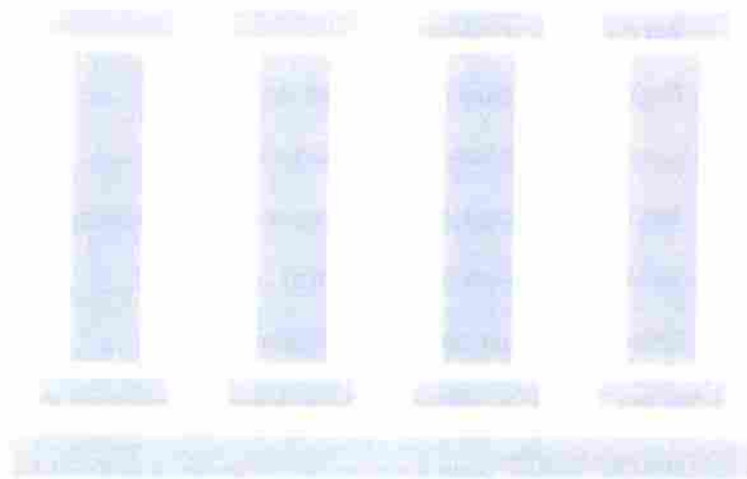




DANNIS WOLIVER KELLEY

# CONDUCTING THE PUBLIC'S BUSINESS UNDER THE BROWN ACT

15TH EDITION



*"It is the intent of the law that their actions be taken openly, and that their deliberations be conducted openly..."*

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## INTRODUCTION

The Ralph M. Brown Act Open Meeting Law, Government Code section 54950 et seq, ("Brown Act" or "Act") is arguably the most important statute in the day to day working life of a local legislator. The Brown Act fulfills two overriding purposes in the cause of transparency in government:

1. To keep the public informed of the actions, debates and views of its locally elected representatives; and
2. To provide the procedural framework for local legislators to meet, debate, act and listen collectively to themselves and their constituents.

School board members are called upon year after year to respond to new, amended or recently interpreted or reinterpreted substantive law by enacting policy, approving programs, overseeing district budgets and adopting curriculum and graduation requirements. Governing boards annually review labor negotiations, pending litigation, real property transactions and personnel actions. Not one of these actions can occur without reference to the statutory framework for properly calling, announcing and conducting Governing Board meetings – the Brown Act.

In 1993 three laws substantially amended the Brown Act.<sup>1</sup> These amendments significantly changed major provisions of the Brown Act related to agenda requirements, closed session deliberations, reporting out requirements, and the conduct of "meetings." In 1994, urgency cleanup legislation made additional changes to the Act.<sup>2</sup> Since 1998 the Legislature has continued to amend the Act and case law developments and Attorney General Opinions have clarified or interpreted various provisions of the Brown Act.

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<sup>1</sup> Assembly Bill No. 1426 (Burton) Stats. 1993, ch.1136, Senate Bill No. 36 (Kopp) Stats. 1993, ch. 1137, Senate Bill No. 1140 (Calderon) Stats. 1993, ch. 1138, all effective April 1, 1994.

<sup>2</sup> Senate Bill No. 752 (Kopp, Calderon), Stats. 1994, ch.32, effective April 1, 1994.





## I. DEFINITIONS: BOARD MEMBERS, LEGISLATIVE BODIES AND MEETINGS

### A. When Does A Board Member Become A Board Member?

The Brown Act defines "member of the legislative body of a local agency" to include any person elected or selected to serve, even if they have not yet assumed public office.<sup>3</sup> Once elected, such persons are expected to know the Brown Act and conform their conduct to its requirements, and can be held accountable in an action against the board for enforcement of the Act just as if they had already assumed office. This means such individuals would be counted as board members for purposes of determining whether a quorum of board members is present at a given time. (§ 54952.1.)<sup>4</sup> One district attorney's office has opined that the board member is not "elected" for purposes of § 54952.1 until the County Registrar of Voters has certified the election results; there do not appear to be any reported or precedential opinions on such timing. The Act permits governing boards to require that copies of the Act be provided to current and newly elected members who have not yet assumed office. (§ 54952.7.)

### B. What Is A Legislative Body?

The Brown Act applies to governing boards of local agencies (e.g., school or community college district governing boards), and the governing board of "any other local body created by state or federal statute" (e.g., special education local planning areas [SELPA]). In addition, the Brown Act requirements apply to any:

-  Commission
-  Committee
-  Or other body
-  Permanent or temporary

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<sup>3</sup> When a vacancy occurs between elections, the Education Code provides that the Board may choose to fill the vacancy by appointment or by special election, depending upon the timing of the vacancy. During some time frames, the county Board of Education may appoint an interim board member if the governing board fails to act. (Ed. Code, § 5090 et seq.)

<sup>4</sup> All references are to the Government Code unless otherwise specified.

Brown Act. The court held that the board and council were either the governing bodies of a local agency (§ 54952, subd. (a)) or the governing body of an entity created by another elected governing body or bodies to exercise lawfully delegated authority. (§ 54952, subd. (c)(1)(A).)

### C. What Is A Meeting?

The definition of a meeting is not determined according to whether “action” is “taken” by the governing body. (§ 54952.6.) Rather, section 54952.2 of the Act defines a “meeting” as the following:

- » Any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate or take action upon any item that is within the subject matter jurisdiction of the legislative body; or
- » A series of communications of any kind, directly or through intermediaries to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the legislative body.<sup>5</sup>

Thus, polling board members on an issue by telephone conferencing or other electronic means, such as computer modems, “E-mail,” or social media such as blogs, Facebook or Twitter constitutes a meeting and violates the Brown Act. (§ 54952.2, subd. (b).) (See also, 84 Ops.Cal.Atty.Gen. 30 (2001).) This may be distinguished from communication to and/or among board members for the purpose of providing information (e.g., a weekly report from the superintendent), or to build the board meeting agenda in a manner which allows sufficient time for the discussion of items. The key criterion is that the communication is procedural or administrative in nature as opposed to substantive discussion. Since 2009, this applies whether or not the communication might lead to development of a “collective concurrence” by board members.

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<sup>5</sup> Senate Bill No. 1732 (Romero) Stats. 2008, ch. 63, effective January 1, 2009.

Attendance is permitted at the above events and occasions as long as discussions by a majority of the board members do not occur, "other than as part of the scheduled program," on business of a "specific nature within the subject matter jurisdiction" of the local agency. (§ 54952.2, subd. (c)(2).) This means a majority of the board may make and/or listen to presentations on topics within the board's jurisdiction and, while not absolutely clear from the statute, might even allow a majority of board members to discuss such matters (e.g., as part of the audience), if the subject is part of the scheduled program.

## II. WHERE AND HOW MEETINGS ARE TO BE CONDUCTED

### A. Open and Public Meeting Requirements

Governing boards must hold regular meetings generally at least monthly<sup>7</sup> and must by rule fix the time and place for such meetings. (§ 54954; Ed. Code, §§ 35140-35142; 72000, subd. (c)(4).) This requirement does not apply to advisory and standing committees. Teleconference locations must be identified and accessible to the public. (§ 54953, subd. (b)(3).) If a meeting is conducted, in part, by teleconference, then at least a quorum of the board must participate from teleconference locations within the district's boundaries. Section 54953 requires all meetings to be open and public, and prohibits the governing board from taking any action by secret ballot, whether the action is preliminary or final in nature. This prohibition applies to closed sessions as well. (§ 54953, subd. (c).)<sup>8</sup> All votes taken during a teleconferenced meeting must be by roll call votes. (§ 54953, subd. (b)(2).) All meetings that are open and public must comply with the Americans with Disabilities Act and its implementing regulations. (§ 54953.2.)

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<sup>7</sup> Education Code section 35141 requires boards of union or joint union high school districts to hold regular meetings monthly or quarterly; other high school districts must hold regular meetings monthly.

<sup>8</sup> This provision codifies an Attorney General opinion prohibiting secret ballots. (68 Ops.Cal.Atty.Gen. 65 (1985).)

- 10 To meet with state or federal elected or appointed officials, when a local meeting would be impractical, solely to discuss legislative or regulatory issues over which the state or federal officials have control affecting the local agency.
- 10 To meet outside the agency's boundaries if the meeting takes place in or near a facility over which the agency has jurisdiction, provided that the topic of the meeting is limited to such facility.
- 10 To visit with the local agency's legal counsel in closed session on pending litigation when to do so would reduce legal fees or costs.<sup>10</sup>

#### 4. Additional Exceptions Applicable to School Boards

There are three additional exceptions allowing school boards to meet outside district boundaries: (1) to attend a conference on non-adversarial collective bargaining techniques,<sup>11</sup> (2) to interview members of the public residing in another district concerning the potential employment of an applicant for employment as superintendent of the board's district, (prior to January 1, 2005, the statute provided for interviews with reference to employing the superintendent of the district where the interviews may take place), or (3) to interview a potential employee from another district. (§ 54954, subd. (c).)

#### 5. Joint Powers Authorities

Joint Powers Authorities ("JPAs") must meet within the territory of one of its member agencies unless it has members throughout the state, in which case it may meet at any facility which conforms to the requirements of section 54961 related to accessibility, nondiscrimination and prohibiting locations where a fee is required. (§ 54954, subd. (d).) A meeting of the board of a trust fund for safety and training, jointly administered by members appointed by a city and by a union pursuant to a collectively bargained agreement, is not subject to the Brown Act. (87 Ops.Cal.Atty.Gen. 19 (February 24, 2004).)

<sup>10</sup> (Section 54954, subd. (b)(1)-(7).)

<sup>11</sup> We believe this exception, together with the EERA's exemption from the Brown Act of negotiations and related activities, allows boards to meet outside district boundaries for the purpose of actively *participating* in training on non-adversarial or interest-based bargaining.



Education Code section 35145, subdivision (a), requires minutes to be taken at all public school board meetings. These minutes are public records and are available to the public for inspection. The public's right to inspect and receive copies of "records" of public agencies is governed primarily by the California Public Records Act. (§ 6250 et seq.) There is no requirement that school boards tape record their meetings. However, if the board does tape meetings, the public has a right to inspect or listen to such tapes, pursuant to the CPRA. (64 Ops.Cal.Atty.Gen. 317 (1981).) The CPRA does not, however, govern the destruction of records.

Education Code section 35253 and its attendant regulations (Cal. Code of Regs., tit. 5, § 16020 et seq.) govern the destruction of school district records. Revised section 16022 provides generally for a four year retention rule, but such period does not apply to records subject to a retention schedule pursuant to state or federal law. (§ 16022, subd. (c).) Thus, the 30 day Brown Act retention period for tapes arguably still applies.

Section 54953.6 permits broadcasting of meetings unless the board makes a reasonable finding that the noise, illumination or obstruction of view would constitute a persistent disruption of the proceedings.

### III. AGENDA REQUIREMENTS

#### A. Open Session

The agenda must reasonably inform the public of the matters to be considered in sufficient detail to allow the public to determine whether to participate at the meeting. The Act requires agendas to contain a "brief general description" of agenda items which generally need not exceed 20 words. (§ 54954.2, subd. (a).) The Act also covers "items to be discussed in closed session," an agenda requirement expressly included in the Brown Act for the first time in 1994. As of January 1, 2003, the agenda must also include information regarding how, to whom, and when a request for disability-related modification or

the council's attention after the agenda was posted and the vote to add the matter to the agenda is unanimous;

- 12 Members of the public shall be permitted during a meeting to address any matter within the subject matter jurisdiction of the council or committee; and
- 13 Questions or brief statements by members of councils, committees or the public that do not have significant impact on pupils or employees or that can be resolved by providing information need not be on the agenda.

Education Code section 35147 provides that if a council or committee violates these procedural requirements, any person can demand reconsideration of the item at the next meeting and public input must be permitted. Section 35147 specifically states that written materials provided to councils or committees shall be made available pursuant to the Public Records Act.

### **C. Closed Session**

The Brown Act now provides specific guidelines for the information which should appear on the closed session agenda. (§ 54954.5.) "Substantial Compliance" with this format for a closed session agenda will protect the legislative body and/or elected officials from violating section 54954.2 or section 54956. (See § 54960.1, subd. (a).) The guidelines are detailed below. The importance of specificity was emphasized in *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310<sup>12</sup> where the agenda item described "Conference with Real Property Negotiator, Property: Barham Ranch". In reality the board was reviewing the acquisition of an easement to the named property. The court held on remand that the agenda did not accurately describe the issue to be discussed in closed session.

Section 54954.5 provides the following descriptions:

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<sup>12</sup> The Court of Appeal decision determined that a resident of one county had standing to sue upon an alleged Brown Act violation occurring in another county. The actual violation was found following remand to the lower court.

3. **Tort Claims (§ 54956.95)**

**LIABILITY CLAIMS**

**Claimant:** (Specify name unless unspecified pursuant to section 54961)

**Agency claimed against:** (Specify name)

4. **Threat to Public; Personnel Actions—Appointment, Employment, Evaluation, Discipline/Dismissal/Release (§ 54957)**

**THREAT TO PUBLIC SERVICES OR FACILITIES**

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

**PUBLIC EMPLOYEE APPOINTMENT**

Title: (Specify description of position to be filled)

**PUBLIC EMPLOYMENT**

Title: (Specify description of position to be filled)

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: (Specify position title of employee being reviewed)

**PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

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

5. **Negotiations With Represented Employees/Discussions with Unrepresented Employees (§ 54957.6)**

**CONFERENCE WITH LABOR NEGOTIATOR <sup>15</sup>**

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances

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<sup>15</sup> Because we believe school district closed sessions for purposes of negotiations with its represented employees under the EERA are exempt from the Brown Act we recommend the following reference: "The Governing Board will meet in closed session for purposes of negotiations pursuant to Government Code section 3549.1." The Brown Act section applies where the board is considering salaries for unrepresented employees.

any court to invalidate the action taken at the meeting for which the notice was given. Effective July 1, 2008 if a writing that is a public record and relates to an open session agenda item is distributed less than 72 hours prior to a meeting, the writing shall be made available for public inspection at a location designated by the agency for that purpose and may be posted on the agency's web site. (SB No. 343 (Negrete McLeod) Stats. 2008, ch. 298, eff. July 1, 2008 amending § 54957.5.)

## F. Special and Emergency Meetings

### 1. Special Meetings (§ 54956)

A special meeting of the board may be held at any time and on almost any topic if the following conditions are met:

1. The meeting is called by either the president of the board or by a majority of the board;
2. Notice of the meeting is mailed or delivered to each board member and to the media who request to be noticed and posted 24-hours in advance of the meeting, including; on the local agency's website, if it has one; and<sup>16</sup>
3. Only business specified in the notice is considered.

Effective January 1, 2012, a governing board cannot consider the salaries, salary schedules, or compensation in the form of fringe benefits, of local agency executives, including a superintendent and assistant superintendents, in a special meeting. Some classified executive positions, such as chief business official, and directors or managers are exempt from this requirement. (§ 54954.2.)

### 2. Emergency Meetings

The board may hold an emergency meeting without complying with the 24-hour notice or posting requirements when an "emergency situation" exists, as determined by a majority of the members of the legislative body. An "emergency situation" is specifically defined as work stoppage, crippling activity, or other activity that severely impairs public

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<sup>16</sup> Notice must be given to newspapers and radio or television stations that have requested notice in writing.

board is present), determines that there is a need for immediate action and that the need to act came to the district's attention subsequent to the agenda being posted. (§ 54954.2, subd. (b)(2).) Dependent on timing, frequently a safer approach involves calling a Special Meeting for a time contiguous with the upcoming regular meeting.

## 2. **Consideration of Statements Made/Questions Posed/Public Testimony**

Except as indicated above, the general agenda requirements of section 54954.2 prohibit the governing board from acting on or discussing matters not appearing on the agenda. However:

- "Members of a legislative body or its staff [to] may briefly respond to statements made or questions posed by persons exercising their public testimony rights under section 54954.3." (§ 54954.2; also see Ed. Code, § 35145.5.)
- Board members or staff, either in response to public questions, or on their own initiative, may "ask for clarification, make a brief announcement, or make a brief report on his or her own activities."

Thus agenda items such as "Board Reports," "Superintendent's Report," and "Comments from the Board" are legal under the Brown Act as long as the actual reports are limited to the activities described above, e.g., the activities of a board or staff member. The Act also states a board member, the board itself, or staff, "subject to the rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, or request staff to report back" to the body at a subsequent meeting about the matter, or take action to direct staff to place a matter of business on a future agenda. (§ 54954.2, subd. (a).) The "subject to rules" requirement mentioned above means boards should be permitted to establish or continue to operate under their own bylaws or other rules for the conduct of meetings with regard to placing items on future agendas.

comment time may be applied unreasonably or arbitrarily. However, there is no difficulty in imagining situations in which such limits would be appropriate.”

The law recognizes that boards have business to conduct; therefore, “regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.” (Ed. Code, §§ 35145.5; 72121.5.) A California Court of Appeal held that the public does not have the right to speak on the issue of whether or not an item should be placed on the meeting agenda. (*Coalition of Labor, et al. v. County of Santa Barbara Board of Supervisors* (2005) 129 Cal.App.4th 205.) We believe *Coalition* does not apply fully to school districts in light of Education Code section 35145.5. In 2012, a California Court of Appeal clarified, however, that a school board has discretion to refuse to place a proposed item on the agenda for a board meeting based on the board’s determination that the proposed agenda item did not directly relate to school district business. (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229.) The court found the duty imposed by section 35145.5 is not purely ministerial; rather, the law gives school boards discretionary power to determine whether proposed agenda items are “directly related to school district business.”

While public entities must be mindful of citizens’ rights to express their political viewpoints, they are not required to tolerate disruptive or threatening speech. In *McMahon v. Albany School District* (2002) 104 Cal.App.4th 1275, the court held that “ ... conduct of dumping gallons of garbage on the floor of a school room during a school board meeting was sufficient to support an arrest for disturbing a public meeting and was not speech protected by the First Amendment.” In 2010, the California Court of Appeal rejected a First Amendment challenge to public agency injunctions prohibiting a “local gadfly” from attending public agency meetings. The Court held that substantial evidence supported findings that credible threats were made against city officials, and irreparable harm was reasonably likely to occur if the injunctions were not issued. (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526.) The same year, however, the federal Ninth Circuit Court of

and programs. Criticism should be limited to district-related actions. A school administrator may choose to address the board in public session when his/her demotion is being considered as a public agenda item, and the superintendent may not prohibit that appearance. (90 Ops.Cal.Atty.Gen. 47 (2007).)

## IV. PROPER CLOSED SESSION ACTIVITIES

Evolution of the Brown Act has produced increasingly specific direction regarding closed session agenda requirements, actions that can be taken in closed session, reporting out of actions and release of documents when matters/cases are completed.

### A. General Requirements for Closed Session

The Act provides specific guidelines for closed session agenda items. (§ 54954.5.) See the discussion of those guidelines and how their use can protect the governing board in section III.C.

The Act requires the governing board to disclose item(s) to be discussed in closed session prior to holding a closed session. This may be done by referring to the closed session agenda items as listed by number or letter on the agenda. For example, the board could announce, "The board will now adjourn to closed session to consider items one through five and seven through nine on the closed session agenda." For certain types of closed sessions additional information must be divulged orally or in writing before the closed session. For example, real property closed sessions under section 54956.8 require prior public session disclosure of the identity of the district's negotiators, the real property which the negotiations concern and the parties to the negotiation; closed sessions concerning compensation for unrepresented employees under section 54957.6 require identification of the district's designated representatives. Other examples of information which must be provided prior to a closed session are in the Act.

hear complaints or charges brought against the employee by another person or employee.” (§ 54957; emphasis added.)<sup>21</sup> Considering the parameters of a closed session covering “employment”, a Court of Appeal in *Travis v. Board of Trustees of California State University* (2008) 161 Cal.App.4th 335 ruled that such closed sessions are not limited to initial hiring decisions but may include consideration of factors surrounding a decision to re-employ or bring back an employee following a leave of absence; such factors may include the extent of the employee’s right to return, the position or duties the employee may assume, potential displacement of other employees and the returning employee’s mental and/or physical fitness to return. [Please Note: While this case arose under the Bagley-Keene Open Meeting Act, Government Code section 11120 et seq., the decision applies to Brown Act agencies because the language at issue is identical to the Brown Act personnel exemption in section 54957.]

While some of the foregoing “personnel matters” might, in a given factual situation, also involve “complaints or charges” against an employee, it is critical accurately to identify situations which require applying the 24-hour notice requirement; while the notice requirement is not likely to apply to most closed session discussions of “standard” personnel items and under circumstances discussed below, the penalty for being wrong can be expensive and burdensome.

## 2. **Complaints or Charges: The 24-Hour Notice Requirement**

Section 54957 provides, in pertinent part:

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 in closed session, which notice shall be delivered to the employee . . . at least 24-hours before the time for holding the session. ***If notice is not given, any disciplinary action taken***

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*Coalinga-Huron Joint Unified School District* (2001) 93 Cal.App.4th 902.) Please note that such contracts must be ratified in open session and any final decision on compensation must also take place in open session.

<sup>21</sup> Government Code section 54957.10 was added during the 2001 legislative session, allowing local agencies to discuss early withdrawal of funds from a deferred compensation plan based on financial hardship arising from an unforeseeable emergency.



employee or person; (2) the board must actually hear and consider the complaints or charges; and (3) impose disciplinary action against the employee being complained about as opposed to (4) evaluating or reviewing evaluations or other materials to determine whether a basis exists for initiating disciplinary proceedings.

Where a governing board met in closed session to consider a statement of charges for dismissal of Kolter, a permanent certificated employee of the district, and decided to proceed with the process to dismiss Kolter, the court of appeal affirmed the commission's and superior court's rulings that a 24-hour written notice to the employee was not required. Kolter did not receive any pre-meeting notice of the session or of the charges against her. After the closed session, the district served the charges.

Kolter requested a hearing before the Commission on Professional Competence ("Commission"). Before any evidence was presented to the Commission, the petitioner moved to dismiss the proceedings, arguing the governing board's closed session violated her rights under the Brown Act. Her motion to dismiss on this basis was denied by the Commission. The court held that the purpose of the 24-hour written notice requirement is to allow an employee to request an open session to defend against specific complaints or charges brought against him or her by another individual and thus to clear his or her name. Under what is commonly referred to as the "personnel exception," the 24-hour notice set forth in section 54957 is not required when a legislative body meets in a closed session for the purpose of considering the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee. The court noted that the governing board did not conduct an evidentiary hearing on the statement of charges against the employee; rather, it considered whether those charges justified the initiation of dismissal proceedings.

In *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568, the court of appeal concluded that a demoted police officer did not have a right to 24-hours' notice of a civil service commission meeting to review and deliberate upon its hearing

evolved into a complaint or charge against the coach and once presented to the board the employee was then entitled to the opportunity to respond to it.<sup>22</sup>

b. Non-Reelection Of Probationary Employees

In 78 Ops.Cal.Atty.Gen. 218 (1995) the California Attorney General opined that the 24-hour notice requirement did *not* apply to a governing board's closed session consideration of whether to non-reelect a second year probationary certificated employee. The Attorney General concluded that "complaints or charges" connote an accusation, i.e., something alleged against an individual. By contrast,

Performance evaluations conducted in the due course of district business are not in the nature of an accusation and are not normally thought of as being 'brought against the employee'. This is particularly true when the evaluation is used as a basis for determining whether to reelect a probationary employee.

At least two Court of Appeal decisions have confirmed the Attorney General's analysis: in *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87, the court ruled that consideration of whether to non-reelect probationary teachers, in this instance, constituted primarily an evaluation of their performance, rather than a hearing about specific complaints or charges brought against the employee; accordingly the 24-hour notice was not required. Again in *Furtado v. Sierra Community College District* (1998) 68 Cal.App.4th 876, the court specifically declined to equate negative comments in an evaluation with "complaints or charges" under section 54957; this case also involved a governing board decision not to re-elect a probationary employee.

In summary, the board may evaluate an employee's performance and make a decision to non-re-elect a probationary employee in closed session without providing the 24-hour notice or opportunity to request an open session hearing; furthermore, such notice and opportunity for public hearing do not apply when the board is considering whether information before it justifies initiation of permanent certificated dismissal proceedings.

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<sup>22</sup> The court comes close to phrasing these matters in "due process" terms even though removing this extra assignment requires no due process; please see Education Code section 44923

discussion involves individuals and therefore enters the sphere of “closed session-personnel” (or involves negotiations with exclusive representatives, thereby exempting the closed session from the Brown Act)<sup>25</sup> Once an employee scheduled for layoff requests an administrative hearing, one or more of the litigation closed session exceptions may apply.

### **C. Pending Litigation**

The 1994 amendments required more detailed description of the circumstances in which a governing board may hold a closed session to discuss pending litigation. (§ 54956.9.) An attorney need not actually be *present* at a closed session in order for the meeting to fall within the “confer with, or receive advice from” exception in section 54956.9. Rather, such advice can be transmitted by written opinion, technological devices (e.g., speaker phone teleconference), and perhaps even through a personal intermediary (e.g., the superintendent or board president conveys information received from the attorney either verbally or in writing).

The California Supreme Court has ruled that circulation of written legal advice to board members does not constitute a “meeting” under the Brown Act, since section 54956.9 was “intended to apply to collective action of local governing boards and not to the passive receipt by individuals of their mail.” (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 376.) In addition, nothing in the Brown Act supersedes or negates the attorney-client privilege, which is also preserved in the Public Records Act, regarding such writings. (*Id.*, at p. 369-373; see also § 6254, subs. (b) and (k); § 54956.9, subd. (b)(3)(F).)

#### **1. Facts and Circumstances Warranting Closed Session Defined**

The Act permits governing boards to hold closed sessions to confer with or receive advice from legal counsel regarding pending litigation when an adjudicative proceeding before a court, administrative body, hearing officer or arbitrator has been initiated formally,

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<sup>25</sup> Senate Bill No. 752 (Kopp, Calderon) Stats. 1994, ch. 32, effective April 1, 1994.

within the responsibility of the board. (§ 54956.9, subd. (e)(4).) However, since such a threat is probably unanticipated, a closed session for this purpose is not likely to have been agendaized beforehand. Therefore, in order to adjourn immediately to closed session, a board would have to vote by 2/3 that a need for "immediate action" exists on a matter which came to its attention after the agenda was posted. (§ 54954.2, subd. (b)(2).)

e. Threats Outside Of Open Session/Record Required

A closed session may be held to consider potential litigation regarding a statement threatening litigation made by a person outside an open and public meeting, as long as the public officer or employee receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting. That record shall also be available for public inspection. Records created for this purpose need not identify the alleged victim of unlawful or tortuous sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortuous conduct, unless the identity of the person has already been publicly disclosed. (§ 54956.9, subd. (e)(5).)

f. Discussion of Whether Closed Session Is Permitted

The law continues to allow the board to meet in closed session to consider whether, based upon facts and circumstances, a closed session is indeed authorized under the pending litigation exception. In this context, a stronger argument can perhaps be made for requiring the actual presence of legal counsel, although the receipt of written advice would probably still meet the requirements of this section.

2. "Party" to Litigation Defined

The law specifies that a district is a "party" or has "significant exposure to litigation" if an officer or employee of the district is sued or has exposure for past or future activities (or alleged activities) that occurred within the course and scope of the individual's office or

the closed session agenda. A section has been added which clarifies the definition of "employee," using the same language which was added to the "personnel exception." (§ 54957.6, subd. (b).)

**E. Parameters for Closed Session Discussions of Real Property Transactions**

In 2011 the California Attorney General published an opinion concerning the authorization for closed session discussions of real property transactions. (94 Ops.Cal.Atty.Gen 82 (2011)). The opinion responded to a request for clarification of the open meeting exception after a prior opinion concluded that discussion of a loan modification of a real estate sublease was not within the scope of the exception. The 2011 opinion concluded that only three subjects may be considered in a closed session related to a real property negotiation: (1) the amount of consideration the public agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred; (2) the form, manner and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms.

**F. Blanket Authorization for Education Code Closed Sessions**

Section 54962 of the Act prohibits any closed session of legislative bodies except as authorized by the Brown Act "or by any provision of the Education Code pertaining to school districts and community college districts." This amendment automatically authorizes closed sessions provided for under the Education Code which are not specifically cross-referenced in the Brown Act. For example, this would apply to a closed session related to student discipline and governing board hearings to consider challenges to grades assigned by the teacher or instructor. (Ed. Code, §§ 35146, 48918, 49070, 76232.)

**EXCEPT:**

The board is not required to identify the action, the defendants or the particulars, other than the decision to initiate or intervene in litigation itself if to do so would jeopardize service of process or the board's ability to conclude existing settlement negotiations to its advantage.

**3. Settlement of Pending Litigation, Section 54957.1, subd. (a)(3)**

- Final approval settling pending litigation must be reported at the same meeting, including the substance of the agreement.
- When final approval rests with another party, the governing board may await acceptance and finalization by the other party or parties and then must disclose its approval and the substance of the agreement upon inquiry by any person.

**4. Actions Affecting Employees**

Actions to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status<sup>27</sup> of a public employee in closed session shall be reported out at the same meeting during which the closed session is held. (§ 54957.1, subd. (a)(5).)

The report of employee appointment, dismissal, etc., shall identify the title of the position. The reporting out requirement of specifying the affected *position* does not mean an employee's name must be reported out. However, this is separate and distinct from the Public Records Act requirement which would require such disclosure upon request. Actions to dismiss or non-renew an employment contract shall not be reported until the employee has exhausted all administrative remedies, if there are any available. An example of administrative remedies is the right of permanent certificated and classified employees to

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<sup>27</sup> This language is more expansive than the circumstances authorizing proper closed sessions in the first place, by including resignations and any action which "affects the employment status of a public employee." However, the authority for proper "closed session-personnel" topics under section 54957 only enumerates appointment, employment, evaluation, discipline or dismissal. The expanded phrase suggests that consideration of granting leaves of absence, promotions and transfers which involve employee privacy rights and/or performance issues are proper closed session matters.

district publicly within those ten (10) days of his/her opinion on whether such proposed agreement "would endanger the fiscal well-being of the school district." (§ 3540.2, subd. (c).)

#### **6. Superintendents' Contracts**

Government Code section 53262 requires ratification of superintendents' (deputies, associates, and assistants) contracts to occur in *open session*. Therefore, while the board may discuss such matters in closed session ("appointment" or "employment" with title "superintendent" specified in the agenda), action to ratify the contract must occur only in open session.<sup>29</sup>

#### **7. Student Discipline**

Education Code section 48918 authorizes school districts to hold expulsion hearings in closed session, unless otherwise requested by a student's parent or guardian. However, any final action to expel a pupil must be taken only in a public session. (Ed. Code, § 48918, subd. (j).) Although Education Code section 48918, subdivision (k) provides that records of student expulsion, "including the cause therefor" are "nonprivileged, disclosable public record [s]," in *Rim of the World Unified School District v. Superior Court* (2002) 104 Cal.App.4th 1393, the California Court of Appeal ruled that the federal Family Educational Rights and Privacy Act ("FERPA") preempts state law to the extent that FERPA conditions receipt of federal funds on protecting students' confidential records. Therefore, districts should not release the names of students who have been expelled or other personally identifiable information related to student disciplinary actions taken by the governing board.<sup>30</sup>

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<sup>29</sup> Since January 1, 2012, consideration of salary and other compensation for a superintendent must occur at a regular Board meeting, not a special meeting. (§ 54956, subd. (b).)

<sup>30</sup> Districts should identify students by number or other reference that protects the student's name.

public documents, including but not limited to the 10-day period to respond to the request. (§ 6253, subd. (c).)

Additionally, writings that are public records and that are distributed during a public meeting must be made available to the public at the meeting if the writing is prepared by the local agency or legislative body, or after the meeting if prepared by another person. Such writings must be made available in appropriate alternative formats upon request by a person with a disability, in accordance with the Americans with Disabilities Act. (§ 54957.5, subd. (b).)

## VII. VIOLATIONS OF THE BROWN ACT

### A. State of Mind Requirement

Misdemeanor liability exists if a member “intends to deprive the public of information to which the member knows or has reason to know the public is entitled” under the Brown Act. (§ 54959.)

### B. Brown Act Violations

The Act permits interested persons to commence an action for mandamus, injunction or declaratory relief to stop or prevent violations or threatened violations of the Brown Act or to determine the applicability of the Act to actions or threatened future actions of the board. The district attorney may pursue Brown Act violations and a court may determine whether any rule or action of the governing board unlawfully penalizes or otherwise discourages the free expression of one or more of its members. (§ 54960, subd. (a).)

In 2012, the Legislature amended Section 54960 and added Section 54960.2 to prohibit a district attorney or an interested person from filing an action for an alleged violation of the Act for *past actions* of a board, unless certain conditions are met, including: (1) the challenged action must have taken place within the past nine months; (2) the potential plaintiff must first send a cease and desist letter to the agency; (3) the plaintiff



transcript of the recording which will be a public exhibit in the proceeding. (§ 54960, subds. (c)(3) and (4).) Communications protected by the attorney-client privilege may not be disclosed under this provision. (§ 54960, subd. (c).)

#### **D. Timelines for Filing Actions**

A written demand on the governing board to cure a Brown Act violation must be made within 90 days of the action, or within 30 days if it was an open session action in violation of the agenda requirements of the Act. (§ 54960.1.) Court actions must be filed 15 days from the receipt of the board's notice of its intention to cure or not, or within 15 days of the expiration of the 30 days the board has to respond to the request, whichever is shorter. (§ 54960.1.) In the case of a 24-hour notice violation under section 54957 a timely cure will not relieve the district of interim liability for the violation. (See *Moreno v. City of King* (2005) 127 Cal.App.4th 17.)

#### **E. Effect of Brown Act Violation**

Pre-1994 law nullified actions taken in violation of the Brown Act sections related to open and public meetings (§ 54953), agenda and posting requirements (§ 54954.2), and special meetings. (§ 54956.) The 1994 amendments added the section governing closed session agendas. (§ 54954.5; § 54960.1, subd. (c).) Recent amendments have added the section governing emergency meetings. (§ 54956.5; see § 54960.1, subd. (a).)

There are still exceptions which will protect the governing board from having action nullified, including substantial compliance with the enumerated sections; actions taken in connection with the issuance of notes, bonds, or other evidences of indebtedness; actions giving rise to contractual obligations upon which a party has in good faith and without a notice of a challenge to the action detrimentally relied (e.g., a collectively negotiated agreement); and actions taken in connection with collection of any tax. (§ 54960.1, subd. (c)(1)- (4).)

**APPENDIX A**  
**Government Code Sections**  
**54950 – 54963**  
**Ralph M. Brown Act**

(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. Member of a legislative body of a local agency; conduct**

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. Meeting; prohibited devices for obtaining collective concurrence; exclusions from chapter**

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

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

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

**§ 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. Copies of chapter to members of legislative body of local agencies**

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. Meetings to be open and public; attendance**

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

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

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

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, 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

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. Right to record proceedings; conditions; tape or film records made by or under direction of local agencies**

(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 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 audio or video recording 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 recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

**§ 54953.6. Prohibitions or restrictions on broadcasts of proceedings of legislative body; reasonable findings**

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. Allowance of greater access to meetings than minimal standards in this chapter**

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. Time and place of regular meetings; special meetings; emergencies**

(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

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

**§ 54954.1. Mailed notice to persons who filed written request; time; duration and renewal of requests; fee**

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

**§ 54954.2. Agenda; posting; action on other matters**

(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 and on the local agency's Internet Web site, if the local agency has one. 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

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. Reimbursements to local agencies and school districts for costs**

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

#### **§ 54954.5. Closed session item descriptions**

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**

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

***THREAT TO PUBLIC SERVICES OR FACILITIES***

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

***PUBLIC EMPLOYEE APPOINTMENT***

Title: (Specify description of position to be filled)

***PUBLIC EMPLOYMENT***

Title: (Specify description of position to be filled)

***PUBLIC EMPLOYEE PERFORMANCE EVALUATION***

Title: (Specify position title of employee being reviewed)

***PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE***

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

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

***CONFERENCE WITH LABOR NEGOTIATORS***

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

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

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

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

***CASE REVIEW/PLANNING***

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



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.

(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; adjourned 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

**§ 54956.5. Emergency meetings in emergency situations**

(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.

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. Charges or complaints from members of local agency health plans; closed hearings; members' rights**

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. Records of certain health plans; meetings on health plan trade secrets**

(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

(1) 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.

(2) 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.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) 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.

(4) 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.

(5) 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).

(g) 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 paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), 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.

(h) 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; insurance pooling; tort liability losses; public liability losses; workers' compensation 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,

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), this chapter shall not 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. This subdivision shall not 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. Closed sessions; public report of action taken**

(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

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 record of closed sessions; inspection**

(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 distributed for discussion or consideration at public meetings; writings distributed less than 72 hours prior to meeting; public records; inspection; closed sessions**

(a) Notwithstanding Section 6255 or any other 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, 6254.22, or 6254.26.

(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

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 in closed sessions**

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

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

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

**§ 54957.8. Multijurisdictional law enforcement agency; closed sessions by legislative or advisory body of agency**

(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.



(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 audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording 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 that 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 that has custody and control of the audio 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 that has custody and control of the recording.

(ii) An affidavit that 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) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

**§ 54960.1. Unlawful action by legislative body; action for mandamus or injunction; prerequisites**

(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.

(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.

**§ 54960.2. Actions to determine past violations by legislative body; conditions; cease and desist letters; responses by legislative body; unconditional commitments to cease; resolutions to rescind commitments**

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To \_\_\_\_\_:

The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

**§ 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, 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. 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. Meetings prohibited in facilities; grounds; identity of victims of tortious sexual conduct 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 tortuous sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

**§ 54962. Closed session by legislative body prohibited**

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.

**APPENDIX B**  
**California Constitution**  
**Article 1, Section 3(b)**  
**Proposition 59 (2004)**

**APPENDIX C**  
**EDUCATION CODE SECTIONS**  
**35140 through 35149,**  
**48912, 48918, 49070,**  
**60617, 72121, 72121.5,**  
**72122 and 72129**

At the annual 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 its members and a clerk.

At the annual meeting each city board of education shall organize by electing a president from 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 district.

As an alternative to the procedures set forth in this section, a city board of education whose members are elected in accordance with a city charter for terms of office commencing in December, may hold its annual organizational meeting required in this section between December 15 and January 14, inclusive, as provided in rules and regulations which shall be adopted by such board. At the annual meeting the city board of education shall organize by electing a president and vice president from its members who shall serve in such office during the period January 15 next to the following January 14, unless removed from such office by majority vote of all members of the city board of education.

#### **§ 35144. Special meetings**

A special meeting of the governing board of a school district may be called at any time by the presiding officer of the board, or by a majority of the members thereof, by delivering personally or by mail written notice to each member of the board, and to each local newspaper of general circulation, radio, or television station requesting notice in writing. The notice shall be delivered personally or by mail 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. No other business shall be considered at those meetings by the governing board. 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 board 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 and district employees.

#### **§ 35145. Public meetings; posting of agenda; commencement of action**

All meetings of the governing board of any school district shall be open to the public and shall be conducted in accordance with Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code. All actions authorized or required by law of the governing board shall be taken at the meetings and shall be subject to the following requirements:

(a) Minutes shall be taken at all of those meetings, recording all actions taken by the governing board. The minutes are public records and shall be available to the public.

(b) An agenda shall be posted by the governing board, or its designee, in accordance with the requirements of Section 54954.2 of the Government Code. Any interested person may commence an action by mandamus or injunction pursuant to Section 54960.1 of the Government Code for the purpose of obtaining a judicial determination that any action

Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Division 3 of Title 2 of the Government Code), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).

(b) The councils and schoolsite advisory committees established pursuant to Sections 52012, 52065, 52176, and 52852, subdivision (b) of Section 54425, Sections 54444.2, 54724, and 62002.5, and committees formed pursuant to Section 11503 or Section 2604 of Title 25 of the United States Code, are subject to this section.

(c) Any meeting held by a council or committee specified in subdivision (b) shall be open to the public and any member of the public shall be able to address the council or committee during the meeting on any item within the subject matter jurisdiction of the council or committee. Notice of the meeting shall be posted at the schoolsite, or other appropriate place accessible to the public, at least 72 hours before the time set for the meeting. The notice shall specify the date, time, and location of the meeting and contain an agenda describing each item of business to be discussed or acted upon. The council or committee may not take any action on any item of business unless that item appeared on the posted agenda or unless the council or committee members present, by unanimous vote, find that there is a need to take immediate action and that the need for action came to the attention of the council or committee subsequent to the posting of the agenda. 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 need not be described on an agenda as items of business. If a council or committee violates the procedural meeting requirements of this section and upon demand of any person, the council or committee shall reconsider the item at its next meeting, after allowing for public input on the item.

(d) Any materials provided to a schoolsite council shall be made available to any member of the public who requests the materials pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

**§ 35148. Repealed**

**§ 35149. Meetings deemed to be regular**

The first meeting of any newly elected or appointed school district governing board, and any annual meeting required by law to be held by such board for purposes of its organization, shall be deemed a regular meeting of the board for purposes of any requirement of law that periodic meetings shall be held by such board, and the regular business of the board may be transacted at such a meeting.

(2) Within 10 schooldays after the conclusion of the hearing, the governing board of the school district shall decide whether to expel the pupil, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the governing board of the school district **does not meet** on a weekly basis, the governing board of the school district shall decide whether to **expel** the pupil within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent of schools, unless the pupil requests in writing that the decision be postponed.

(3) If compliance by the governing board of the school district with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable during the regular school year, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. If compliance by the governing board of the school district with the time requirements for the conducting of an expulsion hearing under this subdivision is impractical due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48925, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days before the first day of school for the school year. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days before the date of the hearing. The notice shall include all of the following:

(1) The date and place of the hearing.

(2) A statement of the specific facts and charges upon which the proposed expulsion is based.

(3) A copy of the disciplinary rules of the school district that relate to the alleged violation.

(4) A notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1.

(5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or to be represented by legal counsel or by a nonattorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses. In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or to have committed a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall be given five days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present



expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to the classroom instructional program from which the expulsion referral was made, unless the parent, guardian, or responsible adult of the pupil requests another school placement in writing. Before the placement decision is made by the parent, guardian, or responsible adult, the superintendent of schools or the superintendent's designee shall consult with school district personnel, including the pupil's teachers, and the parent, guardian, or responsible adult regarding any other school placement options for the pupil in addition to the option to return to his or her classroom instructional program from which the expulsion referral was made. If the hearing officer or administrative panel finds that the pupil committed any of the acts specified in subdivision (c) of Section 48915, but does not recommend expulsion, the pupil shall be immediately reinstated and may be referred to his or her prior school or another comprehensive school, or, pursuant to the procedures set forth in Section 48432.5, a continuation school of the school district. The decision not to recommend expulsion shall be final.

(f) (1) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board of the school district. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board of the school district accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board of the school district may order.

(2) The decision of the governing board of the school district to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board of the school district or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations that shall be examined only by the governing board of the school district or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) (1) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board of the school district to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

(2) In hearings that include an allegation of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or to commit a sexual battery as defined in subdivision (n) of Section 48900, evidence of specific instances, of a complaining witness' prior sexual conduct is to be presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances

(3) Notice of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that school district of the pupil's expulsion.

(k) (1) The governing board of the school district shall maintain a record of each expulsion, including the cause for the expulsion. Records of expulsions shall be nonprivileged, disclosable public records.

(2) The expulsion order and the causes for the expulsion shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

(c) Within 30 days of receipt of an appeal pursuant to subdivision (b), the governing board shall, in closed session with the parent or guardian and the certificated employee who recorded the information in question, if any, and if the employee is presently employed by the school district, determine whether or not to sustain or deny the allegations.

If the governing board sustains any or all of the allegations, it shall order the superintendent to immediately correct or remove and destroy the information from the written records of the pupil, and so inform the parent or guardian in writing. However, in accordance with Section 49066, the governing board shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade.

The decision of the governing board shall be final.

Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board, unless the parent or guardian initiates legal proceedings relative to the disputed information within the prescribed period.

(d) If the final decision of the governing board is unfavorable to the parent or guardian, or if the parent or guardian accepts an unfavorable decision by the district superintendent, the parent or guardian shall be informed and shall have the right to submit a written statement of his or her objections to the information. This statement shall become a part of the pupil's school record until the information objected to is corrected or removed.

## **Education Code**

*Title 3. Postsecondary Education  
Division 7. Community Colleges  
Part 45. Districts and Governing Boards  
Chapter 2. Meetings and Members  
Article 2. Meetings*

**§ 72121. Public meetings**

Except as provided in Sections 54957 and 54957.6 of the Government Code and in Section 72122 of, and subdivision (c) of Section 48914 of, this code, all meetings of the governing board of any community college district shall be open to the public, and all actions authorized or required by law of the governing board shall be taken at the meetings and shall be subject to the following requirements:

(a) Minutes shall be taken at all of those meetings, recording all actions taken by the governing board. The minutes are public records and shall be available to the public.

(b) An agenda shall be posted by the governing board, or its designee, in accordance with the requirements of Section 54954.2 of the Government Code. Any interested person may commence an action by mandamus or injunction pursuant to Section 54960.1 of the Government Code for the purpose of obtaining a judicial determination that any action taken by the governing board in violation of this subdivision or subdivision (b) of Section 72129 is null and void.

**§ 72121.5. Agenda; public participation; regulations**

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

This subdivision shall not preclude the taking of testimony at regularly scheduled meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that no action is taken by the board on such matters at the same meeting at which such testimony is taken. Nothing in this paragraph shall be deemed to limit further discussion on the same subject matter at a subsequent meeting.

**§ 72122. Closed sessions**

The governing board of a community college district shall, unless a request by the student has been made pursuant to this section, hold closed sessions if the board is considering the suspension of, or disciplinary action or any other action in connection with any student of the community college district, if a public hearing upon the question would lead to the

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## Government Code

*Title 1. General  
Division 4. Public Officers and Employees  
Chapter 10.7. Meeting and Negotiating in Public Educational Employment  
Article 1. General Provisions*

### § 3540. Purpose of chapter

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

It is the further intention of the Legislature that this chapter shall not restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of the school district with respect to district policies on academic and professional matters, so long as the exercise of the functions does not conflict with lawful collective agreements.

It is the further intention of the Legislature that any legislation enacted by the Legislature governing employer-employee relations of other public employees shall be incorporated into this chapter to the extent possible. The Legislature also finds and declares that it is an advantageous and desirable state policy to expand the jurisdiction of the board created pursuant to this chapter to cover other public employers and their employees, in the event that this legislation is enacted, and if this policy is carried out, the name of the Educational Employment Relations Board shall be changed to the "Public Employment Relations Board."

### § 3540.2. Qualified or negative certifications; proposed agreements; review process; financial impact; review and comment by Superintendent

(a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall allow the county office of education in which the school district is located at least 10 working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The school district shall provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

**§ 3547.5. Major provisions of exclusive representative agreement; disclosure format; certification relative to the budget**

(a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

(b) The superintendent of the school district and chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement in each year of its term.

(c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of a collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code

**§ 3549.1. Public meeting provisions; exemptions**

All the proceedings set forth in subdivisions (a) to (d), inclusive, are exempt from the provisions of Sections 35144 and 35145 of the Education Code, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise:

(a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and negotiating process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive 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.

**§ 3549.3. Severability**

If any provisions of this chapter or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

# 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 2. Officers and Employees  
Article 3.5. Employment Contracts

§ 53262. Ratification of contracts with certain administrative officers of local agencies; availability to public

(a) All contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.

(b) Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.



# NOTES