

**BROWN ACT DESK BOOK**  
**2013**

County Counsel  
January 2013  
Includes Code & Confidential  
County Counsel Guide



**2013 RALPH M. BROWN ACT  
(California Government Code)**

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Deering's California Codes Annotated  
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propositions approved by the electorate at the June and November 2012 elections)

GOVERNMENT CODE  
Title 5. Local Agencies  
Division 2. Cities, Counties, and Other Agencies  
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Gov Code § 54950 (2013)*

**§ 54950. Declaration of public policy**

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

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

**HISTORY:**

Added Stats 1953 ch 1588 § 1.

**NOTES:**

**Historical Derivation:**

(a) Former Gov C § 36808, as added Stats 1949 ch 79 § 1.

(b) Stats 1883 ch 49 § 858, as amended Stats 1913 ch 221 § 1, Stats 1931 ch 132 § 8, Stats 1933 ch 516 § 11, Stats 1941 ch 545 § 3.

**Note**

Stats 2008 ch 63 provides:

SECTION 1. The Legislature hereby declares that it disapproves the court's holding in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the process of developing a collective concurrence as a violation of the prohibition.

It is the intent of the Legislature that the changes made by Section 3 of this act supersede the court's holding described in subdivision (a).

#### Cross References:

Open meetings of local agencies: *Gov C §§ 54950 et seq.*

Meetings of the hospital and safety commission to be held in accordance with provisions of this chapter: *H & S C § 1456.*

#### Collateral References:

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 191 "Discovery: Privileges And Other Discovery Limitations".*

*Cal. Legal Forms, (Matthew Bender(R)) § 13.31.*

*Cal. Torts (Matthew Bender(R)), § 61.66A.*

2 *Witkin Cal. Evidence (4th ed) Witnesses § 517.*

#### Law Review Articles:

A New Domain for Public Speech: Opening Public Spaces Online. *94 Cal LR 1791.*

Privatization of Public Water Services: The States' Role in Ensuring Public Accountability. *32 Pepperdine LR 561.*

#### Attorney General's Opinions:

Authority of county board of supervisors to hold closed hearings when reviewing problems presented by county welfare director with reference to old age assistance, aid to needy children, or aid to needy blind program. *22 Ops. Cal. Atty. Gen. 224.*

Legality of resolution of city council restricting attendance at "council conferences" to citizens registered with city clerk. *27 Ops. Cal. Atty. Gen. 123.*

Application of secret meeting law to special committees or subcommittees of local agencies where such committees consist of less than quorum. *32 Ops. Cal. Atty. Gen. 240.*

Requirements of Brown Act with respect to city council meeting with city attorney being open to public. *36 Ops. Cal. Atty. Gen. 175.*

Application of Brown Act to meetings of city council with city manager, city attorney and planning director. *42 Ops. Cal. Atty. Gen. 61.*

Application of Secret Meeting Law to luncheon meetings held for discussing items of importance to governmental entity. *43 Ops. Cal. Atty. Gen. 36.*

An executive session may not be held to discuss complaints against presiding officers of the governing body of a city, county or special district. *61 Ops. Cal. Atty. Gen. 10.*

It would be a violation of the Ralph M. Brown Act for members of a city council to hold a series of closed discussions with citizens having matters of business pending before them to gather or convey information regarding those matters where the discussions are held on successive dates and are so planned to insure that a quorum of the council will not be present at any given meeting. *65 Ops. Cal. Atty. Gen. 63.*

Meetings of the academic senate or faculty council of a California community college are subject to the open meeting requirements of the Ralph M. Brown Act. *66 Ops. Cal. Atty. Gen. 252.*

Assuming that a closed session meeting with counsel, which is held by an advisory committee created by the Board of Supervisors to advise it on airport matters, properly relates to the committee's powers and duties to advise the board, the committee may meet with counsel in closed session to discuss litigation to which the board is the sole party representing the interests of the county. *67 Ops. Cal. Atty. Gen. 111.*

Weekend hours may be counted as part of the 72-hour period for the posting of an agenda prior to the regular meeting of the legislative body of a local agency. The posting of an agenda for a regular meeting of the legislative body of a local agency for 72 hours in a public building that is locked during the evening hours would not satisfy the statutory requirements for posting the agenda. *78 Ops. Cal. Atty. Gen. 327(95-812).*

The Ralph M. Brown Act (*Gov C §§ 54950-54962*) does not apply to the hearings of a county board of supervisors when acting as the county board of equalization or to the hearings of an assessment appeals board. *79 Ops. Cal. Atty. Gen. 124.*

An alternate member of a Local Agency Formation Commission, when not serving in place of a regular member, may participate in public hearings and deliberations of the commission, but may not attend closed sessions of the commission. *82 Ops. Cal. Atty. Gen. 29.*

The Los Angeles Community College District Joint Labor Management Benefits Committee is not required to comply with the Ralph M. Brown Act. Therefore, it follows that a closed "caucus" of the employee members is permissible. *92 Ops. Cal. Atty. Gen. 102.*

The circumstance that a proposed rehabilitation loan agreement pertains to the use of real property that a redevelopment agency is currently subleasing to the proposed recipient of the rehabilitation loan, makes reference to the sublease, and incorporates certain of its terms--but does not effectuate the acquisition, disposal, or modification of any real property rights under the existing sublease--does not, in itself, permit the agency and its negotiator to discuss the terms of the proposed agreement in closed session. The circumstance that a proposed rehabilitation loan agreement includes a redevelopment agency's acquisition of restrictive covenants, including use and operating covenants, over real property occupied by the proposed recipient of the rehabilitation loan does not, in itself, permit the agency and its negotiator to discuss the terms of the proposed agreement in closed session. *93 Ops. Cal. Atty. Gen. 51.*

#### Annotations:

Validity, construction, and application of statutes making public proceedings open to the public. *38 ALR3d 1070.*

Attorney-client exception under state law making proceedings by public bodies open to the public. *34 ALR5th 591.*

#### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

#### NOTES OF DECISIONS

##### Decisions Under Current Law

1. Generally 2. Legislative Intent 3. Applicability 4. Construction 5. Compliance 6. Standing 7. Particular Determinations

### Decisions Under Former Law

1. Generally 2. Legislative Intent 3. Applicability 4. Construction 5. Construction With Other Law 6. Quorum 7. Privileges 8. Subterfuge 9. Violations 10. Particular Determinations

### Decisions Under Current Law

#### 1. Generally

While personal meetings permit an interchange of views, unlike the distribution of a written memorandum, California's Ralph M. Brown Act, *Gov C §§ 54950 et seq.*, does not preclude members of a local legislative body from engaging in one-on-one discussions of matters before the body. This is not to imply that serial meetings between a city official and individual members of the city council can never lead to a violation of the Brown Act, but more than mere policy-related informational exchanges are required before such a violation will occur. *Wolfe v. City of Fremont* (2006, Cal App 1st Dist) 144 Cal App 4th 533, 50 Cal Rptr 3d 524, 2006 Cal App LEXIS 1711, modified, rehearing denied (2006, Cal App 1st Dist) 2006 Cal App LEXIS 1891.

#### 2. Legislative Intent

Two newly elected members of a county board of supervisors and an incumbent member did not violate the open meeting requirement of the Ralph M. Brown Act (*Gov C §§ 54950 et seq.*) by holding a series of private meetings with an attorney to discuss their mutual opposition to an amendment to the county general plan, recently passed by the departing board, providing for the development of four new towns in their sparsely populated, agrarian county. When the incumbent supervisor met with the supervisors-elect in December 1992, the act did not apply to supervisors-elect, but only to those who had already assumed office (*Gov C § 54952.1*, operative in 1994). Thus, there was no "legislative body" convening among these three individuals. The legislative history of the 1994 statute supported the general presumption that, since the Legislature did not express clearly to the contrary, its purpose was to change existing law. Hence, the statute was not retroactive. Furthermore, the evidence regarding a meeting conducted on Jan. 4, 1993, when the two supervisors had assumed office, showed only a lawful plan and action to call a special open meeting for the following day. *216 Sutter Bay Associates v. County of Sutter* (1997, Cal App 3d Dist) 58 Cal App 4th 860, 68 Cal Rptr 2d 492, 1997 Cal App LEXIS 856.

Central purpose of the Ralph M. Brown Act, *Gov C § 54957*, is to ensure the sovereignty of the people over the agencies which serve them; thus, the legislature decreed under *Gov C § 54950*, that the actions of public commissions, boards, and councils be taken openly and that their deliberations be conducted openly so that the public could have a voice in shaping policy. *Gillespie v. San Francisco Pub. Library Com.* (1998, Cal App 1st Dist) 67 Cal App 4th 1165, 79 Cal Rptr 2d 649, 1998 Cal App LEXIS 947.

The Brown Act was adopted to ensure the public's right to attend the meetings of public agencies. Accordingly, the Act requires that the legislative bodies of local agencies, including city councils, hold their meetings open to the public except as expressly authorized by the Act. The Act authorizes closed sessions to be held with regard to certain matters, one of which is real property negotiations. The need for closed sessions in this circumstance is obvious. No purchase would ever be made for less than the maximum amount the public body would pay if the public (including the seller) could attend the session at which that maximum was set, and the same is true for minimum sale prices and lease terms and the like. *Kleitman v. Superior Court* (1999, Cal App 6th Dist) 74 Cal App 4th 324, 87 Cal Rptr 2d 813, 1999 Cal App LEXIS 762, rehearing denied (1999, Cal App 6th Dist) 74 Cal App 4th 1231b, 1999 Cal App LEXIS 824, review denied (1999, Cal) 1999 Cal LEXIS 7978.

Intent of the Ralph M. Brown Act, *Gov C §§ 54950 et seq.*, was to assure that actions of public commissions, boards and councils and the other public agencies in this state were taken openly and that their deliberations were conducted openly; hence, where a county board of supervisors and the county counsel denied that their discussion of non-agenda items at closed meetings violated the Act, an action filed under the Act by a newspaper and a public records rights coalition satisfied the intent of the Act. *Los Angeles Times Communications v. Los Angeles County Bd. of Supervisors* (2003, Cal App 2d Dist) 112 Cal App 4th 1313, 5 Cal Rptr 3d 776, 2003 Cal App LEXIS 1617, review denied (2004, Cal) 2004 Cal LEXIS 994.

#### 3. Applicability

School district and school board were not required to give 24-hour written notice of the right to be heard in open session when it considered the appointment, employment, evaluation of performance, discipline, or dismissal of proba-

tionary teachers; *Gov C § 54957*, containing exceptions to the open meeting requirement of the Ralph M. Brown Act, *Gov C §§ 54950 et seq.*, was not violated. *Fischer v. Los Angeles Unified School Dist.* (1999, *Cal App 2d Dist*) 70 *Cal App 4th* 87, 82 *Cal Rptr 2d* 452, 1999 *Cal App LEXIS* 146, review denied (1999, *Cal*) 1999 *Cal LEXIS* 3019.

The Ralph M. Brown Act, *Gov C §§ 54950 et seq.*, does not require a county board of supervisors to allow members of the public to address it concerning whether an item should be placed on the agenda. *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors* (2005, *Cal App 2d Dist*) 129 *Cal App 4th* 205, 28 *Cal Rptr 3d* 198, 2005 *Cal App LEXIS* 749, review denied *Coalition of Labor Agriculture & Business v. County of Santa Barbara Board of Supervisors* (2005, *Cal*) 2005 *Cal LEXIS* 7994.

(Unpublished) Developer was not entitled to reconsideration of the court's stay of damages claims against a city and city officials because Younger abstention was warranted as to each of the developer's claims in that even though a claim under the Ralph M. Brown Act, *Gov C §§ 54950 et seq.*, was dropped in state court, that proceeding still implicated land use regulations, an important state interest. *Lake Luciana, LLC v. County of Napa* (2010, *ND Cal*) 2010 *US Dist LEXIS* 8371.

Trial court should have overruled the demurrers of a community college district and its former superintendent to a district resident's cause of action for violation of *Gov C § 54956.9* where the resident's allegations that individual trustees of the district board of trustees regularly and repeatedly left the room to meet with a judge, after which time they reached a consensus to enter into a settlement with the superintendent, showed more than merely discussing and approving proposed settlement terms and conditions, as they suggested the sort of collective acquisition and exchange of facts preliminary to an ultimate decision that had to occur openly. Issuance of a notice identifying the superintendent as the litigant, and minutes showing the board had reconsidered and approved her settlement agreement, did not establish a cure of the board's acts in impermissibly conducting information gathering in the course of mediating and negotiating with the superintendent in a closed meeting, actions that fell outside the pending litigation exception of California's Ralph M. Brown Act, *Gov C §§ 54950.5 et seq.* *Page v. Miracosta Community College Dist.* (2009, *4th Dist*) 180 *Cal App 4th* 471, 102 *Cal Rptr 3d* 902, 2009 *Cal App LEXIS* 2031, rehearing denied *Page v. Miracosta Community College District* (2009, *Cal. App. 4th Dist.*) 2009 *Cal. App. LEXIS* 2041.

In a case concerning sewer assessments imposed by a public utility district against a property owner's property and the efforts undertaken by the district to enforce those assessments, the owner failed to allege sufficient facts to state a violation of the Ralph M. Brown Act, *Gov C §§ 54950 et seq.* Passing comments by the district's attorneys regarding a tax sale did not constitute a sufficient factual basis for a claim that the district secretly met and decided the matter beforehand. *Galbiso v. Oroshi Public Utility Dist.* (2010, *5th Dist*) 182 *Cal App 4th* 652, 107 *Cal Rptr 3d* 36, 2010 *Cal App LEXIS* 289, review denied *Galbiso (Mary Jane) v. Oroshi Public Utility District* (2010, *Cal.*) 2010 *Cal. LEXIS* 5838.

#### 4. Construction

The requirement of the Ralph M. Brown Act (*Gov C §§ 54950 et seq.*), that meetings of governmental bodies be open to the public, is not limited to gatherings at which action is taken by the relevant legislative body; deliberative gatherings are included as well. Deliberation in this context connotes not only collective decisionmaking, but also the collective acquisition and exchange of facts preliminary to the ultimate decision. To prevent evasion of the act, a series of private meetings (known as serial meetings) by which a majority of the members of a legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business would violate the open meeting requirement. 216 *Sutter Bay Associates v. County of Sutter* (1997, *Cal App 3d Dist*) 58 *Cal App 4th* 860, 68 *Cal Rptr 2d* 492, 1997 *Cal App LEXIS* 856.

In the absence of statutory authority, an argument that an appellate court should recognize a civil cause of action for aiding and abetting a violation of California's Ralph M. Brown Act, *Gov C §§ 54950 et seq.*, is rejected. Given the purpose of the Act, there is simply no need for such a claim. *Wolfe v. City of Fremont* (2006, *Cal App 1st Dist*) 144 *Cal App 4th* 533, 50 *Cal Rptr 3d* 524, 2006 *Cal App LEXIS* 1711, modified, rehearing denied (2006, *Cal App 1st Dist*) 2006 *Cal App LEXIS* 1891.

#### 5. Compliance

In a case in which a community organization challenged a school district's decision to close two elementary schools, the organization did not sustain its claim that the district violated the Ralph M. Brown Open Meeting Act by not providing the organization with all of the public records given to members of the district's board at public meetings. The district complied with all relevant public records requests. *San Lorenzo Valley Community Advocates for Responsi-*

*ble Education v. San Lorenzo Valley Unified School Dist.* (2006, Cal App 6th Dist) 139 Cal App 4th 1356, 44 Cal Rptr 3d 128, 2006 Cal App LEXIS 801.

## 6. Standing

Citizen of the State of California was an "interested person" within the meaning of Gov C §§ 54960, 54960.1 of the Ralph M. Brown Act, Gov C §§ 54950 et seq., and had standing to sue a school district for violations of the Brown Act. *McKee v. Orange Unified School Dist.* (2003, Cal App 4th Dist) 110 Cal App 4th 1310, 2 Cal Rptr 3d 774, 2003 Cal App LEXIS 1160, review denied (2003, Cal) 2003 Cal LEXIS 8866.

Two members of a city council forfeited standing they would otherwise have had under the Ralph M. Brown Act, Gov C §§ 54950 et seq., as citizens of California to sue the city council for alleged violations of the Act when they accepted their seats on the city council. *Holbrook v. City of Santa Monica* (2006, Cal App 2d Dist) 144 Cal App 4th 1242, 51 Cal Rptr 3d 181, 2006 Cal App LEXIS 1810, review denied *Holbrook (Richard) v. City of Santa Monica* (2007, Cal) 2007 Cal LEXIS 1757.

Because government contracts that required the contractor to comply with the Ralph M. Brown Open Meetings Act, Gov C §§ 54950-54963, were made expressly for the public's benefit, an employee of a labor organization, as a member of the public, was a third party beneficiary of the contracts and was entitled under CC § 1559 to enforce the provisions requiring Brown Act compliance. Moreover, the contractor did not argue or show that the labor organization lacked standing to sue on behalf of its members to enforce a public right. *Service Employees Internat. Union, Local 99 v. Options-A Child Care & Human Services Agency* (2011, 2d Dist) 200 Cal App 4th 869, 2011 Cal App LEXIS 1407.

Because a government contractor was not a local agency as defined in Gov C § 54951, or a legislative body as defined in Gov C § 54952, a labor organization and its employee did not have standing under Gov C § 54960(a) to sue directly under the Ralph M. Brown Open Meetings Act, Gov C §§ 54950-54963, for failure to comply with the act as required by the contracts. The provisions allegedly violated, Gov C §§ 54954.2(a)(1), 54954.3(a), 54957.5(a), 54957.7(a), apply only to a legislative body. *Service Employees Internat. Union, Local 99 v. Options-A Child Care & Human Services Agency* (2011, 2d Dist) 200 Cal App 4th 869, 2011 Cal App LEXIS 1407.

## 7. Particular Determinations

Library commission did not violate the Ralph M. Brown Act, Gov C §§ 54950 et seq., by limiting public comment on each agenda item at a meeting of the commission to two minutes per speaker, instead of the three minutes normally allotted to each speaker. *Chaffee v. San Francisco Public Library Com.* (2005, Cal App 1st Dist) 134 Cal App 4th 109, 36 Cal Rptr 3d 1, 2005 Cal App LEXIS 1810.

City resident's allegations about the activities of the city council allowed the inference that, prior to a city council meeting, the council members had improperly reached a collective concurrence that they would not challenge a policy devised by the city police department to govern its response to activated home invasion alarms, and those allegations led directly to the inference that the council members had reached their consensus through the nonpublic discussions that occurred among them, thereby violating California's Ralph M. Brown Act, Gov C §§ 54950 et seq. Supporting that inference was the council members' decision to have the chief of police address them at the meeting in advance of the public comment period, an action that created the impression of a concerted effort to shape public perceptions of the new policy, and, accordingly, although the allegations of the complaint were not wholly free from ambiguity, they were sufficient to state a claim for a violation of Gov C § 54952.2(b) of the Brown Act. *Wolfe v. City of Fremont* (2006, Cal App 1st Dist) 144 Cal App 4th 533, 50 Cal Rptr 3d 524, 2006 Cal App LEXIS 1711, modified, rehearing denied (2006, Cal App 1st Dist) 2006 Cal App LEXIS 1891.

### Decisions Under Former Law 1. Generally

Brown Act is not directed at anything less than formal meeting of city council or one of city's subordinate agencies. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.



Excluding a few exceptions, local governing bodies, elected by the people, exist to aid in the conduct of the people's business, and thus their deliberation should be conducted openly and with due notice. *Carlson v. Paradise Unified Sch. Dist.* (1971, Cal App 3d Dist) 18 Cal App 3d 196, 95 Cal Rptr 650, 1971 Cal App LEXIS 1374.

## 2. Legislative Intent

The Legislature intended that all state and local agencies be included under the provisions of some open meeting act (the Brown Act, *Gov C §§ 54950 et seq.*; the State Act, *Gov C §§ 11120 et seq.*), unless expressly excluded. *Torres v. Board of Commissioners* (1979, Cal App 5th Dist) 89 Cal App 3d 545, 152 Cal Rptr 506, 1979 Cal App LEXIS 1404.

The Brown Act (*Gov C §§ 54950 et seq.*), providing that all meetings of the legislative body of a local agency shall be open and public, reflects a legislative determination that public agencies in this state exist to aid in the conduct of the people's business, and an intent that their actions be taken openly and that their deliberations be conducted openly. The term "deliberation" has been broadly construed to connote not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision. Thus, the trial court erred in refusing to grant an injunction to restrain a board of education and its superintendent from conducting closed executive sessions, where the school board had met in a closed session with prospective contractors, a "consortium" of three real estate specialists, to discuss with those persons their qualifications to assist the board in disposing of surplus real property, where the specialists were engaged because of their expertise to perform special services and were not subject to control as to the details of its accomplishment, and thus were independent contractors and not employees as that term is generally used or as it is used in the exception contained in *Gov C §§ 54957*, permitting closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee, and where the meeting did not fall within any other exception to the general statutory requirement of open meetings. *Röwen v. Santa Clara Unified School Dist.* (1981, Cal App 1st Dist) 121 Cal App 3d 231, 175 Cal Rptr 292, 1981 Cal App LEXIS 1927.

## 3. Applicability

Action of city council in dismissing police officer is sufficient though this was not done at open and public meeting, notwithstanding provisions of this section, since § 54957 permits closed session to consider dismissal of officer or employee unless officer or employee requests public hearing. *Cozzolino v. Fontana* (1955, Cal App 4th Dist) 136 Cal App 2d 608, 289 P2d 248, 1955 Cal App LEXIS 1523.

## 4. Construction

To "deliberate" is to examine, weigh and reflect on the reasons for or against a choice, and in the context of the Brown Act (*Gov C §§ 54950 et seq.*), requiring that meetings and deliberations of local legislative bodies be conducted openly, "deliberation" connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision, and it is only the misdemeanor penalty which is restricted to meetings "where action is taken". (*Gov C § 54959*). "Meetings" include any informal sessions designed for the discussion of public business. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

The concept of "meeting" under the Brown Act (*Gov C §§ 54950 et seq.*) requiring all meetings of the legislative body of a local agency to be open and public (*Gov C § 54953*), comprehends informal sessions at which a legislative body commits itself collectively to a particular future decision concerning the public business, as well as formal meetings. *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391.

The action of one public official is not a "meeting" within the terms of the Brown Act (*Gov C §§ 54950 et seq.*) (meetings of local governing bodies). A hearing officer whose duty it is to deliberate alone does not have to do so in public. Since the act uniformly speaks in terms of collective action, and because the term "meeting," as a matter of ordinary usage, conveys the presence of more than one person, it follows that under *Gov C § 54953*, the term "meeting" means that two or more persons are required in order to conduct a "meeting" within the meaning of the act. *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

The term "meeting," as used in the Ralph M. Brown Act (*Gov C §§ 54950, 54953*) requiring open public meetings, is not limited to gatherings at which action is taken by the relevant legislative body; deliberative gatherings are included

as well. Deliberation in this context connotes not only collective decisionmaking, but also the collective acquisition and exchange of facts preliminary to the ultimate decision. Recognition of deliberation and action as dual components of the collective decisionmaking process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either. *Frazer v. Dixon Unified School Dist.* (1993, Cal App 1st Dist) 18 Cal App 4th 781, 22 Cal Rptr 2d 641, 1993 Cal App LEXIS 913.

##### 5. Construction With Other Law

In view of public purpose of Brown Act, which was directed toward conduct of public officials, Gov C § 1222 and former Pen C § 177, (see now Pen C § 19.4) were applicable and gave mandatory complexion to said act. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

The Evidence Code, following decisional law, includes public agencies and entities among the clients who may assert the privilege not to disclose confidential lawyer-client communications (Ev C §§ 175, 200, 950 et seq.), and it was not the legislative intent to abrogate such privilege by the Brown Act (Gov C §§ 54950 et seq.), requiring meetings, deliberations and actions of local legislative bodies to be conducted openly. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

The privilege not to disclose confidential lawyer-client communications (Ev C §§ 950 et seq.), as applied to local legislative bodies claiming the privilege in relation to the open meetings requirement of the Brown Act (Gov C §§ 54950 et seq.), is to be strictly construed. Public board members may not arbitrarily or unnecessarily inflate confidentiality for the purpose of deflating the spread of the public meeting law, and neither the attorney's presence nor the happenstance of some kind of lawsuit may serve as a pretext for secret consultations whose revelation will not injure the public interest. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

In an action by a newspaper against the members of a city's redevelopment agency, seeking injunctive relief as well as a declaration that defendants violated the Brown Act (Gov C §§ 54950 et seq.) by holding a series of telephone conversations between individual board members and the board's attorney for the commonly agreed purpose of collectively deciding to approve transfer of ownership in redevelopment project property, the trial court erred in granting defendant's motion for judgment on the pleadings on the ground that the telephone conversations were privileged under Ev C §§ 950 et seq. (attorney-client privilege), and thus excepted from the open-meeting requirements of the Brown Act. Nothing in plaintiff's complaint indicated the communications involved legal consultation regarding a threatened or pending lawsuit or were otherwise a genuine occasion for attorney-client confidentiality. On the face of the pleadings, the single purpose of the communications with the attorney was a legislative commitment, which served only to evade the central thrust of the public meeting law. *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391.

In an action seeking declaratory and mandamus relief against local school authorities' approval of curriculum materials, brought by individuals who opposed the use of the materials, the trial judge, in denying all relief sought by plaintiffs, did not err in ruling that the school board did not violate former Ed C § 60262 (board must promote involvement of parents and community in selection of instructional materials), or its own similar policy, in selecting the curriculum materials, where there were opportunities to provide parental input. However, the court did err with respect to a challenged closed meeting of the board, where the gathering of a quorum of the board and various members of the curriculum council fell well within the definition of "meeting" for purposes of the Ralph M. Brown Act (Brown Act) (Gov C §§ 54950, 54953), requiring open public meetings. However, distribution of memoranda from school district staff to individual members of the board was not subject to the open meeting requirements of the Brown Act; and there was no violation of plaintiffs' constitutional rights by defendants' conduct. *Frazer v. Dixon Unified School Dist.* (1993, Cal App 1st Dist) 18 Cal App 4th 781, 22 Cal Rptr 2d 641, 1993 Cal App LEXIS 913.

## 6. Quorum

Although former Gov C § 54952.3 excluded from the "legislative bodies" to which the Brown Act (*Gov C §§ 54950 et seq.*) applied, "a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body," this exception contemplated that the part of the governing body constituting less than a quorum would report back to the parent body where there would then be a full opportunity for public discussion of matters not already considered by the full board or a quorum thereof. Such was not the case where a number of the members sufficient to constitute a quorum of the legislative body had already been formed and deliberated, albeit serially, on a matter of public business by the time the matter reached the stage of public discussion. Thus, a series of nonpublic contacts at which a quorum of a legislative body was lacking at any given time was proscribed by the Brown Act if the contacts were planned by or held with the collective concurrence of a quorum of the body to privately discuss the public's business either directly or indirectly through the agency of a nonmember. *Stockton Newspapers, Inc. v. Redevelopment Agency (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391.*

The trial court did not err in denying a petition for a writ of mandate brought by a newspaper publisher that was seeking to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory and was composed of four members of the nine-member board. Former Gov C § 54952.3 exempted from the definition of "legislative bodies" that were subject to the open meeting requirements of the Ralph M. Brown Act (*Gov C §§ 54950 et seq.*) advisory committees composed of less than a quorum of the governing body. Although former Gov C § 54952.3 could be read to mean that less-than-quorum committees were merely exempt from the formal requirements of that specific statute, the legislative history of the act, including the Legislature's response to court decisions, demonstrated an intent to exempt less-than-quorum advisory committees from all open meeting requirements. Since the committee was an advisory committee composed solely of board members numbering less than a quorum of the board, the committee was not a "legislative body" and was therefore excluded from the open meeting requirements of the act. *Freedom Newspapers, Inc. v. Orange County Employees Retirement System (1993) 6 Cal 4th 821, 25 Cal Rptr 2d 148, 863 P2d 218, 1993 Cal LEXIS 6370.*

## 7. Privileges

The attorney-client privilege in the context of the Brown Act (*Gov C §§ 54950 et seq.*) must be strictly construed. Public board members, sworn to uphold the law, may not arbitrarily or unnecessarily inflate confidentiality for the purpose of deflating the spread of the public meeting law. Neither the attorney's presence nor the happenstance of some kind of lawsuit may serve as a pretext for secret consultations whose revelation will not injure the public interest. *Stockton Newspapers, Inc. v. Redevelopment Agency (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391.*

The Brown Act (*Gov C §§ 54950 et seq.*) (meetings of local governing bodies) did not require disclosure of a letter a city attorney prepared for the city council in which the attorney expressed legal opinions concerning a resident's pending appeal of a parcel map. The letter was a confidential communication within the attorney-client privilege, and the act broadly preserves that privilege for local governing bodies. Recent amendments to the act did not abrogate the privilege. *Gov C § 54956.9*, as amended, governs closed meetings of governing bodies regarding pending litigation and limits the attorney-client privilege for purposes of conducting closed meetings. However, the term "meeting" was intended to apply to collective action of governing bodies and not to the transmission of a letter to the individual members of the governing body. The language in *Gov C § 54956.9*, abrogating the attorney-client privilege applies to open meeting requirements only, and it does not regulate the transmission of documents such as the city attorney's letter. That language was not intended to repeal other language in the act preserving the privilege. *Roberts v. City of Palmdale (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.*

## 8. Subterfuge

The intent of the Brown Act (*Gov C §§ 54950 et seq.*) (requiring "meetings" of local governing bodies to be open) cannot be avoided by subterfuge. A concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next violates the open meeting requirement. *Roberts v. City of Palmdale (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.*

## 9. Violations

A city council violated the Ralph M. Brown Act (*Gov C §§ 54950 et seq.*) by amending its meeting agenda without the requisite notice, in order to consider an appeal from the approval of plaintiff developers' subdivision map and development applications. A major objective of the act is to facilitate public participation in all phases of local government decisionmaking, and to curb misuse of the democratic process by secret legislation. *Gov C §§ 54954.2(a)*, requires an agenda to be posted at least 72 hours before a regular meeting and forbids action on items not on the agenda. Although an exception exists where the need for action arises after the agenda was posted (*Gov C § 54954.2(b)(2)*), there was no "urgency" exemption in this case. The appearance of many interested citizens at the meeting was not a subsequently arising need that authorized amending the agenda; there had been public input over the prior 10-year period. Wishing to ensure that an unpopular planning commission decision is appealed is not an "emergency situation" (*Gov C §§ 54954.2(b)(1), 54956.5*), and no other statutory exception to the 72-hour rule applied. *Cohan v. City of Thousand Oaks* (1994, *Cal App 2d Dist*) 30 *Cal App 4th* 547, 35 *Cal Rptr 2d* 782, 1994 *Cal App LEXIS* 1200, modified, rehearing denied (1994, *Cal App 2d Dist*) 31 *Cal App 4th* 746a, 1994 *Cal App LEXIS* 1300, review denied (1995, *Cal*) 1995 *Cal LEXIS* 1111.

Although a city council violated the Ralph M. Brown Act (*Gov C § 54954.2(a)*) when it amended its meeting agenda without the required 72-hour notice, in order to consider an appeal from the approval of plaintiff developers' subdivision map and development applications, the council's decision was not invalidated absent a showing of prejudice. Although the developers asserted that had citizens in support of their project known that the subject of appeal would be on the agenda, they could have attended the meeting to dissuade the council from deciding to appeal, the actual hearing on appeal was duly noticed, and only a few persons showed support for the project. In contrast, a large number of opponents of the project were present at the appeal hearing. Thus, it was highly unlikely that more persons would have attended the initial city council meeting to dissuade the council from considering whether to appeal the decision than appeared to support the project on the merits. Moreover, there was no statute or municipal code that provided a right to attempt to dissuade someone from filing an appeal. *Cohan v. City of Thousand Oaks* (1994, *Cal App 2d Dist*) 30 *Cal App 4th* 547, 35 *Cal Rptr 2d* 782, 1994 *Cal App LEXIS* 1200, modified, rehearing denied (1994, *Cal App 2d Dist*) 31 *Cal App 4th* 746a, 1994 *Cal App LEXIS* 1300, review denied (1995, *Cal*) 1995 *Cal LEXIS* 1111.

#### 10. Particular Determinations

City council resolution prohibiting tape recorders in council chambers during council proceedings is unreasonable deprivation of means to make accurate record of what transpires in public meeting and interferes with individual's right as free lance reporter and as private citizen to keep record of what takes place at public meetings so long as he does not interfere with conduct of proceedings or rights of other citizens in attendance. *Nevens v. Chino* (1965, *Cal App 5th Dist*) 233 *Cal App 2d* 775, 44 *Cal Rptr* 50, 1965 *Cal App LEXIS* 1416.

There was no violation of the Brown Act (*Gov C §§ 54950 et seq.*), where the trial court found that a hospital board held a regular meeting during which it declared itself in executive session, the subject of discussion at the executive session pertained to the hospital radiologist and pathologist, and at the conclusion of the executive session the board resumed the meeting as an open meeting and terminated the agreement under which petitioner acted as the hospital radiologist and authorized an agreement under which another physician became the hospital radiologist. *Letsch v. Northern San Diego County Hospital Dist.* (1966, *Cal App 4th Dist*) 246 *Cal App 2d* 673, 55 *Cal Rptr* 118, 1966 *Cal App LEXIS* 1070.

Even assuming the Ralph M. Brown Act (*Gov C § 54950*) to be applicable, a regulation of a city police commission requiring every officer, when off duty or on duty in civilian dress, to be equipped with a revolver, could not be invalidated on the grounds it had been passed by the police commission secretly and interested members of the public were not permitted to express their views; nor could the regulation be invalidated on such grounds under a provision of the city's charter providing that meetings of commissions were to be open to the public, where the charter provision was directory and not mandatory, no means of enforcement of the provision being described in the charter. Violation of a directory statute does not result in invalidity of the action taken. *Stribling v. Mailliard* (1970, *Cal App 1st Dist*) 6 *Cal App 3d* 470, 85 *Cal Rptr* 924, 1970 *Cal App LEXIS* 1351, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, *Cal App 2d Dist*) 225 *Cal App 3d* 1586, 275 *Cal Rptr* 901, 1990 *Cal App LEXIS* 1283.

An agreement entered into between a school district and a private corporation, providing for performance by the corporation of research and development work and services for a fee, could not be said to violate the open meeting provisions of *Gov C § 54950*, where no specific violation of these sections was pointed out, and where the agreement did not, in any way, prohibit or inhibit public meetings and deliberations. Moreover, provisions of the Public Records Act permit a school board to receive information in confidence, and the agreement specifically provided for release of such

information in case of a reasonable and proper need therefor. *California Sch. Employees Assn. v. Sunnyvale Elementary Sch. Dist.* (1973, Cal App 1st Dist) 36 Cal App 3d 46, 111 Cal Rptr 433, 1973 Cal App LEXIS 636.

A school board's consideration in executive session as to whether to accept or reject a hearing officer's decision recommending termination of school district employees did not in and of itself deny the employees recommended for termination of a fair hearing, where the employees requested a public hearing, even though the board's consideration of the matter in executive session was in violation of the Brown Act (Gov C §§ 54950 et seq.). And the validity of the action taken by the Board was not affected by the violation of the *Brown Act*. *Santa Clara Federation of Teachers v. Governing Board* (1981, Cal App 1st Dist) 116 Cal App 3d 831, 172 Cal Rptr 312, 1981 Cal App LEXIS 1548, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283.

In an action seeking declaratory and mandamus relief against local school authorities' approval of curriculum materials, brought by individuals who opposed the use of the materials, the trial judge erred in sustaining a demurrer to causes of action alleging that review and hearing committees, created by the school board, were advisory committees which were subject to the Ralph M. Brown Act (Brown Act) pursuant to former Gov C § 54952.3 (advisory body as legislative body required to hold open public meetings), and that these committees violated the Brown Act by secretly reviewing, investigating, and deliberating about parental complaints regarding the curriculum. The board's adoption of a formal, written policy calling for appointment of a committee to advise the school superintendent and, in turn, the school board (with whom rests the final decision), whenever there was a request for reconsideration of "controversial reading matter," was sufficiently similar to the types of "formal action" listed in former Gov C § 54952.3, to require that meetings had to be open to the public. *Frazer v. Dixon Unified School Dist.* (1993, Cal App 1st Dist) 18 Cal App 4th 781, 22 Cal Rptr 2d 641, 1993 Cal App LEXIS 913.



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Chapter 9. Meetings

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*Cal Gov Code § 54950.5 (2013)*

**§ 54950.5. Title of act**

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

**HISTORY:**

Added Stats 1961 ch 115 § 1.

**NOTES:**

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note



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*Cal Gov Code § 54951*

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Cal Gov Code § **54951** (2013)

**§ 54951. "Local agency"**

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

**History:**

Added Stats 1953 ch 1588 § 1. Amended Stats 1959 ch 1417 § 1.

**Notes:**

**Practitioner's Toolbox**

**History**

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**Notes of Decisions**

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**Related Statutes & Rules**

**Collateral References**

> Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 367A "Minors: Tort Actions".

**Atty General's Opinions**

Amendments:

**1959 Amendment:**

Added "whether general law or chartered," after "city" where it first appears.

**Related Statutes & Rules:**

Meeting places: Gov C § 54961.

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 367A "Minors: Tort Actions".

**Attorney General's Opinions:**

Application of secret meeting law to special committees or subcommittees of local agencies where such committees consist of less than quorum. 32 Ops. Cal. Atty. Gen. 240.

Inapplicability of Ralph M. Brown Act to meetings of local admissions committee of office of county superintendent of schools. 56 Ops. Cal. Atty. Gen. 14.

Application of this chapter to county boards of education when determining matter of school attendance of student. 57 Ops. Cal. Atty. Gen. 189.

Where the board of trustees of a school district has formed a committee, known as the district liaison council, consisting of eight representatives from the community, seven employees of the district, and one student, to interview candidates for the office of district superintendent and to make a recommendation to the board, the sessions of the committee held to perform such delegated duties are not required to be open to members of the public. 80 Ops. Cal. Atty. Gen. 308.

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**Notes of Decisions:**

1. Constitutionality
2. Applicability
3. Construction With Other Law

**1. Constitutionality**

Preliminary injunction granted against school district policy which prohibited criticism of its employees during the open sessions of the district's board meetings, as an overbroad and impermissible prior restraint on citizens' rights of free speech and petition under the constitutions of the United States and California (art 1, sec 2). Selective enforcement of the policy was a violation of plaintiff's right to be free of arbitrary and capricious enforcement of a governmental regulation; and the policy violated plaintiff's right publicly to share her criticisms



of school administration under Gov C § 54954.3. *Baca v. Moreno Valley Unified Sch. Dist.* (1996, CD Cal) 936 F Supp 719, 1996 US Dist LEXIS 11151.

## ✚ 2. Applicability

A housing authority created pursuant to H & S C §§ 34200 et seq., is a "local agency" within the meaning of the Brown Act (Gov C §§ 54950 et seq.; open meetings), and is not a "state agency" within the scope of the State Agency Open Meeting Act (Gov C §§ 11120 et seq.). *Torres v. Board of Commissioners* (1979, Cal App 5th Dist) 89 Cal App 3d 545, 152 Cal Rptr 506, 1979 Cal App LEXIS 1404.

County-wide crime task force organized by police chiefs and approved by numerous city councils met the definition of a local agency in Gov C § **54951**, because it was created as a separate entity in accordance with Gov C §§ 6502, 6503.5, and its governing bodies were legislative bodies as defined in Gov C § 54952(a); thus, it was required to comply with the open meeting requirements set forth in Gov C § 54953(a), of the Ralph M. Brown Act, Gov C §§ 54950 et seq. *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005, Cal App 2d Dist) 134 Cal App 4th 354, 36 Cal Rptr 3d 47, 2005 Cal App LEXIS 1825, rehearing denied *McKee v. Los Angeles Interagency Metro. Police Apprehension Crime Task Force* (2005, Cal App 2d Dist) 2005 Cal App LEXIS 2012, review denied *McKee v. Los Angeles Interagency Police* (2006, Cal) 2006 Cal LEXIS 2270.

Because a government contractor was not a local agency as defined in Gov C § **54951**, or a legislative body as defined in Gov C § 54952, a labor organization and its employee did not have standing under Gov C § 54960(a) to sue directly under the Ralph M. Brown Open Meetings Act, Gov C §§ 54950-54963, for failure to comply with the act as required by the contracts. The provisions allegedly violated, Gov C §§ 54954.2(a)(1), 54954.3(a), 54957.5(a), 54957.7(a), apply only to a legislative body. *Service Employees Internat. Union, Local 99 v. Options-A Child Care & Human Services Agency* (2011, 2d Dist) 200 Cal App 4th 869, 2011 Cal App LEXIS 1407.

## ✚ 3. Construction With Other Law

An individual who represented applicants for workers' compensation benefits before the Workers' Compensation Appeals Board was not denied due process after Lab C §§ 4903(a), and 5710(b)(4), were amended in 1991 to allow fee awards only to licensed attorneys, and to disallow fees to nonattorney representatives, on the basis that no public hearings were held pertaining to the amendments in violation of the open and public hearing requirements (Gov C §§ 9027 et seq.), and the open meeting requirements of the Ralph M. Brown Act (Gov C §§ 54950 et seq.). The lawmaking power of the state is vested, by the Constitution, in the Legislature; and while the Constitution has prescribed the formalities to be observed in the passage of bills and the creation of statutes, the power to determine if these formalities have been complied with is necessarily vested in the Legislature itself. This is the result of the constitutional separation of the legislative, executive, and judicial functions. An act of the Legislature, as it is enrolled and authenticated on file in the office of the Secretary of State, cannot be impeached by showing defects and irregularities in the proceedings while they are pending before the Legislature. In any event, there was nothing to support the representative's claim of irregular legislation. Moreover, his reliance on the Ralph M. Brown Act was misplaced, since the open and public meeting requirements of Gov C § 54950, apply to the legislative bodies of local agencies, not the Legislature (Gov C § **54951**). *Longval v. Workers' Comp. Appeals Bd.* (1996, Cal App 4th Dist) 51 Cal App 4th 792, 59 Cal Rptr 2d 463, 1996 Cal App LEXIS 1175, review denied (1997, Cal) 1997 Cal LEXIS 1364.

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Cal Gov Code § **54952** (2013)

**§ 54952. "Legislative body"**

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

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition,

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which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

**(c)**

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

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

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

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

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

**History:**

Added Stats 1953 ch 1588 § 1. Amended Stats 1961 ch 1671 § 1; Stats 1993 ch 1138 § 3 (SB 1140), operative April 1, 1994; Stats 1996 ch 1134 § 1 (SB 1504); Stats 2002 ch 1073 § 2 (AB 2937).

**Notes:**

- 1. Amendments
- 2. Note

- 1. Amendments:
  - 1961 Amendment
  - 1993 Amendment
  - 1996 Amendment
  - 2002 Amendment

**1961 Amendment:**

Added ", and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private

corporation".

**☛ 1993 Amendment:**

Substituted the section for the former section which read: "As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation."

**☛ 1996 Amendment:**

Amended subd (c) by **(1)** adding subdivision designation (c)(1); **(2)** redesignating former subds (c)(1) and (c)(2) to be subds (c)(1)(A) and (c)(1)(B); and **(3)** added subd (c)(2).

**☛ 2002 Amendment:**

**(1)** Substituted "that are less" for "which are less" in the last sentence of subd (b); and **(2)** substituted "corporation, limited liability company, or other" for "corporation or" in four places in subd (c).

☛ 2.

**Note**

Stats 1993 ch 1138 provides:

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

**☛ Related Statutes & Rules:**

Multimember body with delegated authority as "legislative body": Gov C § 54952.2.

Closed sessions: Gov C §§ 54956.7-54957, 54957.6.

**☛ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 429 "Privacy".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

Cal. Legal Forms, (Matthew Bender(R)) § 13.31.

9 Witkin Summary (10th ed) Taxation § 121.

2 Witkin Cal. Evidence (4th ed) Witnesses § 279.

**☛ Attorney General's Opinions:**

Application of secret meeting law to special committees or subcommittees of local agencies where such committees consist of less than quorum. 32 Ops. Cal. Atty. Gen. 240.

Application of Brown Act to meetings of California Association of Port Authorities. 39 Ops. Cal. Atty. Gen. 94.

Adoption by Midpeninsula Regional Open Space District of resolution listing all parcels of real property larger than twenty acres within its planning area as potential subject of negotiation for purchase would not satisfy disclosure prerequisite for closed session regarding purchase of any one or more of such parcels. 73 Ops. Cal. Atty. Gen. 1.

The meetings of a standing committee composed of less than a quorum of the legislative body of a local public agency are subject to the notice, agenda, and public participation requirements of the Ralph M. Brown Act (Gov C §§ 54950 et seq.), if the committee has the responsibility of providing advice concerning budgets, audits, contracts, and personnel matters to and upon request of the legislative body. A fourth member of a seven member legislative body of a local agency may not attend, as a member of the public, an open and noticed meeting of a less than a quorum advisory committee of that body, without violating the notice, agenda, and public participation requirements of the Ralph M. Brown Act applicable to meetings of the parent legislative body. 79 Ops. Cal. Atty. Gen. 69.

Where the board of trustees of a school district has formed a committee, known as the district liaison council, consisting of eight representatives from the community, seven employees of the district, and one student, to interview candidates for the office of district superintendent and to make a recommendation to the board, the sessions of the committee held to perform such delegated duties are not required to be open to members of the public. 80 Ops. Cal. Atty. Gen. 308.

A city is not required under the federal Americans with Disabilities Act to provide, as an accommodation for a disabled member of its city council or an advisory board who is unable to attend a regularly scheduled meeting of the council or board, a teleconferencing connection at the member's place of residence where members of the public would not be permitted to be present. 84 Ops. Cal. Atty. Gen. 181.

The governing board of a jointly administered trust fund, whose members are appointed equally by a city and a labor union representing city employees and whose purpose is to address labor-management issues relating to the health, safety, and training of city employees, is not required to hold its meetings open to the public. 87 Cal. Ops. Atty. Gen. 19.

A county retirement board may permit an applicant for a disability retirement and his or her representative to attend a closed session at which the employee's medical records are discussed and evaluated. 88 Cal. Ops. Atty. Gen. 16.

### **Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

### **Notes of Decisions:**

- 1. Applicability
- 2. Construction
- 3. Construction With Other Law

### **1. Applicability**

A proposed meeting of two members of a city council and two members of the city's planning commission to interview applicants for a vacancy on the commission, and to make a joint

recommendation to the council regarding appointment of a commissioner, was subject to the provisions of the Ralph M. Brown Act (Gov C §§ 54950 et seq.) requiring all meetings of the legislative body of a local agency to be open and public. The exclusion from the definition of "legislative body" under former Gov C § 54952.3, of a committee composed solely of members of the governing body of a local agency which were less than a quorum of such governing body, had no application under the circumstances. Although the council and committee members who were to attend the meeting constituted less than a quorum of their respective bodies, the meeting was to be of an "advisory committee" within the meaning of the statutory definition of "legislative body." Furthermore the proposed interview committee was created by "formal action" of the city council even though the interview procedure was contingent upon the willingness of members of the commission to serve on the committee. *Joiner v. City of Sebastopol* (1981, Cal App 1st Dist) 125 Cal App 3d 799, 178 Cal Rptr 299, 1981 Cal App LEXIS 2363.

In a proceeding for writ of mandate to compel a private nonprofit public benefit corporation operating a hospital owned by a local hospital district pursuant to a 30-year lease from the district to comply with the open meeting requirements of the Brown Act (Gov C §§ 54950 et seq.), the trial court, in denying relief, did not err in concluding that the corporation's board was not a legislative body of the district under Gov C § 54952 (defining "legislative body" ). The two district board members on the corporation's board were not serving in their official capacities on the corporation's board. Further, Gov C § 54952.2 (additionally defining "legislative body" to mean any board or other multimember body exercising authority of a legislative body of a local agency delegated to it by that legislative body), was inapplicable to the corporation's board. *Yoffie v. Marin Hospital Dist.* (1987, Cal App 1st Dist) 193 Cal App 3d 743, 238 Cal Rptr 502, 1987 Cal App LEXIS 1933.

A task force appointed by a mayor of a city and county to formulate legislation creating permanent zoning controls on the demolition of single family houses was not a legislative body within the meaning of the Brown Act (Gov C § 54952), despite the fact that two members of the city's board of supervisors were on the task force. The supervisors were not serving in their official capacity, where there was no evidence that they were appointed to represent the interests of the board of supervisors, where the city charter did not require board members to serve on the task force nor were there any bylaws of the task force requiring such participation, and where there was no evidence that the board of supervisors required its members to serve on the task force or exercised any control over the members' actions. Thus, the task force was not subject to the open meeting requirements of the Brown Act. *Farron v. City and County of San Francisco* (1989, Cal App 1st Dist) 216 Cal App 3d 1071, 265 Cal Rptr 317, 1989 Cal App LEXIS 1326.

The Los Angeles Export Terminal, Inc. board of directors is a legislative body subject to the open meeting requirements of the Brown Act (Gov C §§ 54950 et seq.). The board came within the definition of a legislative body (Gov C § 54952(c)(1)(A)) since (1) it was a multi-member body that governed a private corporation or entity; (2) it was created by the elected legislative body (the city council) through the city harbor commission, a body appointed by the city council, which had the power to review and overturn any matter originally considered by the harbor commission board; and (3) it was created to exercise governmental authority. *International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999, Cal App 2d Dist) 69 Cal App 4th 287, 81 Cal Rptr 2d 456, 1999 Cal App LEXIS 31, rehearing denied (1999, Cal App 2d Dist) 69 Cal App 4th 1219c, 1999 Cal App LEXIS 107, review denied (1999, Cal) 1999 Cal LEXIS 2228.

The board of directors of a property owners association (POA) that administered funds a city raised through assessments on businesses within a business improvement district's boundaries was a legislative body within the meaning of the Brown Act (Gov C § 54952(c)(1)(A)) and was thus required to hold noticed, open meetings with the agenda posted in advance. The POA was created by the city to exercise governmental authority over the district, authority that the city otherwise could exercise. The POA's status as an entity created to take over the city's



legislative functions was not somehow negated, annulled, or dissipated simply because its role subsequently was expanded by the geographic expansion of the area over which it exercised such functions. *Epstein v. Hollywood Entertainment Dist. II Business Improvement Dist.* (2001, Cal App 2d Dist) 87 Cal App 4th 862, 104 Cal Rptr 2d 857, 2001 Cal App LEXIS 168, review denied *City of Los Angeles v. Hollywood Entertainment Dist. II Bus. Improvement Dist.* (2001, Cal) 2001 Cal LEXIS 3868.

Court rejected the taxpayers' claim that because the Ralph M. Brown Act, Gov C §§ 54950 et seq., applied to standing committees, and the city council members in question were the sole members of a standing committee for land use and planning, the meetings were subject to the Act under Gov C § 54952(b); the members did not meet as members of the committee, and just because the committee tried to develop the city's own local coastal program did not mean that the city council gave the committee jurisdiction over the city's response to the state coastal commission's land use plan for the city. *Taxpayers for Livable Communities v. City of Malibu* (2005, Cal App 2d Dist) 126 Cal App 4th 1123, 24 Cal Rptr 3d 493, 2005 Cal App LEXIS 230, review denied (2005, Cal) 2005 Cal LEXIS 5316.

Substantial evidence supported the finding that the city council members were not an "other body" for purposes of Gov C § 54952(b) of the Ralph M. Brown Act, Gov C §§ 54950 et seq.; first, the two of them were not a quorum of the councils' five members, and second, the city council's directive that the members go over the city's response to the land use plan made them no more than an advisory body. *Taxpayers for Livable Communities v. City of Malibu* (2005, Cal App 2d Dist) 126 Cal App 4th 1123, 24 Cal Rptr 3d 493, 2005 Cal App LEXIS 230, review denied (2005, Cal) 2005 Cal LEXIS 5316.

County-wide crime task force organized by police chiefs and approved by numerous city councils met the definition of a local agency in Gov C § 54951, because it was created as a separate entity in accordance with Gov C §§ 6502, 6503.5, and its governing bodies were legislative bodies as defined in Gov C § 54952(a); thus, it was required to comply with the open meeting requirements set forth in Gov C § 54953(a), of the Ralph M. Brown Act, Gov C §§ 54950 et seq. *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005, Cal App 2d Dist) 134 Cal App 4th 354, 36 Cal Rptr 3d 47, 2005 Cal App LEXIS 1825, rehearing denied *McKee v. Los Angeles Interagency Metro. Police Apprehension Crime Task Force* (2005, Cal App 2d Dist) 2005 Cal App LEXIS 2012, review denied *McKee v. Los Angeles Interagency Police* (2006, Cal) 2006 Cal LEXIS 2270.

Because a government contractor was not a local agency as defined in Gov C § 54951, or a legislative body as defined in Gov C § 54952, a labor organization and its employee did not have standing under Gov C § 54960(a) to sue directly under the Ralph M. Brown Open Meetings Act, Gov C §§ 54950-54963, for failure to comply with the act as required by the contracts. The provisions allegedly violated, Gov C §§ 54954.2(a)(1), 54954.3(a), 54957.5(a), 54957.7(a), apply only to a legislative body. *Service Employees Internat. Union, Local 99 v. Options-A Child Care & Human Services Agency* (2011, 2d Dist) 200 Cal App 4th 869, 2011 Cal App LEXIS 1407.

Because a joint labor/management benefits committee was created as part of, and for the purpose of furthering, the collective bargaining process under the Educational Employment Relations Act, Gov C §§ 3540 et seq., the committee's proceedings were exempt under Gov C § 3549.1, from the Ralph M. Brown Act, Gov C §§ 54950 et seq. The committee was not a legislative body under Gov C § 54952(b), and thus was not required under Gov C § 54953(a), to hold open meetings; rather, it was a public school employer under Gov C § 3540.1(k), entitled under Gov C § 3543.3, to meet and negotiate as defined in § 3540.1(h), through its agents or representatives, with its employees' exclusive representatives. *Californians Aware v. Joint Labor/Management Benefits Committee* (2011, 2d Dist) 200 Cal App 4th 972, 2011 Cal App LEXIS 1412.

## ↗ 2. Construction

Definition of "legislative body" includes any board or commission of governing body, but not subordinate agency, such as zoning commission created by city charter, acting independently of governing body and pursuant to authority flowing directly from charter. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

## ↗ 3. Construction With Other Law

Where two public school districts and a county participated in various education-related programs that were funded by the State, and which required participating public school districts to establish and utilize specified school councils, and advisory committees, applying Cal Const Art XIII B, § 6, the California Supreme Court held the school districts were not legally "compelled" to incur the notice and agenda costs relating to public meetings, and were not entitled to reimbursement from the state, further, some of the program funds could be applied to said notice and agenda costs. *Department of Finance v. Commission on State Mandates* (2003) 30 Cal 4th 727, 134 Cal Rptr 2d 237, 68 P3d 1203, 2003 Cal LEXIS 3353.

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*Cal Gov Code § 54952.1*

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> Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

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(All 2012 legislation, 2012 Governor's Reorg. Plan No. 2 and all propositions approved by the electorate at the June and November 2012 elections)

GOVERNMENT CODE  
Title 5. Local Agencies  
Division 2. Cities, Counties, and Other Agencies  
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § **54952.1** (2013)

**§ 54952.1. Conduct and treatment of electee**

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

**History:**

Added Stats 1993 ch 1137 § 1 (SB 36), operative April 1, 1994. Amended Stats 1994 ch 32 § 2 (SB 752), effective March 30, 1994, operative April 1, 1994.

⌵ **Notes:**

- ⌵ 1. Amendments
- ⌵ 2. Note

⌵ 1. Amendments:

**1994 Amendment:**

Substituted the section for the former section which read: "As used in this chapter, 'member of a legislative body of a local agency' includes, but is not limited to, any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office."

⌵ 2.

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

⌵ **Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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*Cal Gov Code § 54952.2*

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**GOVERNMENT CODE**  
 Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
 Part 1. Powers and Duties Common to Cities, Counties, and  
 Other Agencies  
 Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54952.2 (2013)

**§ 54952.2. Specified communications of legislative body of local agency prohibited outside meeting thereof**

(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

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Related Statutes & Rules

Collateral References

> Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

> Cal. Legal Forms, (Matthew Bender) § 13.31.

Atty General's Opinions

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:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

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

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

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

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

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

#### **History:**

Added Stats 1993 ch 1136 § 2 (AB 1426), operative April 1, 1994, ch 1137 § 2 (SB 36), operative April 1, 1994. Amended Stats 1994 ch 32 § 3 (SB 752) (ch 32 prevails), effective March 30, 1994, operative April 1, 1994. Repealed Stats 1994 ch 146 § 83 (AB 3601). Amended Stats 1997 ch 253 § 1 (SB 138); Stats 2008 ch 63 § 3 (SB 1732), effective January 1, 2009.

#### **Notes:**

- ↓ 1. Editor's Notes
- ↓ 2. Former Sections
- ↓ 3. Amendments
- ↓ 4. Note

↗ 1.

### Editor's Notes

It appears that Stats 1993 ch 1138 § 4 was intended to repeal Gov C § 54592.2 as enacted by Stats 1981 ch 968 § 25.

↗ 2.

### Former Sections:

Former Gov C § 54952.2, defining "legislative body", was added Stats 1981 ch 968 § 25 and repealed Stats 1993 ch 1138 § 4, operative April 1, 1994.

↗ 3. Amendments:

- ↓ 1994 Amendment
- ↓ 1997 Amendment
- ↓ 2008 Amendment

#### ↗ 1994 Amendment:

(1) Amended subd (a) by (a) deleting "all of the following: (1)" before "any congregation"; and (b) substituting "at" for "in" after "a legislative body"; (2) redesignated former subds (a) (2) and (b) to be subds (b) and (c); (3) amended subd (b) by adding (a) "Except as authorized pursuant to Section 54953,;" and (b) "is prohibited" at the end; (4) substituted "this section" for "subdivision (a)" in the introductory clause of subd (c); (5) added ", other than as part of the scheduled program," in the first sentence of subd (c)(2) and in subd (c)(3); (6) amended subd (c)(4) by (a) substituting "of a legislative body at an open and noticed meeting of another body of the local agency" for "at a purely social or ceremonial occasion"; and (b) adding ", other than as part of the scheduled meeting,;" and (7) added subd (c)(5).

#### ↗ 1997 Amendment:

Added (1) "or at an open and noticed meeting of a legislative body of another local agency," in subd (c)(4); and (2) subd (c)(6).

#### ↗ 2008 Amendment:

(1) Amended subd (a) by (a) substituting "means" for "includes" after "meeting"; (b) substituting "location, including teleconference location as permitted by Section 54953," for "place"; (c) substituting "discuss, deliberate, or take action on" for "discuss, or deliberate upon"; and (d) deleting "or the local agency to which it pertains" at the end; (2) deleted former (b) which read: "(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited."; (3) added subds (b)(1) and (b)(2); and (4) added "that do not violate subdivision (b)" in subd (c)(1).

↗ 4.



**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

Stats 2008 ch 63 provides:

SECTION 1. The Legislature hereby declares that it disapproves the court's holding in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the process of developing a collective concurrence as a violation of the prohibition.

It is the intent of the Legislature that the changes made by Section 3 of this act supersede the court's holding described in subdivision (a).

**✚ Related Statutes & Rules:**

Discrimination in allowing access of members of legislative body of local agency to writing or portion thereof prohibited: Gov C § 6252.7.

**✚ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

Cal. Legal Forms, (Matthew Bender) § 13.31.

**✚ Attorney General's Opinions:**

The meetings of a standing committee composed of less than a quorum of the legislative body of a local public agency are subject to the notice, agenda, and public participation requirements of the Ralph M. Brown Act (Gov C §§ 54950 et seq.), if the committee has the responsibility of providing advice concerning budgets, audits, contracts, and personnel matters to and upon request of the legislative body. A fourth member of a seven member legislative body of a local agency may not attend, as a member of the public, an open and noticed meeting of a less than a quorum advisory committee of that body, without violating the notice, agenda, and public participation requirements of the Ralph M. Brown Act applicable to meetings of the parent legislative body. 79 Ops. Cal. Atty. Gen. 69.

Members of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body "as observers." Members of the legislative body of a local public agency may not sit in special chairs on the dais while attending a meeting of a standing committee of the legislative body "as observers." 81 Ops. Cal. Atty. Gen. 156.

A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the

Ralph M. Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board. 84 Ops. Cal. Atty. Gen. 30.

### **Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

### **Notes of Decisions:**

- 1. Construction
- 2. Compliance
- 3. Particular Determinations

#### **1. Construction**

Gov C § 54952.2(b), in proscribing the use of direct conversations, intermediaries, and technological means to reach a collective concurrence, does not include a requirement that the use have been purposeful. If a collective concurrence results from these means, it does not matter whether the participants intended that result. *Wolfe v. City of Fremont* (2006, Cal App 1st Dist) 144 Cal App 4th 533, 50 Cal Rptr 3d 524, 2006 Cal App LEXIS 1711, modified, rehearing denied (2006, Cal App 1st Dist) 2006 Cal App LEXIS 1891.

While personal meetings permit an interchange of views, unlike the distribution of a written memorandum, California's Ralph M. Brown Act, Gov C §§ 54950 et seq., does not preclude members of a local legislative body from engaging in one-on-one discussions of matters before the body. This is not to imply that serial meetings between a city official and individual members of the city council can never lead to a violation of the Brown Act, but more than mere policy-related informational exchanges are required before such a violation will occur. *Wolfe v. City of Fremont* (2006, Cal App 1st Dist) 144 Cal App 4th 533, 50 Cal Rptr 3d 524, 2006 Cal App LEXIS 1711, modified, rehearing denied (2006, Cal App 1st Dist) 2006 Cal App LEXIS 1891.

#### **2. Compliance**

Although a library commission's continued meeting was a separate and regular meeting under Gov C §§ 54952.2(a) and 54955 of the Ralph M. Brown Act, Gov C §§ 54950 et seq., under Gov C § 54954.3(a) of the Act and § 67.15(a) of the San Francisco Sunshine Ordinance of 1999, San Francisco, Cal., Admin. Code ch. 67, the commission and its commissioners complied with the Act and the local sunshine law when they allowed public comment on items from that agenda only at the continued meeting. *Chaffee v. San Francisco Library Com.* (2004, Cal App 1st Dist) 115 Cal App 4th 461, 9 Cal Rptr 3d 336, 2004 Cal App LEXIS 117.

#### **3. Particular Determinations**

City resident's allegations about the activities of the city council allowed the inference that, prior to a city council meeting, the council members had improperly reached a collective concurrence that they would not challenge a policy devised by the city police department to govern its response to activated home invasion alarms, and those allegations led directly to the inference that the council members had reached their consensus through the nonpublic discussions that occurred among them, thereby violating California's Ralph M. Brown Act, Gov C §§ 54950 et seq. Supporting that inference was the council members' decision to have the chief

of police address them at the meeting in advance of the public comment period, an action that created the impression of a concerted effort to shape public perceptions of the new policy, and, accordingly, although the allegations of the complaint were not wholly free from ambiguity, they were sufficient to state a claim for a violation of Gov C § 54952.2(b) of the Brown Act. *Wolfe v. City of Fremont* (2006, Cal App 1st Dist) 144 Cal App 4th 533, 50 Cal Rptr 3d 524, 2006 Cal App LEXIS 1711, modified, rehearing denied (2006, Cal App 1st Dist) 2006 Cal App LEXIS 1891.

Trial court should have overruled the demurrers of a community college district and its former superintendent to a district resident's cause of action for violation of Gov C § 54956.9 where the resident's allegations that individual trustees of the district board of trustees regularly and repeatedly left the room to meet with a judge, after which time they reached a consensus to enter into a settlement with the superintendent, showed more than merely discussing and approving proposed settlement terms and conditions, as they suggested the sort of collective acquisition and exchange of facts preliminary to an ultimate decision that had to occur openly. Issuance of a notice identifying the superintendent as the litigant, and minutes showing the board had reconsidered and approved her settlement agreement, did not establish a cure of the board's acts in impermissibly conducting information gathering in the course of mediating and negotiating with the superintendent in a closed meeting, actions that fell outside the pending litigation exception of California's Ralph M. Brown Act, Gov C §§ 54950.5 et seq. *Page v. Miracosta Community College Dist.* (2009, 4th Dist) 180 Cal App 4th 471, 102 Cal Rptr 3d 902, 2009 Cal App LEXIS 2031, rehearing denied *Page v. Miracosta Community College District* (2009, Cal. App. 4th Dist.) 2009 Cal. App. LEXIS 2041.

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TOC: **Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > § 54952.2. Specified communications of legislative body of local agency prohibited outside meeting thereof**

Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54952.2**

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TOC: **Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > § 54952.3. Simultaneous or serial order meetings authorized; Requirements; Compensation or stipend**

Terms: 54952.1  
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*Cal Gov Code § 54952.3*

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**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54952.3 (2013)

**§ 54952.3. Simultaneous or serial order meetings authorized; Requirements; Compensation or stipend**

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(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.

#### History:

Added Stats 2011 ch 91 § 1 (AB 23), effective January 1, 2012.

#### Notes:

#### Former Sections:

Former Gov C 54952.3, relating to advisory body as "legislative body", was added Stats 1968 ch 1297 § 1, amended Stats 1975 ch 959 § 7, Stats 1981 ch 968 § 26 and repealed Stats 1993 ch 1138 § 5, operative April 1, 1994.

#### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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*Cal Gov Code § 54952.6*

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Cal Gov Code § 54952.6 (2013)



**§ 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.



**History:**

Added Stats 1961 ch 1671 § 3.

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-  **Atty General's Opinions**

**↕ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**↕ Attorney General's Opinions:**

Right of public to notice of, and attendance at city council's meetings, irrespective of whether individual members of council intend to take "action". 42 Ops. Cal. Atty. Gen. 61.

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**↕ Notes of Decisions:**

↕ 1. Applicability

**↕ 1. Applicability**

Where there was no allegation in a complaint that the action taken by a local legislative agency in adopting resolutions concerning qualification of developer proposals for an urban renewal project was not at a public meeting, there was no violation of the Brown Act, which in effect proscribed secret meetings of any legislative body in the state. *Old Town Development Corp. v. Urban Renewal Agency* (1967, Cal App 1st Dist) 249 Cal App 2d 313, 57 Cal Rptr 426, 1967 Cal App LEXIS 2226.

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*Cal Gov Code § 54952.7*

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Cal Gov Code § 54952.7 (2013)

**§ 54952.7. Copy of chapter**

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

** History:**

Added Stats 1980 ch 1284 § 17. Amended Stats 1981 ch 968 § 27; Stats 1993 ch 1136 § 3 (AB 1426), operative April 1, 1994, ch 1137 § 3 (SB 36), operative April 1, 1994, ch 1138 § 7 (SB 1140), operative April 1, 1994.



**Notes:**

- 1. Amendments
- 2. Note

- 1. Amendments:
  - 1981 Amendment
  - 1993 Amendment

**1981 Amendment:**

Added "all or a majority of".

**1993 Amendment:**

Added "and any person elected to serve as a member of the legislative body who has not assumed the duties of office" at the end of the first sentence. (As amended Stats 1993 ch 1138, compared to the section as it read prior to 1993. This section was also amended by two earlier chapters, chs 1136 and 1137. See Gov C § 9605.)

**2.****Note**

Stats 1993 ch 1138 provides:

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

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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Terms: 54952.1

Focus: **54952.2 (Exit FOCUS™)**

Section: **Cal Gov Code § 54953**

*Cal Gov Code § 54953*

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Cal Gov Code § 54953 (2013)

**§ 54953. Requirement that meetings be open and public; Teleconferencing; Teleconference meetings by health authority**

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

**(b)**

**(1)** Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or

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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 either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

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

(d)

(1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2018.

#### History:

Added Stats 1953 ch 1588 § 1. Amended Stats 1988 ch 399 § 1, operative until January 1, 1994; Stats 1993 ch 1136 § 4 (AB 1426), operative April 1, 1994, ch 1137 § 4 (SB 36),

operative April 1, 1994; Stats 1994 ch 32 § 4 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1997 ch 253 § 2 (SB 138); Stats 1998 ch 260 § 1 (SB 139); Stats 2005 ch 540 § 1 (AB 1438), effective January 1, 2006; Stats 2012 ch 209 § 1 (SB 475), effective January 1, 2013.

#### Notes:

- 1. Editor's Notes
- 2. Former Sections
- 3. Amendments
- 4. Note

#### 1.

##### Editor's Notes

This section was not effective from January 1, 2009, through December 31, 2012.

Stats 1993 ch 1136 § 4 and ch 1137 § 4 both amend § 54953 as amended by section 1 of Chapter 399 of the Statutes of 1988.

#### 2.

##### Former Sections:

There was another section of this number, relating to requirement for open and public meetings, which was added Stats 1988 ch 399 § 2, operative January 1, 1994, and repealed Stats 1999 ch 83 § 84.

#### 3. Amendments:

- 1988 Amendment
- 1993 Amendment
- 1994 Amendment
- 1997 Amendment
- 1998 Amendment
- 2005 Amendment
- 2012 Amendment

#### 1988 Amendment:

(1) Designated the former section to be subd (a); and (2) added subd (b) and the last paragraph.

#### 1993 Amendment:

(1) Added subd (c); and (2) deleted the former last paragraph which read: "This section shall remain in effect until January 1, 1994, and on that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1994, deletes or extends that date." (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

#### 1994 Amendment:

Added subdivision designations (b)(1)-(b)(4).

**↗ 1997 Amendment:**

(1) Deleted "video" after "agency may use" in subd (b)(1), and after "elects to use" and "agendas at all" in subd (b)(3); (2) substituted "and" for "or" after "of the public" in subd (b)(1) and after "protects the statutory" in subd (b)(3); (3) added the last sentence in subd (b)(1); (4) substituted subd (b)(2) for former subd (b)(2) which read: "(2) The use of video teleconferencing, as authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body."; (5) amended subd (b)(3) by (a) substituting "conduct teleconference meetings in a manner that protects" for "adopt reasonable regulations to adequately protects"; and (b) adding the second and last sentences; and (6) substituted subd (b)(4) for former subd (b)(4) which read: "(4) The term 'video teleconference' shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location."

**↗ 1998 Amendment:**

(1) Added the third sentence in subd (b)(3); and (2) amended subd (b)(4) by (a) substituting "a legislative body, the members of which are" for "individuals"; and (b) adding the second sentence.

**↗ 2005 Amendment:**

(1) Added ", except as provided in subdivision (d)" in subd (b)(3); and (2) added subd (d).

**↗ 2012 Amendment:**

Substituted "January 1, 2018" for "January 1, 2009" in subd (d)(4).

**↗ 4.****Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

Stats 1996 ch 400 provides:

SEC. 8. (a) In addition to the authority granted in Section 54953 of the Government Code, the Board of Supervisors of Santa Barbara County and a standing committee composed of members of the Board of Supervisors of Santa Barbara County that is a legislative body within the meaning of subdivision (b) of Section 54952 of the Government Code may use teleconferencing for the benefit of the public or the legislative body in connection with any meeting or proceeding authorized by law. The use of teleconferencing by the board under this section shall be limited to receipt of testimony by staff and members of the public and to deliberations of the legislative body. If the legislative body elects to use teleconferencing, it shall post agendas at all teleconference locations, which shall be open to the public. The legislative body shall adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body.

(b) The term "teleconference" as used in this section means a system that provides for audio participation between all members of the legislative body and the public attending a meeting or

hearing.

(c) The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of Santa Barbara County that require extensive travel by county supervisors and staff to attend regular meetings.

Stats 2005 ch 540 provides:

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 54953 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Local health initiatives are an essential component of California's health care delivery system, and their ability to meet regularly to address the health care concerns of Medi-Cal beneficiaries is vital. The membership of local health initiative boards of directors is required by statute to represent a diverse group of health care professionals, and, as a result, these boards frequently are large and comprised of persons working and residing outside of the board's jurisdiction. Accordingly, these boards have a demonstrated difficulty in obtaining a quorum of members located within the board's jurisdiction as required by the teleconference provisions of the Ralph M. Brown Act.

Stats 2012 ch 209 provides:

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 54953 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Local health initiatives are an essential component of California's health care delivery system, and their ability to meet regularly to address the health care concerns of Medi-Cal beneficiaries is vital. The membership of local health initiative boards of directors is required by statute to represent a diverse group of health care professionals, and, as a result, these boards frequently are large and comprised of persons working and residing outside of the board's jurisdiction. Accordingly, these boards have a demonstrated difficulty in obtaining a quorum of members located within the board's jurisdiction as required by the teleconference provisions of the Ralph M. Brown Act.

#### **Related Statutes & Rules:**

Closed sessions: Gov C §§ 54956.7-54957, 54957.6.

#### **Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

5 Witkin Summary (10th ed) Torts § 17.

#### **Law Review Articles:**

Secrecy and access to administrative records. 44 Cal LR 305.

A New Domain for Public Speech: Opening Public Spaces Online. 94 Cal LR 1791.

Welfare in 1957 Legislature--open meetings. 46 Cal LR 352.

Access to governmental information in California--meetings of public bodies. 54 Cal LR 1650.

Organizations and administrative practice. 26 Hast LJ 89.

Public meetings under Winton Act governing collective bargaining between public school boards and employees. 21 Stan LR 358.

### **⚡ Attorney General's Opinions:**

Legality of resolution of city council restricting attendance at "council conferences" to citizens registered with city clerk. 27 Ops. Cal. Atty. Gen. 123.

Application of secret meeting law to special committee or subcommittees of local agencies where such committees consist of less than quorum. 32 Ops. Cal. Atty. Gen. 240.

Requirements of Brown Act with respect to city council meeting with city attorney being open to public. 36 Ops. Cal. Atty. Gen. 175.

Tape recordings of city council meetings as being public records which citizens have right to inspect. 39 Ops. Cal. Atty. Gen. 298.

Application of Brown Act to meetings of city council with city manager, city attorney and planning director. 42 Ops. Cal. Atty. Gen. 61.

Application of Secret Meeting Law to luncheon meetings held for discussing items of importance to governmental entity. 43 Ops. Cal. Atty. Gen. 36.

Prohibition against board of supervisors' meeting in executive session to review and decide on position it will take on meeting and conferring with representatives of employee organization, without use of designated representative; propriety of the board's appointing from its membership members to act as its designated representative with whom it may meet and confer in executive session. 57 Ops. Cal. Atty. Gen. 209.

A county board of supervisors may attend a closed session of a county grand jury which is held in exercise of the grand jury's investigatory powers without violating the Ralph M. Brown Act requiring that meetings of the legislative body of a local agency be open and public. 58 Ops. Cal. Atty. Gen. 839.

A "meet and confer" session held pursuant to Gov C § 3505 between representatives of a county employee association and representatives of the board of supervisors, is not required to be open to the public. There is no legal requirement that the employee representative be allowed to tape-record the session. Such matter appears to be one to be settled between both sides in establishing "ground rules" for the session. 61 Ops. Cal. Atty. Gen. 1.

An executive session may not be held to discuss complaints against presiding officers of the governing body of a city, county or special district. 61 Ops. Cal. Atty. Gen. 10.

It is a violation of the Brown Act, [Gov C §§ 54950, et seq.] for members of a community redevelopment agency to hold a series of closed meetings with the city council or the city

planning commission to convey information regarding the agency's business on or about the same date despite the fact that a quorum of any governmental body is not present at any given meeting. 63 Ops. Cal. Atty. Gen. 820.

Closed session meetings with counsel may be held when meetings concern committee's powers and duties to advise Board of Supervisors on airport matters. (1984) 67 Ops. Cal. Atty. Gen. 111.

Adoption by Midpeninsula Regional Open Space District of resolution listing all parcels of real property larger than twenty acres within its planning area as potential subject of negotiation for purchase would not satisfy disclosure prerequisite for closed session regarding purchase of any one or more of such parcels. 73 Ops. Cal. Atty. Gen. 1.

Where the board of trustees of a school district has formed a committee, known as the district liaison council, consisting of eight representatives from the community, seven employees of the district, and one student, to interview candidates for the office of district superintendent and to make a recommendation to the board, the sessions of the committee held to perform such delegated duties are not required to be open to members of the public. 80 Ops. Cal. Atty. Gen. 308.

A city is not required under the federal Americans with Disabilities Act to provide, as an accommodation for a disabled member of its city council or an advisory board who is unable to attend a regularly scheduled meeting of the council or board, a teleconferencing connection at the member's place of residence where members of the public would not be permitted to be present. 84 Ops. Cal. Atty. Gen. 181.

The open meeting requirements of the Ralph M. Brown Act apply to the meetings of the governing board of a private, nonprofit corporation formed for the purpose of providing programming for a cable television channel set aside for educational use by a cable operator pursuant to its franchise agreement with a city and subsequently designated by the city to provide the programming services. 85 Ops. Cal. Atty. Gen. 55.

The governing board of a jointly administered trust fund, whose members are appointed equally by a city and a labor union representing city employees and whose purpose is to address labor-management issues relating to the health, safety, and training of city employees, is not required to hold its meetings open to the public. 87 Cal. Ops. Atty. Gen. 19.

Under the provisions of the Ralph M. Brown Act, a majority of the members of a city council may not meet, either outside or inside the city's boundaries, to attend a private tour of the facilities of a water district that provides services to the city for the purpose of acquiring information regarding those services. A majority of the members of a city council may attend a tour of the extraterritorial water-district facilities if the tour is held as a noticed and public meeting of the council for the purpose of inspecting the facilities and the topics raised and discussed at the meeting are limited to items directly related to the facilities being inspected. 94 Ops. Cal. Atty. Gen. 33.

#### **Annotations:**

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1070.

#### **Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note



## ⌘ Notes of Decisions:

- ⌘ 1. Generally
- ⌘ 2. Constitutionality
- ⌘ 3. Applicability
- ⌘ 4. Construction
- ⌘ 5. Construction With Other Law
- ⌘ 6. Notice
- ⌘ 7. Pleadings
- ⌘ 8. Luncheon and Dinner Meetings
- ⌘ 9. Violations
- ⌘ 10. Remedies
- ⌘ 11. Particular Determinations

### ⌘ 1. Generally

The open meeting requirements of the Brown Act (Gov C § 54953) must be interpreted liberally in favor of openness, and the "personnel exception" in Gov C § 54957 (executive sessions: purpose) must be construed narrowly. *San Diego Union v. City Council* (1983, Cal App 4th Dist) 146 Cal App 3d 947, 196 Cal Rptr 45, 1983 Cal App LEXIS 2136.

County-wide crime task force organized by police chiefs and approved by numerous city councils met the definition of a local agency in Gov C § 54951, because it was created as a separate entity in accordance with Gov C §§ 6502, 6503.5, and its governing bodies were legislative bodies as defined in Gov C § 54952(a); thus, it was required to comply with the open meeting requirements set forth in Gov C § 54953(a), of the Ralph M. Brown Act, Gov C §§ 54950 et seq. *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005, Cal App 2d Dist) 134 Cal App 4th 354, 36 Cal Rptr 3d 47, 2005 Cal App LEXIS 1825, rehearing denied *McKee v. Los Angeles Interagency Metro. Police Apprehension Crime Task Force* (2005, Cal App 2d Dist) 2005 Cal App LEXIS 2012, review denied *McKee v. Los Angeles Interagency Police* (2006, Cal) 2006 Cal LEXIS 2270.

### ⌘ 2. Constitutionality

Although a charter city has complete control over its municipal affairs and has direct constitutional power to determine the compensation of its officers and employees (Cal Const Art XI, § 5(a), (b)), the Brown Act (Gov C §§ 54950 et seq.), requiring open meetings of the city council when salaries of nonelected city officers or employees are discussed and determined, does not impermissibly infringe in any manner upon this authority. Rather, the procedural nature of the Brown Act's guaranty all meetings of a governmental body be open to the public unless expressly exempted by statute, designed to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is predicated, addresses a genuine and pure matter of statewide concern. The fundamental nature of this openness requirement does not impede the city's exercise of its plenary authority over the establishment of compensation for its executive appointees. The Brown Act does not conflict with any substantive power constitutionally conferred upon charter cities. *San Diego Union v. City Council* (1983, Cal App 4th Dist) 146 Cal App 3d 947, 196 Cal Rptr 45, 1983 Cal App LEXIS 2136.

### ⌘ 3. Applicability

Action of city council in dismissing police officer was sufficient though this was not done at open and public meeting. *Cozzolino v. Fontana* (1955, Cal App 4th Dist) 136 Cal App 2d 608, 289 P2d 248, 1955 Cal App LEXIS 1523.

In view of former Gov C § 65543, requiring planning commission to consult with public officials, utilities companies, civic and private organizations and citizens generally with relation to carrying out master or general zoning plan, this section did not forbid informal development of facts pertaining to zoning problems. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

Where there was no allegation in a complaint that the action taken by a local legislative agency in adopting resolutions concerning qualification of developer proposals for an urban renewal project was not at a public meeting, there was no violation of the Brown Act, which in effect proscribed secret meetings of any legislative body in the state. *Old Town Development Corp. v. Urban Renewal Agency* (1967, Cal App 1st Dist) 249 Cal App 2d 313, 57 Cal Rptr 426, 1967 Cal App LEXIS 2226.

Because a joint labor/management benefits committee was created as part of, and for the purpose of furthering, the collective bargaining process under the Educational Employment Relations Act, Gov C §§ 3540 et seq., the committee's proceedings were exempt under Gov C § 3549.1, from the Ralph M. Brown Act, Gov C §§ 54950 et seq. The committee was not a legislative body under Gov C § 54952(b), and thus was not required under Gov C § 54953(a), to hold open meetings; rather, it was a public school employer under Gov C § 3540.1(k), entitled under Gov C § 3543.3, to meet and negotiate as defined in § 3540.1(h), through its agents or representatives, with its employees' exclusive representatives. *Californians Aware v. Joint Labor/Management Benefits Committee* (2011, 2d Dist) 200 Cal App 4th 972, 2011 Cal App LEXIS 1412.

#### 4. Construction

A public hearing is not required under a union agreement grievance procedure whereby a San Francisco Municipal Railway employee is entitled to appeal a decision as to proposed disciplinary action to the general manager of the railway. The agreement, which is silent as to whether any hearing in the course of the grievance procedure must or may be open to the public, supports no inference requiring a public hearing at any stage, and the hearing before the manager is not a "meeting" of a "legislative body" of a local agency within the meaning of the Brown Act relating to the policy of open deliberations and actions by public agencies, so as to require it to be "open and public" as provided by Gov C § 54953. Other sections of the act define "legislative body" by the use of words synonymous therewith such as "board" "commission," "committee," and "body," all of which import the involvement of more than one person, and conventional definitions of the word "meeting" also refer to the presence of more than one person. *Wilson v. San Francisco M. Railway* (1973, Cal App 1st Dist) 29 Cal App 3d 870, 105 Cal Rptr 855, 1973 Cal App LEXIS 1240.

The term "municipal corporation" is broader than the term "city", particularly when both terms appear in the same statute. Thus, under the Brown Act (Gov C §§ 54950 et seq.; requirements of open meetings for local agencies, including cities, counties, school districts and municipal corporations), the term municipal corporation includes such entities as housing authorities. *Torres v. Board of Commissioners* (1979, Cal App 5th Dist) 89 Cal App 3d 545, 152 Cal Rptr 506, 1979 Cal App LEXIS 1404.

A proposed meeting of two members of a city council and two members of the city's planning commission to interview applicants for a vacancy on the commission, and to make a joint recommendation to the council regarding appointment of a commissioner, was subject to the

provisions of the Ralph M. Brown Act (Gov C §§ 54950 et seq.) requiring all meetings of the legislative body of a local agency to be open and public. The exclusion from the definition of "legislative body" under former Gov C § 54952.3, of a committee composed solely of members of the governing body of a local agency which were less than a quorum of such governing body, had no application under the circumstances. Although the council and committee members who were to attend the meeting constituted less than a quorum of their respective bodies, the meeting was to be of an "advisory committee" within the meaning of the statutory definition of "legislative body." Furthermore the proposed interview committee was created by "formal action" of the city council even though the interview procedure was contingent upon the willingness of members of the commission to serve on the committee. *Joiner v. City of Sebastopol* (1981, Cal App 1st Dist) 125 Cal App 3d 799, 178 Cal Rptr 299, 1981 Cal App LEXIS 2363.

The action of one public official is not a "meeting" within the terms of the Brown Act (Gov C §§ 54950 et seq.) (meetings of local governing bodies). A hearing officer whose duty it is to deliberate alone does not have to do so in public. Since the act uniformly speaks in terms of collective action, and because the term "meeting," as a matter of ordinary usage, conveys the presence of more than one person, it follows that under Gov C § 54953, the term "meeting" means that two or more persons are required in order to conduct a "meeting" within the meaning of the act. *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

Where the facts in a matter involving the termination of a community college librarian were undisputed and the issue on appeal was whether the actions taken violated the Brown Act (Gov C §§ 54953 et seq.), the appellate court's review was de novo. *Furtado v. Sierra Community College* (1998, Cal App 3d Dist) 68 Cal App 4th 876, 80 Cal Rptr 2d 589, 1998 Cal App LEXIS 1047.

#### ✦ 5. Construction With Other Law

A former probationary teacher could not successfully claim invalidity of the district Board of Education's decision not to reemploy him on the basis that the decision was the result of closed meetings in violation of Gov C § 54953 (a part of the Brown Act). Gov C § 54957 permits executive sessions to consider dismissal of a public employee unless the employee requests a public hearing, and the record did not establish that such a request was made. Moreover, the procedural action taken in executive session resulted in minor prejudice, if any, and, in any event, an action taken in violation of the Brown Act is not void, but merely subjects the members of the governing board to criminal penalties. *Greer v. Board of Education* (1975, Cal App 1st Dist) 47 Cal App 3d 98, 121 Cal Rptr 542, 1975 Cal App LEXIS 1004.

In an action brought by a high school principal against a school district's local superintendent and the superintendent of schools (officials) that alleged that the officials' statements to the press in newspaper articles invaded his privacy and defamed him, the principal's claims were subject to an anti-strategic lawsuit against public participation motion on the ground that none of the challenged statements divulged private information, but rather amounted to constitutionally privileged comment by a public officer in the proper discharge of an official duty under CC § 47(a) because, to the extent that the challenged disclosures included any private fact, the disclosure was logically relevant to the newsworthy subject of violence at the principal's school and the school district's response to it. Furthermore, the personnel exception in California's Brown Act, found in Gov C § 54957, was inapplicable because the officials' statements were not the equivalent of a personnel evaluation under the district's collective bargaining agreement, and because dismissal of the causes of action for defamation and invasion of privacy could not be considered trivial victories for the officials in the context of the case, an award of attorney fees to them was proper. *Morrow v. Los Angeles Unified School Dist.* (2007, Cal App 2d Dist) 149 Cal App 4th 1424, 57 Cal Rptr 3d 885, 2007 Cal App LEXIS 616.

## ¶ 6. Notice

There are no agenda notice requirements under the Brown Act (Gov C §§ 54950 et seq.), for a regular open meeting of a local agency. Thus, a local housing authority did not violate the Brown Act by failing to give notice of its intent to consider, at a regular meeting, terminating a tenants' union's lease of housing authority property. The usual practice of the authority had been to end regular meetings with an attorney-client conference. The union representatives had left the meeting at issue at that point, unaware that the meeting would be reconvened for consideration of their lease. *Torres v. Board of Commissioners* (1979, Cal App 5th Dist) 89 Cal App 3d 545, 152 Cal Rptr 506, 1979 Cal App LEXIS 1404.

## ¶ 7. Pleadings

In a proceeding by a hospital association challenging a city's grant to a psychiatric service of a special use permit to build a 15-bed crisis psychiatric facility, the trial court did not err in dismissing a cause of action alleging that certain "private meetings" between the city attorney and members of the city council violated the Brown Act, Gov C § 54953, which requires legislative bodies of local agencies to hold open meetings. There was no allegation that during such discussions any action was taken. Thus, the petition failed to state grounds for relief under Gov C § 54960.1, which provides that an interested person may commence an action to obtain a judicial determination that an action taken by a legislative body in violation of Gov C § 54953, is null and void. *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, review denied (1991, Cal) 1991 Cal LEXIS 1133.

## ¶ 8. Luncheon and Dinner Meetings

Fact that all but one of members of municipal planning commission attended dinner meeting given by one who subsequently requested zoning change for his property did not invalidate zoning ordinance that was thereafter enacted on ground that such dinner meeting was violation of "Secret Meeting Law," requiring that all meetings of legislative body of local agency be open and public, where dinner meeting was informally carried on in nature of social function, no one presided over it, no decisions were made nor was proposed rezoning or application therefor deliberated on by commissioners, meeting being only one for fact finding, and two public hearings were held after filing of application for rezoning which fully complied with act. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

Assuming that requirement that all meetings of legislative body of local agency be open and public was violated by actions of most of members of municipal planning commission in attending dinner meeting given by one who subsequently applied for zoning change of his property, such violation did not result in invalidity of rezoning ordinance thereafter enacted. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

An Elks Club luncheon attended by five county supervisors, the county counsel, executive and director of welfare, and members of the Central Labor Council, AFL-CIO, was a "meeting of the legislative body of a local agency" within the meaning of Gov C § 54953, and required under the 1961 amendments to the Brown Act (Gov C §§ 54950 et seq.) to be "open and public," and it was improper to exclude newspaper reporters, where, although the session was allegedly informal, the subject of the discussion was the county's action in connection with a strike, a matter of county governmental interest not involving confidential communications with the county counsel. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

A violation of the Brown Act (Gov C § 54953) by county supervisors, in denying newsmen admittance to an informal luncheon session on the action to be taken by the county in connection with a strike, was not excused under the lawyer-client privilege (Ev C § 952) by the county's pending lawsuit to restrain the expected strike and picketing by county-employed social workers, where, although the supervisors present were accompanied, not only by the county executive, director of welfare and members of the AFL-CIO, but also by the county counsel, the privilege was not claimed in the subsequent trial and it was admitted that no supervisor said anything to counsel in confidence or received advice from him or had even come for that purpose. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

#### ¶ 9. Violations

Purported violations of Brown Act would not, even if true, invalidate zoning ordinance adopted in strict compliance with applicable law. *Claremont Taxpayers Asso. v. Claremont* (1963, Cal App 2d Dist) 223 Cal App 2d 589, 35 Cal Rptr 907, 1963 Cal App LEXIS 1573.

#### ¶ 10. Remedies

Supersedeas pending an appeal from an injunction is based upon a consideration of the litigants' respective rights, and will not be granted at the risk of destroying rights which will belong to the respondent if the decree is affirmed; and, pending appeal from an injunction under the Brown Act (Gov C § 54953), prohibiting a county board from holding closed meetings, a limited writ must issue permitting the board of supervisors and its members to confer with the county counsel under conditions in which the attorney-client privilege would obtain when necessary to preserve the board's right to effective counsel, where the complaint in the injunction suit did not insist on public attendance at sessions involving confidential attorney-client communications. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1967, Cal App 3d Dist) 255 Cal App 2d 51, 62 Cal Rptr 819, 1967 Cal App LEXIS 1238.

#### ¶ 11. Particular Determinations

Statutory requirement that all meetings of legislative body of local agency be open and public was not directed at anything less than formal meeting of city council's or one of city's subordinate agencies. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton*

Newspapers, Inc. v. Redevelopment Agency (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in Centinela Hospital Assn. v. City of Inglewood (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in Roberts v. City of Palmdale (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

In proceeding by school district to dismiss teacher where evidence showed that teacher gave evasive answers to questions asked by school board concerning membership in Communist Party at hearing made public at his request, that at second hearing held at executive session teacher was advised his answers had been evasive and that he would be allowed another opportunity to answer and that thereafter second public hearing was held and teacher again refused to answer, if there was any technical violation of Gov C §§ 54950-54961, providing for public hearings by public agencies, teacher's rights were not prejudiced and action of board was not invalidated thereby. Huntington Beach Union High School Dist. v. Collins (1962, Cal App 4th Dist) 202 Cal App 2d 677, 21 Cal Rptr 56, 1962 Cal App LEXIS 2531, cert den (1962) 371 US 904, 9 L Ed 2d 166, 83 S Ct 210, 1962 US LEXIS 228.

In an action under a complaint challenging the validity of the election of officers of a city's Museum Advisory Commission on the ground that the election originated in a secret meeting in violation of Gov C §§ 54950 et seq., governing local agencies' meetings, a summary judgment for defendants was proper, where it appeared that the meeting came within the Gov C § 54957, exception to the open meeting requirement of Gov C § 54953, and that, therefore, the persons who had been chosen had been legally selected for their offices. Edgar v. Oakland Museum Advisory Com. (1973, Cal App 1st Dist) 36 Cal App 3d 73, 111 Cal Rptr 364, 1973 Cal App LEXIS 637.

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

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*Cal Gov Code § 54953.1*

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GOVERNMENT CODE

Title 5. Local Agencies

Division 2. Cities, Counties, and Other Agencies

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

Chapter 9. Meetings

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Cal Gov Code § 54953.1 (2013)

**§ 54953.1. Grand jury testimony**

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

**History:**

Added Stats 1979 ch 950 § 1.

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*Cal Gov Code § 54953.2*

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**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54953.2 (2013)

**§ 54953.2. Meetings to conform to Americans with Disabilities Act**

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

**History:**

Added Stats 2002 ch 300 § 5 (AB 3035).

↗ **Related Statutes & Rules:**

Right of persons to be present at grand jury session: Pen C § 939.

↗ **Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

Cal Jur 3d (Rev) Criminal Law § 2677.

**Hierarchy Notes:**

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*Cal Gov Code § 54953.3*

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GOVERNMENT CODE  
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**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**



Cal Gov Code § 54953.3 (2013)

**§ 54953.3. Registration of attendance**



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

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

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↗ **Collateral References:**

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**History:**

Added Stats 1957 ch 85 § 1. Amended Stats 1981 ch 968 § 28.

**Notes:**

Amendments:

**1981 Amendment:**

(1) Amended the first paragraph by (a) adding "or her" wherever it appears; and (b) substituting ", to provide" for "and"; and (2) added the second paragraph.

**Related Statutes & Rules:**

Open and public meetings: Gov C § 54953.

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

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Terms: 54952.1

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*Cal Gov Code § 54953.5*

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**GOVERNMENT CODE**

Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
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 Chapter 9. Meetings

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Cal Gov Code § 54953.5 (2013)

**§ 54953.5. Recording proceedings**

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video 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.

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- Collateral References
  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**History:**

Added Stats 1980 ch 1284 § 18. Amended Stats 1993 ch 1136 § 5 (AB 1426), operative April 1, 1994, ch 1137 § 5 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 5 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2009 ch 88 § 57 (AB 176), effective January 1, 2010.

**Notes:**

- 1. Amendments
- 2. Note

- 1. Amendments:
  - 1993 Amendment
  - 1994 Amendment
  - 2009 Amendment

**1993 Amendment:**

(1) Added subdivision designation (a); (2) amended subd (a) by (a) substituting "with an audio or video tape recorder or a still or motion picture camera" for "on a tape recorder"; (b) substituting "by" for "of" after "finding"; (c) substituting "the" for "such" after "agency that"; (d) adding "cannot continue without noise, illumination, or obstruction of view that"; and (e) adding "persistent"; and (3) added subd (b). (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

**1994 Amendment:**

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

**2009 Amendment:**

(1) Deleted "tape" after "audio or video" in subd (a); (2) amended the first sentence of subd (b) by (a) substituting "audio or video recording" for "tape or film record"; and (b) deleting "taping or" after "30 days after the"; and (3) amended the second sentence of subd (b) by substituting (a) "an audio or video" for "a video or tape"; and (b) "equipment" for "a video or tape player".

**2.****Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

**Comments:**

**Law Revision Commission Comments:**

**2009**

Section 54953.5 is amended to reflect advances in recording technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio technology," "audio recording," or "audio record," as context required).

**⚡ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

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*Cal Gov Code § 54953.6*

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Cal Gov Code § 54953.6 (2013)

**§ 54953.6. Restrictions on broadcasts of proceedings**

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

**History:**

Added Stats 1993 ch 1136 § 6 (AB 1426), operative April 1, 1994, ch 1137 § 6 (SB 36), operative April 1, 1994. Amended Stats 1994 ch 32 § 6 (SB 752), effective March 30, 1994, operative April 1, 1994.

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**Notes:**

- 1. Amendments
- 2. Note

**1. Amendments:**

**1994 Amendment:**

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

**2.**

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

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Cal Gov Code § 54953.7 (2013)

**§ 54953.7. Access to meetings beyond minimal standards**

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

** History:**

Added Stats 1981 ch 968 § 29.

**🚩 Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

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*Cal Gov Code § 54954*

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Cal Gov Code § 54954 (2013)

**§ 54954. Rules for conduct of business; Time and place of meetings**




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

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

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

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

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

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

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

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

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

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

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

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

(3) Interview a potential employee from another district.

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

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

#### **History:**

Added Stats 1953 ch 1588 § 1. Amended Stats 1993 ch 1136 § 7 (AB 1426), operative April 1, 1994, ch 1137 § 7 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 7 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1997 ch 253 § 3 (SB 138); Stats 1998 ch 260 § 2 (SB 139); Stats 2004 ch 257 § 1 (SB 1771).

**Notes:**

- 1. Amendments
- 2. Note

**1. Amendments:**

- 1993 Amendment
- 1994 Amendment
- 1997 Amendment
- 1998 Amendment
- 2004 Amendment

**1993 Amendment:**

(1) Added subdivision designations (a) and (e); (2) amended subs (a) by (a) adding "and place"; and (b) deleting the former last two sentences which read: "Unless otherwise provided for in the act under which the local agency was formed, meetings of the legislative body need not be held within the boundaries of the territory over which the local agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day."; (3) added subs (b)--(d); and (4) amended subd (e) by (a) adding the comma after "earthquake"; (b) substituting "shall" for "may" after "meetings"; (c) substituting "the" for "such" after "emergency at"; and (d) adding "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". (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C §'9605.)

**1994 Amendment:**

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

**1997 Amendment:**

Amended subd (a) by (1) substituting "Each" for "The" at the beginning; and (2) adding ", except for advisory committees and standing committees,".

**1998 Amendment:**

Amended subd (a) by (1) substituting "or" for "and" after "advisory committees" in the first sentence; and (2) adding the last sentence.

**2004 Amendment:**

(1) Added the comma after "within the district" in subd (c); and (2) substituted "trustees' potential employment of an applicant for the position of the superintendent of the district" for "trustees' potential employment of the superintendent of that district" in subd (c)(2).

**2.****Note**



Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

#### ✚ Related Statutes & Rules:

Special meetings: Gov C § 54956.

#### ✚ Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

#### Law Review Articles:

Secrecy and access to administrative records. 44 Cal LR 305.

#### ✚ Attorney General's Opinions:

Right of local agencies, including school boards, to hold executive sessions only during regular or special meetings for which adequate notice has been given as required by statute. 43 Ops. Cal. Atty. Gen. 79.

Location of meetings and sessions of board of supervisors. 58 Ops. Cal. Atty. Gen. 554.

A water district may hold its board meetings at the principal office of the water district if the principal office is located outside the jurisdiction of the water district. 94 Ops. Cal. Atty. Gen. 15.

Under the provisions of the Ralph M. Brown Act, a majority of the members of a city council may not meet, either outside or inside the city's boundaries, to attend a private tour of the facilities of a water district that provides services to the city for the purpose of acquiring information regarding those services. A majority of the members of a city council may attend a tour of the extraterritorial water-district facilities if the tour is held as a noticed and public meeting of the council for the purpose of inspecting the facilities and the topics raised and discussed at the meeting are limited to items directly related to the facilities being inspected. 94 Ops. Cal. Atty. Gen. 33.

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Cal Gov Code § 54954.1 (2013)

**§ 54954.1. Request for notice; Renewal; 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.

#### ⚡ History:

Added Stats 1973 ch 1070 § 1. Amended Stats 1990 ch 1198 § 1 (AB 4065); Stats 1997 ch 253 § 4 (SB 138); Stats 2002 ch 300 § 6 (AB 3035).

#### ⚡ Notes:

Amendments:

- ⚡ 1990 Amendment
- ⚡ 1997 Amendment
- ⚡ 2002 Amendment

#### ⚡ 1990 Amendment:

(1) Generally eliminated "such"; (2) amended the first paragraph by (a) deleting "of any district" after "The legislative body" at the beginning; and (b) substituting "person" for "owner of property located within the district" after "to any"; (3) deleted the former third and fourth sentence of the second paragraph which read: "Any request for notice, or renewal request, filed pursuant to this section shall contain a description of the property owned by the person filing the request. Such description may be in general terms but shall be sufficient enough to readily identify such property."; (4) added the third paragraph; and (5) substituted "fee" for "charge" after "annual" in the fourth paragraph.

#### ⚡ 1997 Amendment:

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

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

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

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

#### ⚡ 2002 Amendment:

Added the second sentence.

#### ⚡ Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

Impact fees in California after *Nollan v. California Coastal Commission*. 7 Cal Real Prop J No. 4 p 31.

**⚑ Attorney General's Opinions:**

A "reasonable charge" within the meaning of Government Code, § 54954.1 is essentially a factual question. The estimated cost of providing such service predicated upon any reasonable cost accounting basis would satisfy the provisions of the section. 62 Ops. Cal. Atty. Gen. 658.

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 (All 2012 legislation, 2012 Governor's Reorg. Plan No. 2 and  
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GOVERNMENT CODE  
 Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
 Part 1. Powers and Duties Common to Cities, Counties, and  
 Other Agencies  
 Chapter 9. Meetings



**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**




Cal Gov Code § 54954.2 (2013)

**§ 54954.2. Posting of agenda; Actions not on agenda**




(a)

(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public 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

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adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

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

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

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

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

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

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

**(d)** For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

**(1)** A legislative body as that term is defined by subdivision (a) of Section 54952.

**(2)** A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

#### **History:**

Added Stats 2005 ch 72 § 12 (AB 138), effective July 19, 2005. Amended Stats 2011 ch 692 § 8 (AB 1344), effective January 1, 2012.

#### **Notes:**

- ⚡ 1. Former Sections
- ⚡ 2. Amendments
- ⚡ 3. Note

#### ⚡ 1.

##### **Former Sections:**

Former Gov C § 54954.2, similar to present section, was added Stats 1986 ch 641 § 5, amended Stats 1993 ch 1136 § 8, ch 1137 § 8, Stats 1994 ch 32 § 8, Stats 1997 ch 253 § 5, Stats 2002 ch 300 § 7, and repealed Stats 2005 ch 72 § 11, effective July 19, 2005.

#### ⚡ 2. Amendments:

##### **2011 Amendment:**

(1) Added "and on the local agency's Internet Web site, if the local agency has one" in the third sentence of subd (a)(1); (2) amended the last sentence of subd (a)(1) by (a) substituting "disabilityrelated" for "disability related"; and (b) adding the comma after "aids or services"; and (3) added subd (d).

#### ⚡ 3.

##### **Note**

Stats 2005 ch 72 provides:

SEC. 16. The Legislature finds and declares that Sections 54954.2 and 54957.1 of the Government Code are necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

Stats 2011 ch 692 provides:

SEC. 10. The Legislature finds and declares that the fiscal integrity and stability of local governmental agencies in this state, including charter cities and charter counties, have a direct impact on the long-term well-being of all the residents of this state. The likelihood of businesses locating to or staying in the state is affected by the perception of a functioning, transparent, and practical governmental structure in the local governmental bodies in California. Therefore, the Legislature finds and declares that to ensure the statewide integrity of local government, the provisions of this act are an issue of statewide concern. Therefore, this act shall apply to all counties and cities, including charter counties, charter cities, and charter cities and counties.

SEC. 11. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

##### **⚡ Related Statutes & Rules:**

Equitable relief for violation of section: Gov C § 54960.1.

**⌵ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**⌵ Attorney General's Opinions:**

Weekend hours may be counted as part of the 72-hour period for the posting of an agenda prior to the regular meeting of the legislative body of a local agency. The posting of an agenda for a regular meeting of the legislative body of a local agency for 72 hours in a public building that is locked during the evening hours would not satisfy the statutory requirements for posting the agenda. 78 Ops. Cal. Atty. Gen. 327(95-812).

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**⌵ Notes of Decisions:**

- ⌵ 1. Generally
- ⌵ 2. Constitutionality
- ⌵ 3. Legislative Intent
- ⌵ 3.5. Applicability
- ⌵ 4. Construction With Other Law
- ⌵ 5. Particular Determinations

**⌵ 1. Generally**

Gov C § 54956's requirement that the notice "specify" is intended to refer back to Gov C § 54954.2's requirement that an agenda provide a "description." It is inconceivable that a city could "specify" an item of business without providing a "brief general description" of that item of business. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

**⌵ 2. Constitutionality**

Preliminary injunction granted against school district policy which prohibited criticism of its employees during the open sessions of the district's board meetings, as an overbroad and impermissible prior restraint on citizens' rights of free speech and petition under the constitutions of the United States and California (Art 1, § 2). Selective enforcement of the policy was a violation of plaintiff's right to be free of arbitrary and capricious enforcement of a governmental regulation; and the policy violated plaintiff's right publicly to share her criticisms of school administration under Gov C § 54954.3. *Baca v. Moreno Valley Unified Sch. Dist.* (1996, CD Cal) 936 F Supp 719, 1996 US Dist LEXIS 11151.

**⌵ 3. Legislative Intent**

The Brown Act (Gov C §§ 54950 et seq.), adopted in 1953, is intended to ensure the public's right to attend the meetings of public agencies. To achieve this aim, the Act requires, inter alia, that an agenda be posted at least 72 hours before a regular meeting and forbids action on any

item not on that agenda (Gov C § 54954.2(a)). The Act thus serves to facilitate public participation in all phases of local government decisionmaking and to curb misuse of the democratic process by secret legislation of public bodies. *International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999, Cal App 2d Dist) 69 Cal App 4th 287, 81 Cal Rptr 2d 456, 1999 Cal App LEXIS 31, rehearing denied (1999, Cal App 2d Dist) 69 Cal App 4th 1219c, 1999 Cal App LEXIS 107, review denied (1999, Cal) 1999 Cal LEXIS 2228.

### ✦ 3.5. Applicability

Because a government contractor was not a local agency as defined in Gov C § 54951, or a legislative body as defined in Gov C § 54952, a labor organization and its employee did not have standing under Gov C § 54960(a) to sue directly under the Ralph M. Brown Open Meetings Act, Gov C §§ 54950-54963, for failure to comply with the act as required by the contracts. The provisions allegedly violated, Gov C §§ 54954.2(a)(1), 54954.3(a), 54957.5(a), 54957.7(a), apply only to a legislative body. *Service Employees Internat. Union, Local 99 v. Options-A Child Care & Human Services Agency* (2011, 2d Dist) 200 Cal App 4th 869, 2011 Cal App LEXIS 1407.

### ✦ 4. Construction With Other Law

Because Gov C §§ 54956 and 54954.2 contain equivalent requirements, the trial court's finding that the city council's special meeting agenda violated Gov C § 54954.2 was equivalent to a finding that it violated Gov C § 54956. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

### ✦ 5. Particular Determinations

A city council violated the Ralph M. Brown Act (Gov C §§ 54950 et seq.) by amending its meeting agenda without the requisite notice, in order to consider an appeal from the approval of plaintiff developers' subdivision map and development applications. A major objective of the act is to facilitate public participation in all phases of local government decisionmaking, and to curb misuse of the democratic process by secret legislation. Gov C § 54954.2(a), requires an agenda to be posted at least 72 hours before a regular meeting and forbids action on items not on the agenda. Although an exception exists where the need for action arises after the agenda was posted (Gov C § 54954.2(b)(2)), there was no "urgency" exemption in this case. The appearance of many interested citizens at the meeting was not a subsequently arising need that authorized amending the agenda; there had been public input over the prior 10-year period. Wishing to ensure that an unpopular planning commission decision is appealed is not an "emergency situation" (Gov C §§ 54954.2(b)(1), 54956.5), and no other statutory exception to the 72-hour rule applied. *Cohan v. City of Thousand Oaks* (1994, Cal App 2d Dist) 30 Cal App 4th 547, 35 Cal Rptr 2d 782, 1994 Cal App LEXIS 1200, modified, rehearing denied (1994, Cal App 2d Dist) 31 Cal App 4th 746a, 1994 Cal App LEXIS 1300, review denied (1995, Cal) 1995 Cal LEXIS 1111.

Although a city council violated the Ralph M. Brown Act (Gov C § 54954.2(a)) when it amended its meeting agenda without the required 72-hour notice, in order to consider an appeal from the approval of plaintiff developers' subdivision map and development applications, the council's decision was not invalidated absent a showing of prejudice. Although the developers asserted that had citizens in support of their project known that the subject of appeal would be on the agenda, they could have attended the meeting to dissuade the council from deciding to appeal, the actual hearing on appeal was duly noticed, and only a few persons showed support for the project. In contrast, a large number of opponents of the project were present at the appeal hearing. Thus, it was highly unlikely that more persons would have attended the initial city

council meeting to dissuade the council from considering whether to appeal the decision than appeared to support the project on the merits. Moreover, there was no statute or municipal code that provided a right to attempt to dissuade someone from filing an appeal. *Cohan v. City of Thousand Oaks* (1994, Cal App 2d Dist) 30 Cal App 4th 547, 35 Cal Rptr 2d 782, 1994 Cal App LEXIS 1200, modified, rehearing denied (1994, Cal App 2d Dist) 31 Cal App 4th 746a, 1994 Cal App LEXIS 1300, review denied (1995, Cal) 1995 Cal LEXIS 1111.

Where plaintiff former librarian of defendant community college contended that defendant's Board of Trustees violated the Brown Act by taking action regarding plaintiff's employment in closed session rather than an open public meeting, plaintiff's argument that the Board mischaracterized the agenda item pursuant to which her employment was reviewed, thereby violating Gov C § 54954.5, which sets forth the posting requirements for describing closed session items was rejected. Plaintiff's assertion that the "public employee performance evaluation" agenda classification is inappropriate "for consideration of matters constituting charges and complaints against the employee and for which discipline and/or dismissal is contemplated," and that the appropriate agenda item was "Public employee discipline/dismissal/release was incorrect. Section 54960.1 denies relief if the agenda item was in "substantial compliance" with §§ 54954.2 and 54954.5. (Gov C § 54960.1(d)(1)), and here, the Board was found to have been in substantial compliance with those statutes. *Furtado v. Sierra Community College* (1998, Cal App 3d Dist) 68 Cal App 4th 876, 80 Cal Rptr 2d 589, 1998 Cal App LEXIS 1047.

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*Cal Gov Code § 54954.3*

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Cal Gov Code § 54954.3 (2013)

**§ 54954.3. Public testimony at regular meetings**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative

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body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

**(b)** The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

**(c)** The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

#### **History:**

Added Stats 1986 ch 641 § 6. Amended Stats 1991 ch 66 § 1 (SB 100); Stats 1993 ch 1136 § 9 (AB 1426), operative April 1, 1994, ch 1137 § 9 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 9 (SB 752), effective March 30, 1994, operative April 1, 1994.

#### **Notes:**

- 1. Amendments
- 2. Note

#### **1. Amendments:**

- 1991 Amendment
- 1993 Amendment
- 1994 Amendment

#### **1991 Amendment:**

Amended subd (a) by **(1)** substituting "any item of interest to the public, before or during the legislative body's consideration of the item, that is" for "items of interest to the public that are" in the first sentence; and **(2)** adding "before or during the committee's consideration of the item," after "committee on the item" in the second sentence.

#### **1993 Amendment:**

**(1)** Amended the second sentence of subd (a) by **(a)** deleting "in the case of a meeting of a city council in a city or a board of supervisors in a city and county," after "However,"; and **(b)** substituting "legislative body" for "council or board" wherever it appears; **(2)** added the last sentence of subd (a); and **(3)** added subd (c). (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

#### **1994 Amendment:**

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

#### **2.**

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

**⚡ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

Cal. Legal Forms, (Matthew Bender) § 13.31.

**⚡ Law Review Articles:**

A New Domain for Public Speech: Opening Public Spaces Online. 94 Cal LR 1791.

**⚡ Attorney General's Opinions:**

Legislative body of local agency may prohibit members of public, who speak during time permitted on agenda for public expression, from commenting on matters that are not within subject matter jurisdiction of legislative body. 78 Ops. Cal. Atty. Gen. 224.

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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- ⚡ 1. Constitutionality
- ⚡ 2. Construction
- ⚡ 3. Construction With Other Law
- ⚡ 3.5. Applicability
- ⚡ 4. Compliance
- ⚡ 5. Pending Litigation
- ⚡ 6. Violation

**⚡ 1. Constitutionality**

Preliminary injunction granted against school district policy which prohibited criticism of its employees during the open sessions of the district's board meetings, as an overbroad and impermissible prior restraint on citizens' rights of free speech and petition under the constitutions of the United States and California (art 1, sec 2). Selective enforcement of the policy was a violation of plaintiff's right to be free of arbitrary and capricious enforcement of a governmental regulation; and the policy violated plaintiff's right publicly to share her criticisms of school administration under Gov C § 54954.3. *Baca v. Moreno Valley Unified Sch. Dist.* (1996, CD-Cal) 936 F Supp 719, 1996 US Dist LEXIS 11151.



## ¶ 2. Construction

Although Gov C § 54954.3(a) required a board of county supervisors to allow members of the public to address it before or during consideration of an agenda item, the subdivision did not require the board to allow members of the public to address it on whether to place an item on the agenda. *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors* (2005, Cal App 2d Dist) 129 Cal App 4th 205, 28 Cal Rptr 3d 198, 2005 Cal App LEXIS 749, review denied *Coalition of Labor Agriculture & Business v. County of Santa Barbara Board of Supervisors* (2005, Cal) 2005 Cal LEXIS 7994.

Library commission did not violate the Ralph M. Brown Act, Gov C §§ 54950 et seq., by limiting public comment on each agenda item at a meeting of the commission to two minutes per speaker, instead of the three minutes normally allotted to each speaker. *Chaffee v. San Francisco Public Library Com.* (2005, Cal App 1st Dist) 134 Cal App 4th 109, 36 Cal Rptr 3d 1, 2005 Cal App LEXIS 1810.

## ¶ 3. Construction With Other Law

While Gov C § 54954.3 permits members of the public to provide input, it does not mandate that they do so, and nothing in the plain language of § 54954.3 supports a city's construction under Elec C § 9241 that members of the public had to raise a given legal concern about a potential action before any course of action had been adopted, or be forever barred from raising the issue, and the court rejected the construction. *Lindelli v. Town of San Anselmo* (2003, Cal App 1st Dist) 111 Cal App 4th 1099, 4 Cal Rptr 3d 453, 2003 Cal App LEXIS 1372, review denied (2003, Cal) 2003 Cal LEXIS 9608.

### ¶ 3.5. Applicability

Because a government contractor was not a local agency as defined in Gov C § 54951, or a legislative body as defined in Gov C § 54952, a labor organization and its employee did not have standing under Gov C § 54960(a) to sue directly under the Ralph M. Brown Open Meetings Act, Gov C §§ 54950-54963, for failure to comply with the act as required by the contracts. The provisions allegedly violated, Gov C §§ 54954.2(a)(1), 54954.3(a), 54957.5(a), 54957.7(a), apply only to a legislative body. *Service Employees Internat. Union, Local 99 v. Options-A Child Care & Human Services Agency* (2011, 2d Dist) 200 Cal App 4th 869, 2011 Cal App LEXIS 1407.

## ¶ 4. Compliance

Although a library commission's continued meeting was a separate and regular meeting under Gov C §§ 54952.2(a) and 54955 of the Ralph M. Brown Act, Gov C §§ 54950 et seq., under Gov C § 54954.3(a) of the Act and § 67.15(a) of the San Francisco Sunshine Ordinance of 1999, San Francisco, Cal., Admin. Code ch. 67, the commission and its commissioners complied with the Act and the local sunshine law when they allowed public comment on items from that agenda only at the continued meeting. *Chaffee v. San Francisco Library Com.* (2004, Cal App 1st Dist) 115 Cal App 4th 461, 9 Cal Rptr 3d 336, 2004 Cal App LEXIS 117.

City officials were entitled to Fed. R. Civ. P. 12(b)(6) dismissal of a citizen's petition for a writ of mandate that alleged a violation of the Ralph M. Brown Act, Gov C §§ 54950 et seq., for the alleged failure to hear public comments regarding a city resolution at a meeting; there was no violation of the Brown Act because the public had the requisite opportunity prescribed by Gov C § 54954.3(a) to comment on the resolution. The public had an opportunity to comment on the

resolution at an earlier hearing, and the resolution did not substantially change from that time. Jenkel v. City & County of San Francisco (2006, ND Cal) 2006 US Dist LEXIS 49923.

#### 5. Pending Litigation

Fact that public body is entitled to meet and confer privately with its attorney to discuss legal issues and receive confidential legal advice in connection with pending litigation does not preclude a member of the public from expressing comments or concerns relating to the pending litigation during a public session. Galbiso v. Orosi Public Utility Dist. (2008, 5th Dist) 167 Cal App 4th 1063, 84 Cal Rptr 3d 788, 2008 Cal App LEXIS 1677.

#### 6. Violation

Trial court erred in its determination that no California Ralph M. Brown Act, Gov C §§ 54950 et seq., violation was shown where property owner established that a public utility district had violated the act by failing to provide opportunity for public comment and failing to make required disclosures prior to going into closed session because district could not prohibit the owner from presenting her public comments simply because the comments related to pending litigation or a possible basis for settlement thereof; because trial court assumed that no violation occurred, it never properly exercised its discretion whether to grant attorney fees pursuant to Gov C § 54960.5 to the owner as a prevailing party, and thus remand was required to consider that issue. Galbiso v. Orosi Public Utility Dist. (2008, 5th Dist) 167 Cal App 4th 1063, 84 Cal Rptr 3d 788, 2008 Cal App LEXIS 1677.

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Cal Gov Code § 54954.4 (2013)

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

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

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary

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*Cal Gov Code § 54954.5*

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Cal Gov Code § 54954.5 (2013)

**§ 54954.5. Description of closed session items**

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

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

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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.

#### History:

Added Stats 1991 ch 238 § 1 (AB 102).

#### Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

#### Attorney General's Opinions:

Weekend hours may be counted as part of the 72-hour period for the posting of an agenda prior to the regular meeting of the legislative body of a local agency. The posting of an agenda for a regular meeting of the legislative body of a local agency for 72 hours in a public building that is locked during the evening hours would not satisfy the statutory requirements for posting the agenda. 78 Ops. Cal. Atty. Gen. 327(95-812).

#### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54954.4**

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Section 54956.9)

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

or

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

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

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

LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

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

CONFERENCE WITH LABOR NEGOTIATORS

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

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

or

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

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

CASE REVIEW/PLANNING

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

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

REPORT INVOLVING TRADE SECRET

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



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

**HEARINGS**

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

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

**CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW**

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

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

**CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)**

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

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

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

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

**AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE**

**History:**

Added Stats 1993 ch 1136 § 10 (AB 1426), operative April 1, 1994, ch 1137 § 10 (SB 36), operative April 1, 1994. Amended Stats 1994 ch 32 § 10 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1996 ch 182 § 1 (SB 2092); Stats 1998 ch 260 § 2.5 (SB 139), ch 876 § 11.1 (SB 1649); Stats 2002 ch 1120 § 1 (AB 2645); Stats 2004 ch 576 § 3 (AB 1827), ch 784 § 1.5 (AB 2782); Stats 2005 ch 22 § 98 (SB 1108), effective January 1, 2006; Stats 2012 ch 281 § 37 (SB 1395), effective January 1, 2013, ch 759 § 6.1 (AB 2690), effective January 1, 2013.

**Notes:**

- 1. Amendments
- 2. Note

- 1. Amendments:
  - 1994 Amendment
  - 1996 Amendment
  - 1998 Amendment
  - 2002 Amendment
  - 2004 Amendment

- ± 2005 Amendment
- ± 2012 Amendment

**± 1994 Amendment:**

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

**± 1996 Amendment:**

Added subd (i).

**± 1998 Amendment:**

(1) Added the paragraph "Agency negotiator:" in subd (b); (2) amended subd (f) by (a) deleting the paragraph which read: "Agency negotiator: (Specify name)"; and (b) adding the paragraph "Agency designated representatives:". (As amended Stats 1998 ch 876, compared to the section as it read prior to 1998. This section was also amended by an earlier chapter, ch 260. See Gov C § 9605.)

**± 2002 Amendment:**

Added ", or name of applicable agency representative and title" in subd (e).

**± 2004 Amendment:**

Added subds (j) and (k). (As amended Stats 2004 ch 784, compared to the section as it read prior to 2004. This section was also amended by an earlier chapter, ch 586. See Gov C § 9605.)

**± 2005 Amendment:**

Substituted "agency) Name" for "agency.) Name" in subd (j).

**± 2012 Amendment:**

(1) Amended subd (c) by substituting (a) "Paragraph (1) of subdivision (d)" for "Subdivision (a)"; (b) "paragraph (2) or (3) of subdivision (d)" for "subdivision (b)"; (c) "paragraphs (2) to (5)" for "subparagraphs (B) to (E)"; (d) "subdivision (e)" for "paragraph (3) of subdivision (b)"; and (e) "paragraph (4) of subdivision (d)" for "subdivision (c)"; and (2) substituted "CALIFORNIA STATE AUDITOR'S OFFICE" for "BUREAU OF STATE AUDITS" in subd (k). (As amended Stats 2012 ch 759, compared to the section as it read prior to 2012. This section was also amended by an earlier chapter, ch 281. See Gov C § 9605.)

**± 2.**

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

**✚ Comments:**

**Law Revision Commission Comments:**

**2012**

Section 54954.5 is amended to reflect relabeling of material in Section 54956.9. 41 Cal. L. Revision Comm'n Reports 285 (2011).

**✚ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**✚ Notes of Decisions:**

- ✚ 1. Adequacy
- ✚ 2. Substantial Compliance

**✚ 1. Adequacy**

Trial court did not err in finding that the agenda for a special meeting of the city council was inadequate where the agenda's description provided no clue that the dismissal of a public employee would be discussed at the meeting. While it is true that Gov C § 54954.5 does not provide the exclusive means of compliance with agenda specification requirements, it demonstrates that the city could have protected the employee's privacy while properly agendizing the council's consideration of his dismissal. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

**✚ 2. Substantial Compliance**

Where plaintiff former librarian of defendant community college contended that defendant's Board of Trustees violated the Brown Act by taking action regarding plaintiff's employment in closed session rather than an open public meeting, plaintiff's argument that the Board mischaracterized the agenda item pursuant to which her employment was reviewed, thereby violating Gov C § 54954.5, which sets forth the posting requirements for describing closed session items was rejected. Plaintiff's assertion that the "public employee performance evaluation" agenda classification is inappropriate "for consideration of matters constituting charges and complaints against the employee and for which discipline and/or dismissal is contemplated," and that the appropriate agenda item was "Public employee discipline/dismissal/release was incorrect. Section 54960.1 denies relief if the agenda item was

in "substantial compliance" with §§ 54954.2 and 54954.5. (Gov C § 54960.1(d)(1)), and here, the Board was found to have been in substantial compliance with those statutes. *Furtado v. Sierra Community College* (1998, Cal App 3d Dist) 68 Cal App 4th 876, 80 Cal Rptr 2d 589, 1998 Cal App LEXIS 1047.

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*Cal Gov Code § 54954.6*

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 (All 2012 legislation, 2012 Governor's Reorg. Plan No. 2 and all propositions approved by the electorate at the June and November 2012 elections)

**GOVERNMENT CODE**

Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
 Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
 Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54954.6 (2013)



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



**(a)**

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



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

**(A)** A fee that does not exceed the reasonable cost of providing the services, facilities, or

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regulatory activity for which the fee is charged.

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

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

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

**(E)** Standby or immediate availability charges.

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

**(b)**

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

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

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

**(B)** The activity to be taxed.

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

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

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

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

**(c)**

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

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

**(A)** In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

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

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

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

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

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

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

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

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



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

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

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

**(1)** The property owners subject to the assessment.

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

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

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

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

#### **History:**

Added Stats 1992 ch 1234 § 2 (SB 1977). Amended Stats 1993 ch 1194 § 2 (SB 376), effective October 11, 1993; Stats 1994 ch 860 § 3 (SB 1286); Stats 1995 ch 258 § 1 (SB 725); Stats 1997 ch 38 § 6 (SB 919), effective July 1, 1997; Stats 2011 ch 382 § 3.5 (SB 194), effective January 1, 2012.

#### **Notes:**

- 1. Amendments
- 2. Note

#### **1. Amendments:**

- 1993 Amendment
- 1994 Amendment
- 1995 Amendment
- 1997 Amendment
- 2011 Amendment

#### **1993 Amendment:**

**(1)** Amended subd (a)(1) by **(a)** substituting "special district, or joint powers authority" for "or special district" after "a city, county,"; **(b)** adding the second paragraph; and **(c)** adding subds (a)(1)(A)-(a)(1)(E); **(2)** added the last sentence in subd (a)(2); **(3)** amended subd (b) (1) by **(a)** substituting "The joint notice of both the public meeting and the public hearing required by" for "The notice of the public hearing required by paragraph (2) of" in the beginning; and **(b)** adding the second through sixth sentences; **(4)** added "of this subdivision" in subd (b)(2); **(5)** added the last sentence in subd (b)(1)(A); **(6)** added subds (b)(2)(D), (c)

(2)(E), (c)(3), and (c)(4); **(7)** redesignated former subds (b)(2)(D), (b)(2)(E), and (c)(2)(E) to be subds (b)(2)(E), (b)(2)(F), and (c)(2)(f); **(8)** substituted "meeting and hearing" for "hearings" in subds (b)(2)(E) and (c)(2)(F); **(9)** substituted "and" for "or" in subd (b)(2)(F); **(10)** amended subd (c)(1) by **(a)** substituting "joint notice of both the public meeting and the public hearing required by" for "notice of the public hearing required by paragraph (2) of" near the beginning; **(b)** adding the second and third sentences; **(c)** adding "in at least 10-point type and shall be" after "notice shall be"; and **(d)** adding "proposed to be subject to the new or increased assessment" after "all property owners"; **(11)** substituted "joint notice required by paragraph (1) of this subdivision" for "notice required by paragraph (1)" in subd (c)(2); **(12)** added the last sentence in subd (c)(2)(A); **(13)** substituted subd (c)(2)(D) for former subd (c)(2)(D) which read: "(c)(2)(D) If applicable, a statement that a majority protest shall cause the assessment to be abandoned."; **(14)** substituted subd (e) for former subd (e) which read: "(e) Subdivisions (b) and (c) shall not apply to any new or increased general tax or any new or increased assessment that requires an election of the property owners or registered voters subject to the proposed general tax or assessment."; **(15)** added "meeting or" in subd (f); and **(16)** amended subd (g) by **(a)** substituting "reasonable costs of public meetings, public hearings," for "costs of the hearing"; and **(b)** adding the last sentence.

#### ✚ 1994 Amendment:

**(1)** Substituted ", rate, or charge, unless a special district's principal act requires the service charge, rate, or charge" for "or benefit charge, unless a special district's principal act requires service charges or benefit charges" in subd (a)(1)(B); **(2)** added "previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) of Section 54954.6 and which was" in subd (a)(1)(D); **(3)** deleted the former sixth sentence in subd (b)(1) which read: "The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision."; **(4)** added subd (c)(2)(G); and **(5)** amended subd (c)(3) by adding **(a)** "exclusively for" after "or district, or"; **(b)** pursuant to this subdivision or" after "may be provided"; **(c)** "estimated amount of the assessment of various types, amounts, or uses of property and the" after "shall include the"; and **(d)** "subparagraphs (B) to (G), inclusive, of" after "information required by".

#### ✚ 1995 Amendment:

Substituted **(1)** "local agency" for "city, county, special district, or joint powers authority" wherever it appears in the first paragraph subd (a)(1) and in subd (e)(2); and **(2)** "imposed throughout the entire local agency" for "for an entire city, county, or district" in subd (c)(3).

#### ✚ 1997 Amendment:

In addition to making technical changes, **(1)** substituted "and that" for "of Section 54954.6 and which" after "subdivision (c)" in subd (a)(1)(D); and **(2)** added subd (h).

#### ✚ 2011 Amendment:

**(1)** Substituted "telephone" for "phone" in subds (b)(2)(F) and (C)(2)(D); **(2)** added "or businesses" in the first sentence of subd (c)(1); **(3)** amended the last sentence of subd (c)(1) by **(a)** adding "or business owners"; **(b)** substituting the comma for "or" after "county assessment roll"; and **(c)** adding "or the local agency's records pertaining to business ownership,"; and **(4)** amended subd (c)(2)(A) by adding **(a)** "In the case of an assessment proposed to be levied on property," in the first sentence; and **(b)** adding the second sentence.

#### ✚ 2.

#### Note

Stats 1993 ch 1194 provides:

SEC. 27. The provisions of this act are declarative of existing law.

Stats 2011 ch 382 provides:

SECTION 1. (a) This act shall be known and may be cited as the Local Government Omnibus Act of 2011.

**Related Statutes & Rules:**

Proposition 218 Omnibus Implementation Act (implementing Cal. Const. Articles XIIIIC and XIIID: Gov C §§ 53750 et seq.

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54955**

*Cal Gov Code § 54955*

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GOVERNMENT CODE  
 Title 5. Local Agencies  
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 Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
 Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54955 (2013)

**§ 54955. Adjournment of meetings**

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

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purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

**History:**

Added Stats 1953 ch 1588 § 1. Amended Stats 1955 ch 760 § 1; Stats 1959 ch 647 § 1.

**Notes:****Amendments:**

- ↓ 1955 Amendment
- ↓ 1959 Amendment

**1955 Amendment:**

Substituted the section for the former section which read: "The legislative body of a local agency may adjourn any regular or adjourned meeting to a time and place specified in the order of adjournment. When so adjourned, the adjourned meeting is a regular meeting for all purposes. When an order of adjournment of a regular or adjourned meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified by ordinance, resolution, by-laws, or whatever other rule is required for regular meetings."

**1959 Amendment:**

Added the fourth sentence.

**Related Statutes & Rules:**

Time and place for holding regular meetings: Gov C § 54954.

Continuance of hearing to subsequent meeting: Gov C § 54955.1.

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Attorney General's Opinions:**

Right of press to require twenty-four-hour advance notification of open meetings. 32 Ops. Cal. Atty. Gen. 240.

No express statutory limitations are placed on frequency of adjourned regular meetings of county board of supervisors held outside county seat; accordingly, frequency of such meetings is for board of supervisors to determine in exercise of its discretion. 76 Ops. Cal. Atty. Gen. 113.

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**Notes of Decisions:****1. Compliance****1. Compliance**

Although a library commission's continued meeting was a separate and regular meeting under Gov C §§ 54952.2(a) and 54955 of the Ralph M. Brown Act, Gov C §§ 54950 et seq., under Gov C § 54954.3(a) of the Act and § 67.15(a) of the San Francisco Sunshine Ordinance of 1999, San Francisco, Cal., Admin. Code ch. 67, the commission and its commissioners complied with the Act and the local sunshine law when they allowed public comment on items from that agenda only at the continued meeting. *Chaffee v. San Francisco Library Com.* (2004, Cal App 1st Dist) 115 Cal App 4th 461, 9 Cal Rptr 3d 336, 2004 Cal App LEXIS 117.

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Terms: 54952.1

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Section: **Cal Gov Code § 54955.1**

*Cal Gov Code § 54955.1*

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Cal. Gov Code § 54955.1 (2013)

**§ 54955.1. Continuance of hearing**

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

**History:**

Added Stats 1965 ch 469 § 1.

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**🔗 Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**🔗 Notes of Decisions:**

🔗 1. Generally

**🔗 1. Generally**

Gov C § 54955.1 of the Ralph M. Brown Act, Gov C §§ 54950 et seq., allows for any hearing by a legislative body of a local agency to be continued in the manner set forth in Gov C § 54955 of the Act, and a library commission and its commissioners did not violate Gov C § 54954.3(a) the Act by allowing public comment only at a continued hearing on the same agenda. *Chaffee v. San Francisco Library Com.* (2004, Cal App 1st Dist) 115 Cal App 4th 461, 9 Cal Rptr 3d 336, 2004 Cal App LEXIS 117.

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*Cal Gov Code § 54956*

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Cal Gov Code § 54956 (2013)

**§ 54956. Special meetings; Notice**

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

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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.

**(b)** Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

**(c)** For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

**(1)** A legislative body as that term is defined by subdivision (a) of Section 54952.

**(2)** A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

#### **History:**

Added Stats 1953 ch 1588 § 1. Amended Stats 1955 ch 760 § 2; Stats 1980 ch 1284 § 19; Stats 1986 ch 641 § 7; Stats 1994 ch 32 § 11 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1997 ch 253 § 6 (SB 138); Stats 2011 ch 692 § 9 (AB 1344), effective January 1, 2012.

#### **Notes:**

- 1. Amendments
- 2. Note

#### **1. Amendments:**

- 1955 Amendment
- 1980 Amendment
- 1986 Amendment
- 1994 Amendment
- 1997 Amendment
- 2011 Amendment

#### **1955 Amendment:**

**(1)** Substituted "called" for "ordered" after "A special meeting may be" at the beginning of the section; **(2)** substituted "The call and notice" for "The order" at the beginning of the third sentence; and **(3)** added the last three sentences.

#### **1980 Amendment:**

**(1)** Amended the second sentence by **(a)** substituting "shall" for "must" after "Such notice"; and **(b)** adding "and shall be received" after "by mail"; and **(2)** added the last sentence.

**✚ 1986 Amendment:**

(1) Generally eliminated "such"; and (2) added the second paragraph.

**✚ 1994 Amendment:**

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

**✚ 1997 Amendment:**

Amended the first paragraph by (1) deleting "personally or by mail" after "body, by delivering"; (2) substituting "and" for the comma after "general circulation"; and (3) substituting "any other means" for "mail" after "personally or by".

**✚ 2011 Amendment:**

(1) Added subdivision designation (a); (2) added "and posting a notice on the local agency's Internet Web site, if the local agency has one" in the first sentence of subd (a); and (3) added subds (b) and (c).

✚ 2.

**Note**

Stats 2011 ch 692 provides:

SEC. 10. The Legislature finds and declares that the fiscal integrity and stability of local governmental agencies in this state, including charter cities and charter counties, have a direct impact on the long-term well-being of all the residents of this state. The likelihood of businesses locating to or staying in the state is affected by the perception of a functioning, transparent, and practical governmental structure in the local governmental bodies in California. Therefore, the Legislature finds and declares that to ensure the statewide integrity of local government, the provisions of this act are an issue of statewide concern. Therefore, this act shall apply to all counties and cities, including charter counties, charter cities, and charter cities and counties.

SEC. 11. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

**✚ Related Statutes & Rules:**

Adjournment of meetings: Gov C § 54955.

Emergency meetings; Notice: Gov C § 54956.5.

Equitable relief for violation of section: Gov C § 54960.1.

**↗ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Law Review Articles:**

Secrecy and access to administrative records. 44 Cal LR 305.

**↗ Attorney General's Opinions:**

Right of press to require twenty-four-hour advance notification of open meetings. 32 Ops. Cal. Atty. Gen. 240.

Right of local agencies, including school boards, to hold executive sessions only during regular or special meetings for which adequate notice has been given as required by statute. 43 Ops. Cal. Atty. Gen. 79.

Government Code, § 54956 does not require the legislative body of a special district to give the 24-hour notice of a special meeting to the local newspaper of general circulation unless the newspaper has requested such notice in advance. 62 Ops. Cal. Atty. Gen. 658.

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**↗ Notes of Decisions:**

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- ↕ 2. Applicability
- ↕ 3. Construction
- ↕ 4. Construction With Other Law
- ↕ 5. Pleadings
- ↕ 6. Entry of Record
- ↕ 7. Informal Development
- ↕ 8. Subsequent Ratification
- ↕ 9. Particular Determinations

**↗ 1. Generally**

A board of supervisors cannot settle with the county treasurer at a special meeting, unless they have first given public notice thereof, and specified therein that such business will be transacted. *County of El Dorado v. Reed* (1858) 11 Cal 130, 1858 Cal LEXIS 370.

A special meeting and all proceedings thereof are void where notice thereof is not given and one board member is absent. *Orange v. Clement* (1919, Cal App) 41 Cal App 497, 183 P 189, 1919 Cal App LEXIS 358.

It is settled that the governing board of a school district may hold executive sessions to consider and even act upon personnel matters unless the employee affected has requested a public hearing. *Krausen v. Solano County Junior College Dist.* (1974, Cal App 1st Dist) 42 Cal App 3d 394, 116 Cal Rptr 833, 1974 Cal App LEXIS 1232.

## ¶ 2. Applicability

Statutory requirement that all meetings of legislative body of local agency be open and public was not directed at anything less than formal meeting of city council's or one of city's subordinate agencies. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

## ¶ 3. Construction

Gov C § 54956's requirement that the notice "specify" is intended to refer back to Gov C § 54954.2's requirement that an agenda provide a "description." It is inconceivable that a city could "specify" an item of business without providing a "brief general description" of that item of business. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

## ¶ 4. Construction With Other Law

Because Gov C §§ 54956 and 54954.2 contain equivalent requirements, the trial court's finding that the city council's special meeting agenda violated Gov C § 54954.2 was equivalent to a finding that it violated Gov C § 54956. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

## ¶ 5. Pleadings

A complaint alleging that defendant city council violated the Ralph M. Brown Act (Gov C §§ 54950 et seq.) was properly dismissed after sustaining a demurrer without leave to amend. Plaintiff contended that at two separate meetings, the city council discussed matters it had not properly and timely placed on the agenda. Although the city council did not properly and timely post its agenda as required by statute, the complaint stated no cause of action under the Act. As to the first meeting, there was no "action taken," and the city council later exercised its statutory discretion to "correct or cure" the alleged violation. As to the second meeting, plaintiff did not file a timely complaint as required by Gov C § 54960.1(c)(3). *Boyle v. City of Redondo Beach* (1999, Cal App 2d Dist) 70 Cal App 4th 1109, 83 Cal Rptr 2d 164, 1999 Cal App LEXIS 228.

## ¶ 6. Entry of Record

Where all members of council were present at special meeting, except one, and resolution was adopted unanimously, there was no error in admitting testimony of clerk of council that he served proper notice of meeting on all members, notice not having been entered of record. *Gill v. Dunham* (1893) 4 Cal Unrep 229, 34 P 68.

## ¶ 7. Informal Development

In view of former Gov C § 65543, requiring planning commission to consult with public officials, utility companies, civic and private organizations and citizens generally with relation to carrying

out master or general zoning plan, requirement that all meetings of legislative body of local agency be open and public contemplated and did not forbid informal development of facts pertaining to zoning problems. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

#### ✚ 8. Subsequent Ratification

Proceedings taken at a special meeting, but void for want of proper notice, cannot be ratified at a subsequent regular board meeting. *Orange v. Clement* (1919, Cal App) 41 Cal App 497, 183 P 189, 1919 Cal App LEXIS 358.

#### ✚ 9. Particular Determinations

An ordinance establishing the rates of county licenses, passed at a session other than a regular session, and before the board of supervisors had provided by ordinance for regular sessions, was invalid under the former County Government Act of March 14, 1883. *County of San Luis Obispo v. Hendricks* (1886) 71 Cal 242, 11 P 682, 1886 Cal LEXIS 567.

An ordinance fixing license rates, passed without a regular meeting or special meeting regularly called for that purpose, was void under the former County Government Act of March 14, 1883. *People v. Dunn* (1891) 89 Cal 228, 26 P 761, 1891 Cal LEXIS 802.

A special meeting of the city council of a city of the sixth class is illegally held and action taken thereat a nullity, where one of the councilmen was not present, did not consent to the holding of the meeting, was given no notice, and did not sign the call and waiver of notice. *Baumgardner v. Hawthorne* (1951, Cal App) 104 Cal App 2d 512, 231 P2d 864, 1951 Cal App LEXIS 1653.

Assuming that "Secret Meeting Law," requiring all meetings of legislative body of local agency to be open and public, was violated by actions of most of members of municipal planning commission in attending dinner meeting given by one who subsequently applied for zoning change of his property, such violation did not result in invalidity of rezoning ordinance thereafter enacted. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

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Cal Gov Code § 54956.5 (2013)



**§ 54956.5. Emergency meetings; Notice**

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



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

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

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**(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.

**History:**

Added Stats 1979 ch 223 § 1. Amended Stats 1981 ch 968 § 30; Stats 1986 ch 641 § 8; Stats 2002 ch 175 § 2 (SB 1643).

**Notes:****Amendments:**

- ⚡ 1981 Amendment
- ⚡ 1986 Amendment
- ⚡ 2002 Amendment

**1981 Amendment:**

**(1)** Substituted "emergency" for "special" in the first and third paragraphs; and **(2)** substituted "closed" for "executive" in the fourth paragraph.

**1986 Amendment:**

In addition to making technical changes, **(1)** substituted "either the 24-hour notice requirement of the 24-hour posting requirement of Section 54956 or both of the notice and

posting requirements" for "the 24-hour notice requirement of Section 54956" at the end of the first paragraph; **(2)** amended the first sentence of the third paragraph by **(a)** deleting "shall exhaust" before "all telephone numbers"; and **(b)** adding "shall be exhausted" at the end of the sentence; and **(3)** substituted "emergency" for "special" after "holding of the" in the second sentence of the third paragraph.

#### ✚ 2002 Amendment:

**(1)** Redesignated the first paragraph of the introductory clause to be subd (b)(1); **(2)** redesignated the second paragraph of introductory clause to be subd (a); **(3)** substituted "both of the" for "any of the" in the introductory clause of subd (a); **(4)** added "Subject to paragraph (2)," in subd (b)(1); **(5)** added subd (b)(2); **(6)** redesignated former subds (a) and (b) to be subd (a)(1) and (a)(2); **(7)** amended subd (a)(1) by **(a)** substituting "An emergency, which shall be defined as a work stoppage, crippling activity," for "Work stoppage"; and **(b)** substituting "that severely" for "which severely"; **(8)** substituted "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" for "Crippling disaster which severely impairs" in subd (a)(2); **(9)** added the subd (b)(2) designation; **(10)** amended the first sentence of subd (b)(2) by **(a)** deleting "However," at the beginning; **(b)** substituting "that has requested" for "which has requested"; and **(c)** adding ", 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"; **(11)** amended the second sentence of subd (b)(2) by **(a)** adding "This notice shall be given"; and **(b)** substituting "a newspaper" for "such newspaper"; **(12)** added subdivision designations (c)-(e); and **(13)** amended subd (c) by **(a)** substituting "During a meeting held pursuant to this section," for "Notwithstanding Section 54957,,"; **(b)** substituting "may meet" for "shall not meet"; **(c)** deleting "during a meeting called" after "closed session"; and **(d)** substituting "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" for "this section".

#### ✚ Related Statutes & Rules:

Mailed notice of regular or special meeting: Gov C § 54954.1.

Special meetings: Gov C § 54956.

#### ✚ Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

#### Hierarchy Notes:

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Terms: 54952.1

Focus: 54952.2 (Exit FOCUS™)

Section: **Cal Gov Code § 54956.5**

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Cal Gov Code § 54956.6 (2013)

**§ 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.

 **History:**

Added Stats 1980 ch 1284 § 20.

**Hierarchy Notes:**

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Section: **Cal Gov Code § 54956.7**

*Cal Gov Code § 54956.7*

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Cal Gov Code § 54956.7 (2013)

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

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the

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consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

**History:**

Added Stats 1982 ch 298 § 1.

**Related Statutes & Rules:**

Statement of reason for closed session: Gov C § 54957.7.

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

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*Cal Gov Code § 54956.75*

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Cal Gov Code § 54956.75 (2013)



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

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

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

**History:**

Added Stats 2004 ch 576 § 4 (AB 1827).

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Cal Gov Code § 54956.8 (2013)



**§ 54956.8. Closed sessions regarding real property negotiations**

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



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

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

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

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

#### **History:**

Added Stats 1984 ch 1126 § 2. Amended Stats 1994 ch 32 § 12 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1998 ch 260 § 3 (SB 139).

#### **Notes:**

- 1. Amendments
- 2. Note

- 1. Amendments:
  - 1994 Amendment
  - 1998 Amendment

#### **1994 Amendment:**

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

#### **1998 Amendment:**

(1) Amended the second paragraph by adding (a) "its negotiators,"; and (b) the comma after "may concern"; (2) substituted "negotiators" for "negotiator" before "may" in the second and third paragraphs; and (3) amended the third paragraph by substituting (a) "purposes" for "the purpose"; and (b) "members" for "a member".

#### **2.**

#### **Note**

Stats 1994 ch 32 provides:

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

#### **Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

#### **Attorney General's Opinions:**

Adoption by Midpeninsula Regional Open Space District of resolution listing all parcels of real property larger than twenty acres within its planning area as potential subject of negotiation for purchase would not satisfy disclosure prerequisite for closed session regarding purchase of any one or more of such parcels. 73 Ops. Cal. Atty. Gen. 1.

The mayor of a charter city, who is designated as the executive head of the city by the city charter, may not attend a closed session of the city's redevelopment agency, the members of

which are appointed by the mayor with the approval of the city council, when the purpose of the closed session is to conduct a conference with the agency's real property negotiators who are negotiating the disposition and development of property, a portion of which is owned by the city, for construction of a publicly financed and publicly owned city conference center and privately financed and developed hotel complex. 83 Ops. Cal. Atty. Gen. 221.

The circumstance that a proposed rehabilitation loan agreement pertains to the use of real property that a redevelopment agency is currently subleasing to the proposed recipient of the rehabilitation loan, makes reference to the sublease, and incorporates certain of its terms--but does not effectuate the acquisition, disposal, or modification of any real property rights under the existing sublease--does not, in itself, permit the agency and its negotiator to discuss the terms of the proposed agreement in closed session. The circumstance that a proposed rehabilitation loan agreement includes a redevelopment agency's acquisition of restrictive covenants, including use and operating covenants, over real property occupied by the proposed recipient of the rehabilitation loan does not, in itself, permit the agency and its negotiator to discuss the terms of the proposed agreement in closed session. 93 Ops. Cal. Atty. Gen. 51.

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Terms: 54952.1

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Cal Gov Code § 54956.81 (2013)

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

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

**History:**

Added Stats 2004 ch 533 § 20 (AB 2234).

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Cal Gov Code § 54956.86 (2013)

**§ 54956.86. Closed session for health plan member**

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

**History:**

Added Stats 1996 ch 182 § 2 (SB 2092).

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Cal Gov Code § 54956.87 (2013)


**§ 54956.87. Disclosure of records and information; Meetings in closed session**

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

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

**(c)** Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

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

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

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

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

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

#### **History:**

Added Stats 1999 ch 769 § 2 (AB 496). Amended Stats 2003 ch 424 § 2 (AB 171).

#### **Notes:**

Amendments:

#### **2003 Amendment:**

**(1)** Substituted "formulas" for "formulae" in the first sentence of subd (a); **(2)** substituted "subdivision (f)," for "subdivision (c) of Section 32106 of the Health and Safety Code," in the first sentence of subd (b); **(3)** added the first sentence of subd (c); and **(4)** added subd (f).

#### **Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

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*Cal Gov Code § 54956.9*

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GOVERNMENT CODE  
 Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
 Part 1. Powers and Duties Common to Cities, Counties, and  
 Other Agencies  
 Chapter 9. Meetings

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Cal Gov Code § 54956.9 (2013)





**§ 54956.9. Closed sessions concerning pending litigation; Lawyer-client privilege**

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



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


(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including

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eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

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

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

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

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

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

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

**(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.

#### History:

Added Stats 1984 ch 1126 § 3. Amended Stats 1987 ch 1320 § 5; Stats 1993 ch 1136 § 11 (AB 1426), operative April 1, 1994, ch 1137 § 11 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 13 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2012 ch 759 § 7 (AB 2690), effective January 1, 2013.

#### Notes:

- 1. Amendments
- 2. Note

##### 1. Amendments:

- 1987 Amendment
- 1993 Amendment
- 1994 Amendment
- 2012 Amendment

##### 1987 Amendment:

Amended the second paragraph by **(1)** adding the first and second sentences; and **(2)** substituting the period for "; or" at the end of subd (b)(1).

##### 1993 Amendment:

**(1)** Added the third paragraph; **(2)** amended the fourth paragraph by **(a)** substituting "Litigation" for "An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator" in subd (a); and **(b)** adding the second paragraph of subd (b)(2); **(3)** substituted "on the agenda or publicly announce the subdivision of this section that authorizes the closed session" for "publicly to which subdivision it is pursuant" in the first sentence of the fifth paragraph; and **(4)** substituted the last paragraph for the former fourth and fifth paragraphs which read: "The legal counsel of the legislative body of the local agency shall prepare and submit to the body a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to subdivision (a), the memorandum shall include the title of the litigation. If the closed session is pursuant to subdivision (b) or (c), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the body prior to the closed session if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.1.

"For purposes of this section, 'litigation' includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator." (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

**¶ 1994 Amendment:**

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

**¶ 2012 Amendment:**

(1) Added subdivision designations (a)-(d), (g), and (h); (2) redesignated former subds (a), (b)(1)-(b)(3), and (b)(3)(A)-(b)(3)(F) to be subds (d)(1)-(d)(3), (e), (e)(1)-(e)(5), and (f); (3) substituted "paragraph (2)" for "paragraph (1) of this subdivision (2)" in subd (d)(3); (4) added subd (d)(4); (5) substituted "paragraphs (2) and (3) of subdivision (d)" for "paragraphs (1) and (2)" in the introductory clause of subd (e); (6) substituted "Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code)" for "Tort Claims Act" in subd (e)(3); (7) deleted former subd (c) which read: "(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation."; and (8) amended subd (g) by substituting (a) "paragraph of subdivision (d)" for "subdivision of this section" in the first sentence; and (b) "paragraph (1) of subdivision (d)" for "subdivision (a)" in the second sentence.

¶ 2.

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 also provides:

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

**¶ Comments:****Law Revision Commission Comments:****2012**

Section 54956.9 is amended to more accurately refer to the content of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. See *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d 295 (2007); see also Gov't Code § 810 (stating that Division 3.6 of Title 1 of the Government Code may be referred to as "Government Claims Act").

Section 54956.9 is also amended to insert paragraph labels, conform internal cross-references to the new labeling, and relocate the substance of former subdivision (c). These changes are purely technical. 41 Cal. L. Revision Comm'n Reports 285 (2011).

**¶ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 191 "Discovery: Privileges And Other Discovery Limitations".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

2 Witkin Cal: Evidence (4th ed) Witnesses §§ 288, 294.

### ⚡ Attorney General's Opinions:

When proposed or tentative cease and desist order has been served upon city by regional water quality control board, "adjudicatory proceeding" exception within Government Code § 54956.9 authorizes closed sessions of city council with its city attorney to receive his or her advice, even when one city agency has already discussed order in open session. 69 Ops. Cal. Atty. Gen. 232.

A local agency such as county board of supervisors may use "pending litigation" exception of Act to go into closed session to deliberate and take action upon settlement of lawsuit. 75 Ops. Cal. Atty. Gen. 14.

### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

### ⚡ Notes of Decisions:

- ⚡ 1. Applicability
- ⚡ 2. Construction
- ⚡ 3. Privilege
- ⚡ 4. Discovery
- ⚡ 5. Public Comment
- ⚡ 6. Litigation Settlement
- ⚡ 7. Remedies
- ⚡ 8. Attorney Fees
- ⚡ 9. Particular Determinations

#### ⚡ 1. Applicability

Contractual exemption of a developer's subdivision project from certain zoning restrictions, pursuant to a settlement agreement adopted in a closed council session, violated the Ralph M. Brown Act, Gov C §§ 54950 et seq., because the statutory exemption of Gov C § 54956.9, for settlement discussions did not extend to the parties' agreement to take governmental action for which a public hearing was required. *Trancas Property Owners Assn. v. City of Malibu* (2005, Cal App 2d Dist) 132 Cal App 4th 1245, 34 Cal Rptr 3d 334, 2005 Cal App LEXIS 1507, rehearing granted, depublished *Trancas Property Owners Assn. v. City of Malibu Trancas-PCH, LLC* (2005, Cal App 2d Dist) 2005 Cal App LEXIS 1787, superseded (2006, Cal App 2d Dist) 138 Cal App 4th 172, 41 Cal Rptr 3d 200, 2006 Cal App LEXIS 466.

#### ⚡ 2. Construction

Statutory exemption of Gov C § 54956.9, for settlement discussions does not include an agreement to take governmental action for which a public hearing is required. *Trancas Property Owners Assn. v. City of Malibu* (2005, Cal App 2d Dist) 132 Cal App 4th 1245, 34 Cal Rptr 3d 334, 2005 Cal App LEXIS 1507, rehearing granted, depublished *Trancas Property Owners Assn. v. City of Malibu Trancas-PCH, LLC* (2005, Cal App 2d Dist) 2005 Cal App LEXIS 1787,

superseded (2006, Cal App 2d Dist) 138 Cal App 4th 172, 41 Cal Rptr 3d 200, 2006 Cal App LEXIS 466.

Trial court erred in finding that the board of directors of a nonprofit corporation created by a city could meet in closed session with legal counsel for the city's redevelopment agency under Gov C § 54956.9 of the Brown Act, Gov C §§ 54950 et seq. According to the clear terms of Gov C § 54956.9, the general rules of the attorney-client privilege of Ev C § 952 did not apply. *Shapiro v. Board of Directors* (2005, Cal App 4th Dist) 134 Cal App 4th 170, 35 Cal Rptr 3d 826, 2005 Cal App LEXIS 1813.

Adoption of a settlement agreement in closed session violated the Ralph M. Brown Act, Gov C § 54950 et seq., where a city council agreed to refrain from regulatory actions regarding the zoning of a development project; although Gov C § 54956.9 permits approval of settlements in closed session, it does not empower a city council to take or agree to take, as part of a non-publicly ratified litigation settlement, action that by substantive law cannot be taken without a public hearing and an opportunity for the public to be heard. *Trancas Property Owners Assn. v. City of Malibu* (2006, Cal App 2d Dist) 138 Cal App 4th 172, 41 Cal Rptr 3d 200, 2006 Cal App LEXIS 466, review denied *Trancas Property Owners Association v. City of Malibu (TRANCAS-PHC)* (2006, Cal) 2006 Cal LEXIS 7617.

### ¶ 3. Privilege

The Brown Act (Gov C §§ 54950 et seq.) (meetings of local governing bodies) did not require disclosure of a letter a city attorney prepared for the city council in which the attorney expressed legal opinions concerning a resident's pending appeal of a parcel map. The letter was a confidential communication within the attorney-client privilege, and the act broadly preserves that privilege for local governing bodies. Recent amendments to the act did not abrogate the privilege. Gov C § 54956.9, as amended, governs closed meetings of governing bodies regarding pending litigation and limits the attorney-client privilege for purposes of conducting closed meetings. However, the term "meeting" was intended to apply to collective action of governing bodies and not to the transmission of a letter to the individual members of the governing body. The language in Gov C § 54956.9, abrogating the attorney-client privilege applies to open meeting requirements only, and it does not regulate the transmission of documents such as the city attorney's letter. That language was not intended to repeal other language in the act preserving the privilege. *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

In an action by a developer against, inter alia, a city alleging that its right to equal protection was violated when the city imposed a condition of approval on the developer's proposed condominium project that was more onerous than that imposed on similarly situated projects, the questions posed by the developer implicated the deliberative process privilege because the developer sought to question city council members about their decision making process, in particular their motive and intent in approving the condition for approval, which was both pre-decisional and deliberative in nature; the deliberative process privilege was overcome because there was a federal interest in the enforcement of federal constitutional rights, the testimony sought was highly relevant to the developer's equal protection claim, the council's decision making process was central to the litigation, and the information sought might well be relevant in the ascertainment of motive. Gov C § 54956.9 did not apply to the city council's assertion of the attorney-client privilege, and case-by-case rulings were necessary on the assertion of the attorney-client privilege at trial regarding whether any particular communication made during the closed sessions of the city council, with legal counsel present, was related primarily to the seeking of legal advice. *North Pacifica, LLC v. City of Pacifica* (2003, ND Cal) 274 F Supp 2d 1118, 2003 US Dist LEXIS 13232.

### ¶ 4. Discovery

Redacted copies of the closed session minutes of a county board of supervisors were not discoverable because the minutes were specifically exempt from disclosure under Gov C § 54957.2; the closed sessions were properly convened under Gov C § 54956.9 to discuss anticipated litigation. *County of Los Angeles v. Superior Court* (2005, Cal App 2d Dist) 130 Cal App 4th 1099, 30 Cal Rptr 3d 708, 2005 Cal App LEXIS 1039, review denied *County of Los Angeles v. Los Angeles County Superior Court* (2005, Cal) 2005 Cal LEXIS 10348.

#### **¶ 5. Public Comment**

Fact that public body is entitled to meet and confer privately with its attorney to discuss legal issues and receive confidential legal advice in connection with pending litigation does not preclude a member of the public from expressing comments or concerns relating to the pending litigation during a public session. *Galbiso v. Orosi Public Utility Dist.* (2008, 5th Dist) 167 Cal App 4th 1063, 84 Cal Rptr 3d 788, 2008 Cal App LEXIS 1677.

#### **¶ 6. Litigation Settlement**

The implied exception for adoption of litigation settlements in closed session does not embrace such agreements as provide for governmental decisions without legally required public hearings. *Trancas Property Owners Assn. v. City of Malibu* (2006, Cal App 2d Dist) 138 Cal App 4th 172, 41 Cal Rptr 3d 200, 2006 Cal App LEXIS 466, review denied *Trancas Property Owners Association v. City of Malibu (TRANCAS-PHC)* (2006, Cal) 2006 Cal LEXIS 7617.

#### **¶ 7. Remedies**

The trial court erred by failing to grant a petition for a writ of mandate to compel the public disclosure of a memorandum, which discussed an appeal from a decision of the city's planning commission and was prepared by the city attorney for the city council, since the council failed to publicly announce its intent to consider the memorandum in a closed session, as required by Gov C § 54956.9 (closed sessions regarding pending litigation). The failure to comply with this statutorily compelled procedure constituted a waiver of the "pending litigation" privilege. Even assuming that the memorandum was a confidential communication between lawyer and client, that it was privileged as work product and that the memorandum concerned pending litigation so as to authorize a closed session under Gov C § 54956.9, the decision to address the issue in a closed session must be made and announced publicly prior to the closed session. Public agencies may not avoid the requirements of Gov C § 54956.9, by receiving legal advice in writing rather than orally at a formal closed session. *Roberts v. City of Palmdale* (1992, Cal App 2d Dist) 13 Cal App 4th 298, 7 Cal App 4th 1130, 9 Cal Rptr 2d 501, 1992 Cal App LEXIS 839, review gr, republished (1992, Cal) 12 Cal Rptr 2d 326, 837 P2d 94, 1992 Cal LEXIS 4954, reprinted for tracking pending review *Roberts v. City of Palmdale* (1992, Cal App 2d Dist) 13 Cal App 4th 298.

#### **¶ 8. Attorney Fees**

Trial court erred in its determination that no California Ralph M. Brown Act, Gov C §§ 54950 et seq., violation was shown where property owner established that a public utility district had violated the act by failing to provide opportunity for public comment and failing to make required disclosures prior to going into closed session because district could not prohibit the owner from presenting her public comments simply because the comments related to pending litigation or a possible basis for settlement thereof; because trial court assumed that no violation occurred, it never properly exercised its discretion whether to grant attorney fees pursuant to Gov C § 54960.5 to the owner as a prevailing party, and thus remand was required

to consider that issue. Galbiso v. Orosi Public Utility Dist. (2008, 5th Dist) 167 Cal App 4th 1063, 84 Cal Rptr 3d 788, 2008 Cal App LEXIS 1677.

#### ¶ 9. Particular Determinations

Trial court should have overruled the demurrers of a community college district and its former superintendent to a district resident's cause of action for violation of Gov C § 54956.9 where the resident's allegations that individual trustees of the district board of trustees regularly and repeatedly left the room to meet with a judge, after which time they reached a consensus to enter into a settlement with the superintendent, showed more than merely discussing and approving proposed settlement terms and conditions, as they suggested the sort of collective acquisition and exchange of facts preliminary to an ultimate decision that had to occur openly. Issuance of a notice identifying the superintendent as the litigant, and minutes showing the board had reconsidered and approved her settlement agreement, did not establish a cure of the board's acts in impermissibly conducting information gathering in the course of mediating and negotiating with the superintendent in a closed meeting, actions that fell outside the pending litigation exception of California's Ralph M. Brown Act, Gov C §§ 54950.5 et seq. Page v. Miracosta Community College Dist. (2009, 4th Dist) 180 Cal App 4th 471, 102 Cal Rptr 3d 902, 2009 Cal App LEXIS 2031, rehearing denied Page v. Miracosta Community College District (2009, Cal. App. 4th Dist.) 2009 Cal. App. LEXIS 2041.

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[Cal Gov Code § 54956.95 \(2013\)](#)

**§ 54956.95. Closed sessions regarding liability**


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

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

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

**History:**

Added Stats 1989 ch 882 § 3.

**Collateral References:**

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Cal Gov Code § 54956.96 (2013)

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

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

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

for that local agency to the following individuals:

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

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

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

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

#### **History:**

Added Stats 2004 ch 784 § 2 (AB 2782).

#### **Collateral References:**

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TOC: Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > **§ 54956.96. Disclosure of specified information in closed session of joint powers agency; Authorization of designated alternate to attend closed session; Closed session of legislative body of local agency member**

Terms: 54952.1

Focus: **54952.2 (Exit FOCUS™)**

Section: **Cal Gov Code § 54956.96**

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TOC: Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > **§ 54957. Closed session regarding public security, facilities, employees, examination of witness**

Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54957**

*Cal Gov Code § 54957*

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GOVERNMENT CODE  
 Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
 Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
 Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54957 (2013)

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

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

(b)

**Practitioner's Toolbox**

- History
- Notes
- Notes of Decisions

**Resources & Practice Tools**

- Related Statutes & Rules
- Collateral References
  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".
  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 512 "Schools: Certification, Dismissal, And Related Employment Issues".
- Atty General's Opinions

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

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

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

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

#### History:

Added Stats 1953 ch 1588 § 1. Amended Stats 1957 ch 1314 § 1; Stats 1959 ch 647 § 2; Stats 1961 ch 1671 § 4; Stats 1971 ch 587 § 1; Stats 1975 ch 959 § 8; Stats 1980 ch 1284 § 21; Stats 1982 ch 298 § 2; Stats 1993 ch 1136 § 12 (AB 1426), operative April 1, 1994, ch 1137 § 12 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 14 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2002 ch 1120 § 2 (AB 2645).

#### Notes:

- 1. Amendments
- 2. Note

#### 1. Amendments:

- 1957 Amendment
- 1959 Amendment
- 1961 Amendment
- 1971 Amendment
- 1975 Amendment
- 1980 Amendment
- 1982 Amendment
- 1993 Amendment
- 1994 Amendment
- 2002 Amendment

#### 1957 Amendment:

Added "appointment," before "employment or dismissal" in the first sentence.

**✚ 1959 Amendment:**

Added "during a regular or special meeting" in the first sentence.

**✚ 1961 Amendment:**

Added the second paragraph.

**✚ 1971 Amendment:**

Added "with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding executive sessions" in the first sentence.

**✚ 1975 Amendment:**

(1) Amended the first paragraph by deleting (a) "officer or" after "dismissal of a public", after "against such" and after "unless such"; and (b) "public officer," after "by another" in the first sentence; (2) added the second paragraph; and (3) amended the third paragraph by (a) deleting "officer or" after "dismissal of an" and after "against such"; and (b) substituting "person or employee unless such" for "officer, person, or employee unless such officer or" in the first sentence.

**✚ 1980 Amendment:**

(1) Amended the first sentences of the first and third paragraphs by (a) substituting "closed" for "executive" wherever it appears; and (b) adding the commas after "employment"; (2) substituted "closed" for "private" in the second sentences of the first and third paragraphs; (3) amended the second paragraph by adding (a) "elected to office, or" after "any person"; and (b) the comma after "treasurer"; and (4) substituted "Such" for "Said" at the beginning of the second sentence of the third paragraph.

**✚ 1982 Amendment:**

Added "evaluation of performance," after "appointment, employment," in the first sentence of the first paragraph and in the first sentence of the last paragraph.

**✚ 1993 Amendment:**

In addition to making technical changes, (1) amended the first paragraph by (a) substituting "session" for "hearing" at the end of the first sentence; and (b) adding the second and third sentences; and (2) substituted the second paragraph for the former second and third paragraphs which read: "For the purposes of this section, the term 'employee' shall not include any person elected to office, or appointed to an office by the legislative body of a local agency; provided, however, that nonelective positions of city manager, county administrator, city attorney, county counsel, or a department head or other similar administrative officer of a local agency shall be considered employee positions; and provided, further that nonelective positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer, or tax collector of any governmental district supplying services within limited boundaries shall be deemed employee positions.

"Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding closed sessions to consider (a) matters affecting the national security, or (b) the

appointment, employment, evaluation of performance, or dismissal of an employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. Such body also may exclude from any such public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body." (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

**✚ 1994 Amendment:**

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

**✚ 2002 Amendment:**

(1) Divided the former first paragraph into subds (a) and (b)(1); (2) added subdivision (b)(2)-(b)(4) designations; (3) amended subd (a) by (a) adding "agency counsel,"; (b) adding "or a security consultant or a security operations manager,"; (c) adding ", a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service,"; (d) deleting ", or" after "public facilities"; (4) added "Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency" in subd (b)(1); and (5) substituted "subdivision" for "section" in three places in subd (b)(4).

**✚ 2.**

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

**✚ Related Statutes & Rules:**

Public report of employment decisions: Gov C § 54957.1.

**✚ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 512 "Schools: Certification, Dismissal, And Related Employment Issues".

**Law Review Articles:**

Secrecy and access to administrative records. 44 Cal LR 305.

### ⚡ Attorney General's Opinions:

Application of secret meeting law to special committee or subcommittee of local agencies where such committees consist of less than quorum. 32 Ops. Cal. Atty. Gen. 240.

Does Secret Meeting Law require local agency to give 24-hours' notice of executive session to be held?. 33 Ops. Cal. Atty. Gen. 32.

Requirements of Brown Act with respect to city council meeting with city attorney being open to public. 36 Ops. Cal. Atty. Gen. 175.

Tape recordings of city council meetings as being public records which citizens have right to inspect. 39 Ops. Cal. Atty. Gen. 298.

Application of Brown Act to meetings of city council with city manager, city attorney and planning director. 42 Ops. Cal. Atty. Gen. 61.

Right of local agencies, including school boards, to hold executive sessions only during regular or special meetings for which adequate notice has been given as required by statute. 43 Ops. Cal. Atty. Gen. 79.

Minutes of executive session on personnel matters as not available for public inspection; power of majority of governing school board to make all or any portion of minutes public; requirement that board action be made part of formal minutes. 44 Ops. Cal. Atty. Gen. 147.

Members of press or other individuals who are not witnesses as not to be admitted as spectators to executive sessions. 46 Ops. Cal. Atty. Gen. 35.

Effect of Brown Act on meeting of public body to discuss labor negotiations. 51 Ops. Cal. Atty. Gen. 201.

Propriety, under Ralph M. Brown Act, of public employers meeting and conferring with representatives of employee organizations in private. 51 Ops. Cal. Atty. Gen. 201.

A "meet and confer" session held pursuant to Government Code, § 3505 between representatives of a county employee association and representatives of the board of supervisors, is not required to be open to the public. There is no legal requirement that the employee representative be allowed to tape-record the session. Such matter appears to be one to be settled between both sides in establishing "ground rules" for the session. 61 Ops. Cal. Atty. Gen. 1.

An executive session may not be held to discuss complaints against presiding officers of the governing body of a city, county or special district. 61 Ops. Cal. Atty. Gen. 10.

County board of supervisors may not hold executive sessions to discuss job performance or salaries of elected officers, but board may hold executive sessions to discuss job performance of employees as defined in Gov C § 54957; no notice or opportunity to be heard need be given to the official or other employee. Gov C § 25307 precludes a board of supervisors from holding executive sessions the primary purpose of which is to discuss salaries even as to employees as so defined. 61 Ops. Cal. Atty. Gen. 283.

Under the provisions of the Brown Act [Gov C §§ 54950 et seq.], the subject of the establishment of new administrative positions would not usually be a proper subject for an executive session by the governing body of a local agency. The subject of the work load of particular individuals would be a proper subject for executive session by the governing body of a local agency if (1) the individuals are "employees" within the meaning of Gov C § 54957 and



(2) work load is defined to include the work the employees do as well as the work assigned to the positions or employees. 63 Ops. Cal. Atty. Gen. 153.

When members of school district governing board discuss whether to employ probationary certificated employee for third consecutive school year, employee may not require that discussion be held in public. 70 Ops. Cal. Atty. Gen. 219.

Where the board of trustees of a school district has formed a committee, known as the district liaison council, consisting of eight representatives from the community, seven employees of the district, and one student, to interview candidates for the office of district superintendent and to make a recommendation to the board, the sessions of the committee held to perform such delegated duties are not required to be open to members of the public. 80 Ops. Cal. Atty. Gen. 308.

A county board of education may not meet in closed session under the "personnel exception" of the Ralph M. Brown Act to consider the appointment, employment, evaluation of performance, discipline, or dismissal of certificated or classified employees of the county superintendent of schools. 85 Ops. Cal. Atty. Gen. 77.

A county retirement board may permit an applicant for a disability retirement and his or her representative to attend a closed session at which the employee's medical records are discussed and evaluated. 88 Cal. Ops. Atty. Gen. 16.

#### **Annotations:**

Privileged nature of statements or utterances by member of school board in course of official proceedings. 85 ALR3d 1137.

#### **Hierarchy Notes:**

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#### **Notes of Decisions:**

- ✚ 1. Generally
- ✚ 2. Constitutionality
- ✚ 3. Legislative Intent
- ✚ 4. Applicability
- ✚ 5. Construction
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- ✚ 7. Procedure
- ✚ 8. Notice
- ✚ 9. Evidence
- ✚ 10. Sufficiency of Action
- ✚ 11. Remedies
- ✚ 12. Particular Determinations

#### **1. Generally**

Gov C § 54957, providing for the holding of executive sessions by a legislative body to consider the dismissal of a public officer or employee unless such officer or employee requests a public hearing, does not provide a procedure for administrative hearing, but simply grants an officer or employee the right to have a matter pertaining to his employment considered publicly rather

than in an executive session, and a failure to request a public hearing does not constitute a failure to exhaust administrative remedies on the part of the officer or employee so as to preclude his resort to the courts. *Ball v. City Council of Coachella* (1967, Cal App 4th Dist) 252 Cal App 2d 136, 60 Cal Rptr 139, 1967 Cal App LEXIS 1492.

## ✦ 2. Constitutionality

A police officer and police officers' association obtained a writ of mandate compelling the city civil service commission to set aside its closed session ratification of a hearing officer's findings of fact and recommendation that the police officer be demoted. The court erroneously agreed the commission's act was void under Gov C § 54957 because it failed to give the officer 24-hour written notice of his right to request a public hearing. The Court of Appeal concluded that a public agency may deliberate in closed session on complaints or charges brought against an employee without providing the statutory notice. The Legislature had specifically rejected the notion an employee is entitled to that notice when the closed session is for the sole purpose of considering, or deliberating, whether complaints or charges brought against the employee justify dismissal or disciplinary action. The officer argued that the commission violated his procedural due process rights by denying him the opportunity to respond to written factual findings and recommendation before it made its final decision, while the commission countered that the evidentiary hearing before a single hearing officer, and the opportunity to seek judicial review, satisfied due process requirements. Although the better practice would be to give the employee the opportunity to respond orally or in writing before a final decision is made, the officer's minimum due process rights were satisfied. *Bollinger v. San Diego Civil Service Com.* (1999, Cal App 4th Dist) 71 Cal App 4th 568, 84 Cal Rptr 2d 27, 1999 Cal App LEXIS 343.

## ✦ 3. Legislative Intent

The Brown Act (Gov C §§ 54950 et seq.) prohibited a city council from meeting in executive session for the express purpose of discussing and determining salaries of nonelected city officers or employees enumerated in Gov C § 54957 (executive sessions: purpose); however, where a specified employee's performance was to be evaluated, an executive session could be held for that limited purpose unless the employee requested a public session. Although the Brown Act provides for a "personnel exception" in § 54957, allowing closed sessions when a governmental entity is "meeting to consider the appointment, employment, evaluation of performance or dismissal of a public employee... unless such employee requests a public hearing," the terms "employment" and "evaluation of performance" should not be broadly interpreted so as to encompass the terms and conditions of continued employment of which salary level determination is an integral part. Had the Legislature intended the "personnel exception" to permit closed hearings for the determination of public employees' salaries, it could have easily included such authorization when it enacted Gov C § 54957.6, in 1968, which permits the governmental body to meet in executive session with its representative in collective bargaining negotiations to design negotiating strategy, or when it amended § 54957 in 1982 to add the "evaluation of performance" exception. *San Diego Union v. City Council* (1983, Cal App 4th Dist) 146 Cal App 3d 947, 196 Cal Rptr 45, 1983 Cal App LEXIS 2136.

Central purpose of the Ralph M. Brown Act, Gov C § 54957, is to ensure the sovereignty of the people over the agencies which serve them; thus, the legislature decreed under Gov C § 54950, that the actions of public commissions, boards, and councils be taken openly and that their deliberations be conducted openly so that the public could have a voice in shaping policy. *Gillespie v. San Francisco Pub. Library Com.* (1998, Cal App 1st Dist) 67 Cal App 4th 1165, 79 Cal Rptr 2d 649, 1998 Cal App LEXIS 947.

The Brown Act was adopted to ensure the public's right to attend the meetings of public agencies. Accordingly, the Act requires that the legislative bodies of local agencies, including city councils, hold their meetings open to the public except as expressly authorized by the Act.

The Act authorizes closed sessions to be held with regard to certain matters, one of which is real property negotiations. The need for closed sessions in this circumstance is obvious. No purchase would ever be made for less than the maximum amount the public body would pay if the public (including the seller) could attend the session at which that maximum was set, and the same is true for minimum sale prices and lease terms and the like. *Kleitman v. Superior Court* (1999, Cal App 6th Dist) 74 Cal App 4th 324, 87 Cal Rptr 2d 813, 1999 Cal App LEXIS 762, rehearing denied (1999, Cal App 6th Dist) 74 Cal App 4th 1231b, 1999 Cal App LEXIS 824, review denied (1999, Cal) 1999 Cal LEXIS 7978.

#### 4. Applicability

In an action under a complaint challenging the validity of the election of officers of a city's Museum Advisory Commission on the ground that the election originated in a secret meeting in violation of Gov C §§ 54950 et seq., governing local agencies' meetings, a summary judgment for defendants was proper, where it appeared that the meeting came within the Gov C § 54957, exception to the open meeting requirement of Gov C § 54953, and that, therefore, the persons who had been chosen had been legally selected for their offices. *Edgar v. Oakland Museum Advisory Com.* (1973, Cal App 1st Dist) 36 Cal App 3d 73, 111 Cal Rptr 364, 1973 Cal App LEXIS 637.

The Brown Act (Gov C §§ 54950 et seq.), providing that all meetings of the legislative body of a local agency shall be open and public, reflects a legislative determination that public agencies in this state exist to aid in the conduct of the people's business, and an intent that their actions be taken openly and that their deliberations be conducted openly. The term "deliberation" has been broadly construed to connote not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision. Thus, the trial court erred in refusing to grant an injunction to restrain a board of education and its superintendent from conducting closed executive sessions, where the school board had met in a closed session with prospective contractors, a "consortium" of three real estate specialists, to discuss with those persons their qualifications to assist the board in disposing of surplus real property, where the specialists were engaged because of their expertise to perform special services and were not subject to control as to the details of its accomplishment, and thus were independent contractors and not employees as that term is generally used or as it is used in the exception contained in Gov C § 54957, permitting closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee, and where the meeting did not fall within any other exception to the general statutory requirement of open meetings. *Rowen v. Santa Clara Unified School Dist.* (1981, Cal App 1st Dist) 121 Cal App 3d 231, 175 Cal Rptr 292, 1981 Cal App LEXIS 1927.

School district and school board were not required to give 24-hour written notice of the right to be heard in open session when it considered the appointment, employment, evaluation of performance, discipline, or dismissal of probationary teachers; the personnel exception of Gov C § 54957 does not apply to school board meetings to consider the termination of probationary employees. *Fischer v. Los Angeles Unified School Dist.* (1999, Cal App 2d Dist) 70 Cal App 4th 87, 82 Cal Rptr 2d 452, 1999 Cal App LEXIS 146, review denied (1999, Cal) 1999 Cal LEXIS 3019.

In an action brought by a high school principal against a school district's local superintendent and the superintendent of schools (officials) that alleged that the officials' statements to the press in newspaper articles invaded his privacy and defamed him, the principal's claims were subject to an anti-strategic lawsuit against public participation motion on the ground that none of the challenged statements divulged private information, but rather amounted to constitutionally privileged comment by a public officer in the proper discharge of an official duty under CC § 47(a) because, to the extent that the challenged disclosures included any private fact, the disclosure was logically relevant to the newsworthy subject of violence at the principal's school and the school district's response to it. Furthermore, the personnel exception

in California's Brown Act, found in Gov C § 54957, was inapplicable because the officials' statements were not the equivalent of a personnel evaluation under the district's collective bargaining agreement, and because dismissal of the causes of action for defamation and invasion of privacy could not be considered trivial victories for the officials in the context of the case, an award of attorney fees to them was proper. *Morrow v. Los Angeles Unified School Dist.* (2007, Cal App 2d Dist) 149 Cal App 4th 1424, 57 Cal Rptr 3d 885, 2007 Cal App LEXIS 616.

In a case where school district's governing board convened in a closed session to initiate the process to dismiss a permanent certificated teacher, the personnel exception to California's Ralph M. Brown Act, Gov C §§ 54950 et seq., applied to the governing board's action, and 24-hour written notice was not required because the governing board did not conduct an evidentiary hearing on the verified statement of charges against the teacher; rather, it considered whether those charges justified the initiation of dismissal proceedings under Ed C § 44944, and the teacher exercised her statutory right under the California Education Code and was accorded a noticed public evidentiary hearing. *Kolter v. Commission on Professional Competence of the L.A. Unified School Dist.* (2009, 2d Dist) 170 Cal App 4th 1346, 88 Cal Rptr 3d 620, 2009 Cal App LEXIS 150, review denied *Kolter (Colleen) v. Commission on Professional Competence of the L.A.U.S.D. (Los Angeles Unified School District)* (2009, Cal.) 2009 Cal. LEXIS 4246.

Governing board of a school district can convene in a closed session to initiate the process to dismiss a permanent certificated teacher without complying with California's Ralph M. Brown Act, which requires 24-hour written notice to employee of the right to have the matter heard in an open session. *Kolter v. Commission on Professional Competence of the L.A. Unified School Dist.* (2009, 2d Dist) 170 Cal App 4th 1346, 88 Cal Rptr 3d 620, 2009 Cal App LEXIS 150, review denied *Kolter (Colleen) v. Commission on Professional Competence of the L.A.U.S.D. (Los Angeles Unified School District)* (2009, Cal.) 2009 Cal. LEXIS 4246.

Contractor who performed the day-to-day business described in Gov C §§ 56386, 56650, 56658, was the executive officer as defined in Gov C § 56384(a), of a local agency formation commission; thus, his performance evaluation in a closed session was proper because he was a public employee under Gov C § 54957(b)(4). *Hofman Ranch v. Yuba County Local Agency Formation Com.* (2009, 3d Dist) 172 Cal App 4th 805, 91 Cal Rptr 3d 458, 2009 Cal App LEXIS 409.

## 5. Construction

The word "appointment," as used in Gov C § 54957, declaring that nothing in the chapter of that code governing local agencies' meetings is to be construed to prevent the legislative body of a local agency from holding executive sessions during a regular or special meeting to consider the "appointment," employment or dismissal of a public officer, includes the choosing, by a public body, of its own officers, and is not restricted to the action of such a body in appointing some person to a separate position or group. *Edgar v. Oakland Museum Advisory Com.* (1973, Cal App 1st Dist) 36 Cal App 3d 73, 111 Cal Rptr 364, 1973 Cal App LEXIS 637.

Every word in a statute is presumed to have meaning. The word "or" in Gov C § 54957 appears before "dismissal" and then again before "to hear complaints," and the qualifying phrase ("unless the employee requests a public session" ) follows the second disjunctive phrase ("or to hear complaints or charges brought against the employee" ). An accepted rule of statutory construction is that qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. Pursuant to this rule, the qualifying phrase concerning an employee's request for a public session refers only to situations where the agency in question is hearing complaints or charges against the employee. This interpretation is further supported by the second paragraph of § 54957, which clarifies the statute's intention to permit an employee to request an open session when complaints or charges have been brought against the employee. Conspicuously absent from this paragraph, however, is any mention of other

personnel matters, and when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded. Thus, where plaintiff former librarian of defendant community college contended that defendant's Board of Trustees violated the Brown Act by taking action regarding plaintiff's employment in closed session rather than an open public meeting, the trial court did not err in denying plaintiff's petition for a writ of mandate. *Furtado v. Sierra Community College* (1998, Cal App 3d Dist) 68 Cal App 4th 876, 80 Cal Rptr 2d 589, 1998 Cal App LEXIS 1047.

Where plaintiff former librarian of defendant community college contended that defendant's Board of Trustees violated the Brown Act by taking action regarding plaintiff's employment in closed session rather than an open public meeting, plaintiff's argument that negative comments in her performance evaluations constituted "complaints or charges brought against [her] by another person or employee" within the meaning of Gov C § 54957, thus entitling her to an open session, was rejected. The contention failed for two reasons. First, the statutory language includes reference to "evaluation of performance" which is separate and distinct from the hearing of "complaints or charges brought against the employee. Thus, to merge employee evaluations into the category of "complaints or charges" to permit an open session is effectively to rewrite the statute. Second, an Attorney General opinion (78 Ops Cal Atty Gen 218 (1995), focusing on another aspect of the statutory language, concluded that personnel evaluations do not constitute "complaints or charges. *Furtado v. Sierra Community College* (1998, Cal App 3d Dist) 68 Cal App 4th 876, 80 Cal Rptr 2d 589, 1998 Cal App LEXIS 1047.

The phrase "evaluation of performance," as used in the Gov C § 54957 exception to the public meeting requirements of the Brown Act, encompassed a review of an employee's job performance, even if that review involved particular instances of job performance rather than a comprehensive review of such performance. Nothing in the language of § 54957 indicated that "evaluation of performance" was limited to the annual or periodic comprehensive, formal, and structured review of job performance commonly envisioned in a typical personnel manual or employment contract. Further, "evaluation" could properly include consideration of the criteria for such evaluation, consideration of the process for conducting the evaluation, and other preliminary matters, to the extent those matters constituted an exercise of defendant employer's discretion in evaluating a particular employee. *Duval v. Board of Trustees* (2001, Cal App 5th Dist) 93 Cal App 4th 902, 113 Cal Rptr 2d 517, 2001 Cal App LEXIS 1721, review denied (2002, Cal) 2002 Cal LEXIS 1279.

Library board of trustees did not violate Gov C § 54957(b), by its choice of advisory counsel for an employee discipline matter. Nothing in this code section limits whom a board may choose to advise it when it conducts meetings involving employment matters. *Kaye v. Board of Trustees of the San Diego County Public Law Library* (2009, 4th Dist) 179 Cal App 4th 48, 101 Cal Rptr 3d 456, 2009 Cal App LEXIS 1804, rehearing denied *Kaye v. Board of Trustees of the San Diego County Public Law Library/San Diego County Public Law Library et al.* (2009, Cal. App. 4th Dist.) 2009 Cal. App. LEXIS 1967, review denied *Kaye (Michael) v. Board of Trustees of the San Diego Public Law Library/(Public Law Library of San Diego County)* (2010, Cal.) 2010 Cal. LEXIS 1756.

## ✎ 6. Construction With Other Law

A school board, meeting in executive session to consider a student disciplinary matter, had authority under former Ed C § 966, requiring that all board meetings be public except as provided in Gov C § 54957, to additionally determine whether or not to reemploy a high school superintendent, and such authority necessarily included authority to vote and act; Gov C § 54957, authorizing a school board to hold executive sessions to consider the appointment, employment or dismissal of a public officer or employee, does not limit the board to mere "consideration" of the matter. *Lucas v. Board of Trustees* (1971, Cal App 1st Dist) 18 Cal App 3d 988, 96 Cal Rptr 431, 1971 Cal App LEXIS 1451.

Community college district was not required under the California Public Records Act, Gov C § 6250 et seq., to disclose the personal performance goals of its former superintendent because the goals were part of the confidential evaluation process under Gov C § 54957(b)(1). *Versaci v. Superior Court* (2005, Cal App 4th Dist) 127 Cal App 4th 805, 26 Cal Rptr 3d 92, 2005 Cal App LEXIS 385, rehearing denied (2005) 2005 Cal. App. LEXIS 640, review denied *Versaci v. S.C. (Paloma Community College District)* (2005) 2005 Cal. LEXIS 6523.

#### **¶ 7. Procedure**

A former probationary teacher could not successfully claim invalidity of the district Board of Education's decision not to reemploy him on the basis that the decision was the result of closed meetings in violation of Gov C § 54953 (a part of the Brown Act) and former Ed C § 966. Gov C § 54957 permits executive sessions to consider dismissal of a public employee unless the employee requests a public hearing, and the record did not establish that such a request was made. Moreover, the procedural action taken in executive session resulted in minor prejudice, if any, and, in any event, an action taken in violation of the Brown Act is not void, but merely subjects the members of the governing board to criminal penalties. *Greer v. Board of Education* (1975, Cal App 1st Dist) 47 Cal App 3d 98, 121 Cal Rptr 542, 1975 Cal App LEXIS 1004.

Employee action taken to appoint, employ, dismiss, transfer, or accept the resignation of a public employee in closed session pursuant to the Ralph M. Brown Act, Gov C § 54957 shall be reported immediately in a manner that names the employee, the action taken and the position affected and, in the case of dismissal for a violation of law or of the policy of the city, the reason for dismissal. *Gillespie v. San Francisco Pub. Library Com.* (1998, Cal App 1st Dist) 67 Cal App 4th 1165, 79 Cal Rptr 2d 649, 1998 Cal App LEXIS 947.

#### **¶ 8. Notice**

School district and school board were not required to give 24-hour written notice of the right to be heard in open session when it considered the appointment, employment, evaluation of performance, discipline, or dismissal of probationary teachers; Gov C § 54957, containing exceptions to the open meeting requirement of the Ralph M. Brown Act, Gov C §§ 54950 et seq., was not violated. *Fischer v. Los Angeles Unified School Dist.* (1999, Cal App 2d Dist) 70 Cal App 4th 87, 82 Cal Rptr 2d 452, 1999 Cal App LEXIS 146, review denied (1999, Cal) 1999 Cal LEXIS 3019.

Trial court did not err in concluding that a public employee had been deprived of the opportunity to respond to specific accusations made by another person, in violation of Gov C § 54957, because the city failed to give him advance notice that it would be hearing the city manager's allegations of misconduct by the employee at a special meeting of the city council. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

Cure provisions of Gov C § 54960.1 do not apply to a violation of Gov C § 54957. When there has been a failure to give an employee advance notice of a hearing on specific complaints or charges, 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 under § 54957. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

#### **¶ 9. Evidence**

In a mandamus proceeding in which a former sheriff's department employee sought reinstatement to his position of lieutenant, the record did not support allegations that the

county civil service commission met in unlawful secrecy and acted with the improper participation of its president in sustaining the lieutenant's suspension and discharge. A public agency may consider the dismissal of a public employee in a closed meeting (Gov C § 54957), and there was not a scintilla of evidence that the president participated in the decision to sustain the officer's discharge. The only evidence presented established that he participated neither in the discussion of the matter nor in the decision made. There was no evidence of impropriety, and, in the absence of evidence to the contrary, it is presumed that a public official has performed his duty in a regular manner. *Titus v. Civil Service Com.* (1982, Cal App 2d Dist) 130 Cal App 3d 357, 181 Cal Rptr 699, 1982 Cal App LEXIS 1521.

#### ✚ 10. Sufficiency of Action

Action of city council in dismissing police officer was sufficient though this was not done at open and public meeting. *Cozzolino v. Fontana* (1955, Cal App 4th Dist) 136 Cal App 2d 608, 289 P2d 248, 1955 Cal App LEXIS 1523.

#### ✚ 11. Remedies

In a proceeding resulting in the termination of a high school football coach, the school district violated the Brown Act's written notice requirement (Gov C § 54957) where a closed meeting evolved into a "complaint or charge" presented by other employees and another person once they presented findings of undue influence as a basis for disciplining the coach. As such, the coach was entitled to an opportunity to respond. Nor did the trial court abuse its discretion in issuing a temporary restraining order (TRO) before the statutory 30-day period had run for the district to cure or correct the Brown Act violation (Gov C § 54960.1). The premature filing of suit and the issuance of a TRO did not restrict or diminish the district's option to correct the alleged violation. In fact, the statutory scheme expressly anticipated potential correction following the filing of an action. *Bell v. Vista Unified School Dist.* (2000, Cal App 4th Dist) 82 Cal App 4th 672, 98 Cal Rptr 2d 263, 2000 Cal App LEXIS 594, review denied (2000, Cal) 2000 Cal LEXIS 7446.

#### ✚ 12. Particular Determinations

In proceeding by school district to dismiss teacher where evidence showed that teacher gave evasive answers to questions asked by school board concerning membership in Communist Party at hearing made public at his request, that at second hearing held at executive session teacher was advised his answers had been evasive and that he would be allowed another opportunity to answer and that thereafter second public hearing was held and teacher again refused to answer, if there was any technical violation of Gov C §§ 54950-54961, providing for public hearings by public agencies, teacher's rights were not prejudiced and action of board was not invalidated thereby. *Collins v. Huntington Beach Union High School Dist.* (1962) 371 US 904, 9 L Ed 2d 166, 83 S Ct 210, 1962 US LEXIS 228.

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Terms: 54952.1

Focus: **54952.2 (Exit FOCUS™)**

Section: **Cal Gov Code § 54957**

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*Cal Gov Code § 54957.1*

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Cal Gov Code § 54957.1 (2013)

**§ 54957.1. Public report of action taken in closed session; Form; Availability; Actions for injury to interests**

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

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

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

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

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

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

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

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

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

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

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

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

**(b)** Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally

approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

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

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

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

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

#### **History:**

Added Stats 2005 ch 72 § 14 (AB 138), effective July 19, 2005. Amended Stats 2006 ch 538 § 311 (SB 1852), effective January 1, 2007.

#### **Notes:**

- 1. Former Sections
- 2. Amendments
- 3. Note

#### **1.**

#### **Former Sections:**

Former Gov C § 54957.1, similar to present section, was added Stats 1975 ch 959 § 9, amended Stats 1977 ch 89 § 1, Stats 1980 ch 181 § 1, ch 1284 § 22, Stats 1993 ch 1136 § 13, ch 1137 § 13, Stats 1994 ch 32 § 15, Stats 2004 ch 533 § 21, and repealed Stats 2005 ch 72 § 13, effective July 19, 2005.

#### **2. Amendments:**

#### **2006 Amendment:**

(1) Amended subd (a) by (a) adding "on that action" after "vote or abstention"; and (b) deleting "thereon" after "every member present"; (2) substituted "follows" for "specified below" after "is final, as" in subd (a)(1); (3) amended subd (a)(3) by (a) substituting "proceeding shall" for "proceedings hall" after "or quasi-judicial"; and (b) substituting "follows" for "specified below" after "is final, as"; (4) substituted "subdivision" for "paragraph" after "referred to in" in subd (c); and (5) added ", and reasonably within the scope of," after "necessary to implement" in subd (f).

#### **3.**

**Note**

Stats 2005 ch 72 provides:

SEC. 16. The Legislature finds and declares that Sections 54954.2 and 54957.1 of the Government Code are necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

**⌘ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**⌘ Attorney General's Opinions:**

Gov C § 54957.1 does not require the board of directors of a hospital district to report at its next public meeting action taken by it in executive session to set the compensation of its hospital administrator. However, that compensation, as an integral part of the hospital administrator's employment contract, would be a matter of public record under Gov C § 6254.8. 63 Ops. Cal. Atty. Gen. 215.

A county retirement board may permit an applicant for a disability retirement and his or her representative to attend a closed session at which the employee's medical records are discussed and evaluated. 88 Cal. Ops. Atty. Gen. 16.

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**⌘ Notes of Decisions:**

- ⌘ 1. Report of Votes
- ⌘ 2. Violations

**⌘ 1. Report of Votes**

While the public library commission had to participate in an appointment process before the selection of librarian, it could nominate candidates in closed session, and there was no need for a report of votes where final selection was not made in the session. *Gillespie v. San Francisco Pub. Library Com.* (1998, Cal App 1st Dist) 67 Cal App 4th 1165, 79 Cal Rptr 2d 649, 1998 Cal App LEXIS 947.

**⌘ 2. Violations**

Water district board member's comments to a newspaper reporter about the board's reasons for firing its general counsel violated Gov C § 54957.1(a)(5) of the Ralph M. Brown Act, Gov C §§ 54950 et seq., and were thus not protected by the anti-SLAPP (strategic lawsuit against public participation) statute, CCP § 425.16. The board member admitted that his comments revealed the closed session discussion; closed sessions, when authorized by the Brown Act, are not subject to public scrutiny. *Harron v. Bonilla* (2005, Cal App 4th Dist) 125 Cal App 4th 738, 23 Cal Rptr 3d 73, 2005 Cal App LEXIS 14, dismissed (2006, Cal) 49 Cal Rptr 3d 654, 143 P3d

655; 2006 Cal LEXIS 12703.

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*Cal Gov Code § 54957.2*

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Cal Gov Code § 54957.2 (2013)

**§ 54957.2. Minute book for closed sessions**

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

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative

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body keep a minute book as prescribed under subdivision (a).

**History:**

Added Stats 1976 ch 1363 § 1. Amended Stats 1980 ch 1284 § 23; Stats 1981 ch 968 § 31.

**Notes:**

Amendments:

- ↓ 1980 Amendment
- ↓ 1981 Amendment

**1980 Amendment:**

(1) Designated the former section to be subd (a); (2) amended subd (a) by substituting (a) "closed" for "executive" in the first and last sentences; (b) "of" for a comma after "Division 7"; and (c) "a closed" for "an executive" after "occurred at" in the third sentence; and (3) added subd (b).

**1981 Amendment:**

Added "or a majority" in subd (b).

**Related Statutes & Rules:**

Closed sessions: Gov C §§ 54956.7-54957, 54957.6.

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**Notes of Decisions:**

- ↓ 1. Confidentiality
- ↓ 2. Discovery

**1. Confidentiality**

The Brown Act does not expressly provide that the proceedings of a closed session are confidential. However, confidentiality may be strongly inferred from the various provisions of the Act pertaining to the recording of closed sessions. In particular, the Act provides that a legislative body has the option of keeping a minute book for closed sessions, in which the topics discussed and decisions made may be recorded. The minute book is expressly made confidential. A legislative body also may choose to make tape recordings of its closed sessions, Gov C § 54957.2(a) providing that the minute book may, but need not, consist of a recording of the closed session. Thus, the legislative body is not required by the Brown Act to keep minutes

or make tape recordings of its closed sessions. Here, the trial court erred in compelling disclosure of personal recollections of city council members as to a closed session that, allegedly, violated the Act. The Brown Act does not provide for disclosure of the personal recollections of members of a legislative body with regard to the proceedings held in an unrecorded closed session. Instead, the Act provides only for the in camera review of minute books and the disclosure of the tape recordings of a closed session under certain specific circumstances. *Kleitman v. Superior Court* (1999, Cal App 6th Dist) 74 Cal App 4th 324, 87 Cal Rptr 2d 813, 1999 Cal App LEXIS 762, rehearing denied (1999, Cal App 6th Dist) 74 Cal App 4th 1231b, 1999 Cal App LEXIS 824, review denied (1999, Cal) 1999 Cal LEXIS 7978.

## 2. Discovery

Redacted copies of the closed session minutes of a county board of supervisors were not discoverable because the minutes were specifically exempt from disclosure under Gov C § 54957.2; the closed sessions were properly convened under Gov C § 54956.9 to discuss anticipated litigation. *County of Los Angeles v. Superior Court* (2005, Cal App 2d Dist) 130 Cal App 4th 1099, 30 Cal Rptr 3d 708, 2005 Cal App LEXIS 1039, review denied *County of Los Angeles v. Los Angeles County Superior Court* (2005, Cal) 2005 Cal LEXIS 10348.

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Section: **Cal Gov Code § 54957.5**

*Cal Gov Code § 54957.5*

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Cal Gov Code § 54957.5 (2013)

**§ 54957.5. Agendas and other writings as public records**

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

(b)

(1) If a writing that is a public record under subdivision (a), and that relates to an agenda

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

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

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

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

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

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

#### **History:**

Added Stats 1980 ch 1284 § 24. Amended Stats 1981 ch 968 § 32; Stats 1993 ch 1136 § 14 (AB 1426), operative April 1, 1994, ch 1137 § 14 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 16 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1998 ch 260 § 4 (SB 139); Stats 1999 ch 769 § 3 (AB 496); Stats 2002 ch 300 § 8 (AB 3035); Stats 2007 ch 298 § 1 (SB 343), effective January 1, 2008.

#### **Notes:**

- 1. Editor's Notes
- 2. Amendments
- 3. Note

1.

#### **Editor's Notes**

Subdivision (b) is operative July 1, 2008 by its own terms.

- ✚ 2. Amendments:
  - ✚ 1981 Amendment
  - ✚ 1993 Amendment
  - ✚ 1994 Amendment
  - ✚ 1998 Amendment
  - ✚ 1999 Amendment
  - ✚ 2002 Amendment
  - ✚ 2007 Amendment

#### ✚ 1981 Amendment:

(1) Added "California" in subd (a); (2) amended the third sentence of subd (e) by (a) substituting "be construed to be applicable" for "apply"; (b) adding "solely because they are"; and (c) substituting "a" for "the" before "legislative body"; and (3) added the last sentence of subd (e).

#### ✚ 1993 Amendment:

(1) Amended the first sentence of subd (a) by (a) adding "any" before "other"; (b) substituting "any person in connection with a matter subject to" for "a member, officer, employee, or agent of such body for"; (c) substituting "the" for "such" before "body,"; (d) deleting "as soon as distributed" after "Title 1"; and (e) adding "without delay" at the end; (2) substituted subd (b) for former subds (b)-(d) which read: "(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

"(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be made available for public inspection prior to commencement of, and during, their discussion at such meeting.

"(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable."; (3) redesignated former subd (e) to be subd (c); (4) substituted "chapter" for "section" in subd (c); (5) added subdivision designation (d); (6) amended subd (d) by (a) substituting "This section shall not be construed to limit or delay the public's right to inspect any record required to be disclosed under" for "The writings described in subdivisions (b), (c), and (d) are subject to"; (b) deleting ", and subdivisions (b), (c), and (d) shall not be construed to exempt from public inspection any record covered by that act, or to limit the public's right to inspect any record required to be disclosed by that act" at the end of the first sentence; (c) deleting the former second sentence which read: "This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of the local agency."; and (d) substituting "of" for "or" before "a local agency in the last sentence; and (7) deleted former subd (f) which read: "(f) 'Writing' for purposes of this section means 'writing' as defined under Section 6252." (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

#### ✚ 1994 Amendment:

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

#### ✚ 1998 Amendment:

(1) Substituted "that" for "which" both times it appears in subd (b); and (2) added "or

obtain a copy of" after "to inspect" in subd (d).

**¶ 1999 Amendment:**

Substituted "Section 6253.5, 6254, 6254.7, or 6254.22" for "Section 6253.5, 6254, or 6254.7".

**¶ 2002 Amendment:**

(1) Added the second sentence in subd (b); and (2) substituted "Section 6253, except that a surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof" for "Section 6257" in subd (c).

**¶ 2007 Amendment:**

(1) Amended subd (a) by (a) substituting "an open" for "a public" after "consideration at"; (b) substituting "Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22" for "Section 6253.5, 6254, 6254.7, or 6254.22"; (2) redesignated former subd (b) to be subd (b) (1); (4) added subds (b)(1)-(b)(3); (3) added subdivision designation (c); and (4) redesignated former subds (c) and (d) to be subds (d) and (e).

**¶ 3.**

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

**¶ Related Statutes & Rules:**

Withholding records from inspection; justification; public interest: Gov C § 6255.

Public report of employment decisions: Gov C § 54957.1.

**¶ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**¶ Notes of Decisions:**

1. Applicability

**1. Applicability**

Because a government contractor was not a local agency as defined in Gov C § 54951, or a legislative body as defined in Gov C § 54952, a labor organization and its employee did not have standing under Gov C § 54960(a) to sue directly under the Ralph M. Brown Open Meetings Act, Gov C §§ 54950-54963, for failure to comply with the act as required by the contracts. The provisions allegedly violated, Gov C §§ 54954.2(a)(1), 54954.3(a), 54957.5(a), 54957.7(a), apply only to a legislative body. Service Employees Internat. Union, Local 99 v. Options-A Child Care & Human Services Agency (2011, 2d Dist) 200 Cal App 4th 869, 2011 Cal App LEXIS 1407.

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54957.5**

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TOC: [Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > § 54957.6. Closed sessions regarding employee matters](#)

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*Cal Gov Code § 54957.6*

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**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54957.6 (2013)

**§ 54957.6. Closed sessions regarding employee matters**

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

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

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

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> Cal. Forms Pleading & Practice (Matthew Bender(R))-ch 470B "Public Agency Meetings".

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representatives.

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

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

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

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

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

#### History:

Added Stats 1968 ch 1272 § 2. Amended Stats 1980 ch 1284 § 25; Stats 1984 ch 62 § 1; Stats 1985 ch 366 § 1; Stats 1986 ch 248 § 97; Stats 1993 ch 1138 § 8 (SB 1140), operative April 1, 1994; Stats 1994 ch 32 § 17 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1998 ch 260 § 5 (SB 139).

#### Notes:

- 1. Amendments
- 2. Note

#### 1. Amendments:

- 1980 Amendment
- 1984 Amendment
- 1985 Amendment
- 1986 Amendment
- 1993 Amendment
- 1994 Amendment
- 1998 Amendment

#### 1980 Amendment:

**(1)** Substituted "closed" for "executive" after "may hold"; and **(2)** added the second sentence.

#### 1984 Amendment:

**(1)** Amended the first paragraph by **(a)** substituting "the local agency's designated representatives" for "its designated representatives prior to and during consultations and discussions with representatives of employee organizations"; **(b)** substituting "its represented and unrepresented employees" for "employees in order to review its position and instruct its designated representatives" at the end of the first sentence; and **(c)** adding the second and third sentences; and **(2)** substituted "this section" for "the preceding sentence" in the second

paragraph.

**¶ 1985 Amendment:**

(1) Designated the former section to be subd (a); (2) deleted "or" before "compensation paid" in the first sentence of the first paragraph of subd (a); and (3) added subd (b).

**¶ 1986 Amendment:**

Routine code maintenance.

**¶ 1993 Amendment:**

(1) Added ", and, for represented employees, any other matter within the statutorily-provided scope of representation" at the end of the first sentence of subd (a); (2) substituted subd (b) for former subd (b) which read: "(b) In addition to the closed sessions authorized by subdivision (a), the legislative body, as defined by Sections 54952, 54952.2, 54952.3, and 54952.5, of a public agency, as defined by subdivision (c) of Section 3501, may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504"; and (3) added the last paragraph.

**¶ 1994 Amendment:**

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

**¶ 1998 Amendment:**

Added the second paragraph in subd (a).

¶ 2.

**Note**

Stats 1993 ch 1138 provides:

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

Stats 1994 ch 32 provides:

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

**¶ Related Statutes & Rules:**

Meetings conducted by board of supervisors pertaining to salaries of county employees shall be open and public except as provided in this section: Gov C § 25307.

**¶ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

7 Witkin Summary (10th ed) Constitutional Law § 149.

**Law Review Articles:**

Organizations and administrative practice. 26 Hast LJ 89.

**⚡ Attorney General's Opinions:**

Prohibition against board of supervisors' meeting in executive session to review and decide on position it will take on meeting and conferring with representatives of employee organization, without use of designated representative; propriety of the board's appointing from its membership members to act as its designated representative with whom it may meet and confer in executive session. 57 Ops. Cal. Atty. Gen. 209.

A "meet and confer" session held pursuant to Government Code, § 3505 between representatives of a county employee association and representatives of the board of supervisors, is not required to be open to the public. There is no legal requirement that the employee representative be allowed to tape-record the session. Such matter appears to be one to be settled between both sides in establishing "ground rules" for the session. 61 Ops. Cal. Atty. Gen. 1.

But only for those specified therein, including salaries, salary schedules or compensation paid in the form of fringe benefits. However, where these specified matters are inextricably entwined with bargaining on other "meet and confer" matters, executive sessions will be permitted with respect to all related matters being considered). 61 Ops. Cal. Atty. Gen. subjects.

A county board of education may not meet in closed session under the "labor negotiations exception" of the Ralph M. Brown Act to consider the salaries or compensation paid in the form of fringe benefits to certificated or classified employees of the county superintendent of schools. 85 Ops. Cal. Atty. Gen. 77.

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**⚡ Notes of Decisions:**

⚡ 1. Remedies

**⚡ 1. Remedies**

Prohibition lies to restrain the trial court from ordering members of a county board of supervisors to answer questions as to conversations relating to their reasons for voting for a challenged county ordinance. County of Los Angeles v. Superior Court of Los Angeles County (1975) 13 Cal 3d 721, 119 Cal Rptr 631, 532 P2d 495, 1975 Cal LEXIS 204.

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Terms: 54952.1

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54957.7**

*Cal Gov Code § 54957.7*

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Cal Gov Code § 54957.7 (2013)




**§ 54957.7. Disclosure of items to be discussed at closed session**

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


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

(c) The announcements required to be made in open session pursuant to this section may be

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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.

#### History:

Added Stats 1980 ch 1284 § 26. Amended Stats 1981 ch 968 § 33; Stats 1993 ch 1136 § 15 (AB 1426), operative April 1, 1994, ch 1137 § 15 (SB 36), operative April 1, 1994.

#### Notes:

- 1. Amendments
- 2. Note

- 1. Amendments:
  - 1981 Amendment
  - 1993 Amendment

#### 1981 Amendment:

Added ", including the specific section and subdivision," in the first sentence.

#### 1993 Amendment:

Substituted the section for the former section which read: "Prior to or after holding any closed session, the legislative body of the local agency shall state the general reason or reasons for the closed session, and may cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the legislative body may consider only those matters covered in its statement. In the case of special, adjourned, and continued meetings, the statement shall be made as part of the notice provided for the special, adjourned, or continued meeting. Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session." (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

#### 2.

#### Note

Stats 1993 ch 1137 provides:

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

#### Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

#### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

## Notes of Decisions:

- ± 1. Generally
- ± 2. Applicability

### 1. Generally

Trial court erred in its determination that no California Ralph M. Brown Act, Gov C §§ 54950 et seq., violation was shown where property owner established that a public utility district had violated the act by failing to provide opportunity for public comment and failing to make required disclosures prior to going into closed session because district could not prohibit the owner from presenting her public comments simply because the comments related to pending litigation or a possible basis for settlement thereof; because trial court assumed that no violation occurred, it never properly exercised its discretion whether to grant attorney fees pursuant to Gov C § 54960.5 to the owner as a prevailing party, and thus remand was required to consider that issue. *Galbiso v. Orosi Public Utility Dist.* (2008, 5th Dist) 167 Cal App 4th 1063, 84 Cal Rptr 3d 788, 2008 Cal App LEXIS 1677.

### 2. Applicability

Because a government contractor was not a local agency as defined in Gov C § 54951, or a legislative body as defined in Gov C § 54952, a labor organization and its employee did not have standing under Gov C § 54960(a) to sue directly under the Ralph M. Brown Open Meetings Act, Gov C §§ 54950-54963, for failure to comply with the act as required by the contracts. The provisions allegedly violated, Gov C §§ 54954.2(a)(1), 54954.3(a), 54957.5(a), 54957.7(a), apply only to a legislative body. *Service Employees Internat. Union, Local 99 v. Options-A Child Care & Human Services Agency* (2011, 2d Dist) 200 Cal App 4th 869, 2011 Cal App LEXIS 1407.

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Section: **Cal Gov Code § 54957.8**

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Cal Gov Code § 54957.8 (2013)

**§ 54957.8. Closed sessions of multijurisdictional drug law enforcement agencies**


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

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to

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discuss courses of action in particular cases.

#### History:

Added Stats 1988 ch 55 § 1. Amended Stats 2006 ch 427 § 1 (AB 2945), effective September 22, 2006.

#### Notes:

- 1. Amendments
- 2. Note

#### 1. Amendments:

##### 2006 Amendment:

(1) Added subd (a); (2) designated the former section to be subd (b); (3) deleted "drug" before "law enforcement agency" wherever it appears in subd (b); and (4) deleted the last two paragraphs which read: " 'Multijurisdictional drug law enforcement agency,' for purposes of this section, means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, which provides drug law enforcement services for the parties to the joint powers agreement.

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

#### 2.

#### Note

Stats 2006 ch 427 provides:

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 54957.8 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the public interest in preventing the impairment of ongoing law enforcement investigations, protecting witnesses and informants, and permitting the discussion of effective courses of action in particular cases, it is necessary to authorize the legislative body of a multijurisdictional law enforcement agency to hold a closed session for specified purposes related to any ongoing criminal investigation of the multijurisdictional law enforcement agency.

#### Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

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Cal Gov Code § 54957.9 (2013)

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

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

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**History:**

Added Stats 1970 ch 1610 § 2. Amended Stats 1981 ch 968 § 34.

**Notes:**

- 1. Amendments
- 2. Note

**1. Amendments:****1981 Amendment:**

Deleted "Duly accredited" at the beginning of the third sentence.

**2.****Note**

Stats 1970 ch 1610 also provides:

SEC. 3. The Legislature finds that it is in the public interest to allow duly accredited representatives of the press or other news media to attend sessions from which members of the general public have been excluded by reason of a wilful disturbance.

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54957.10**

*Cal Gov Code § 54957.10*

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GOVERNMENT CODE  
 Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
 Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
 Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**



Cal Gov Code § 54957.10 (2013)

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

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

**History:**

Added Stats 2001 ch 45 § 1 (SB 671).

**Practitioner's Toolbox**  

**History**

**Resources & Practice Tools**

**Collateral References**

- > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**↗ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54958**

*Cal Gov Code § 54958*

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**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54958 (2013)

**§ 54958. Application of chapter**

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

**History:**

Added Stats 1953 ch 1588 § 1.

**Related Statutes & Rules:**

**Practitioner's Toolbox**

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"Local agency": Gov C § 54951.

"Legislative body": Gov C § 54952.

### ↗ Attorney General's Opinions:

Conferences between city council and city attorney. 36 Ops. Cal. Atty. Gen. 175.

Application of Brown Act to meetings of city council with city manager, city attorney and planning director. 42 Ops. Cal. Atty. Gen. 61.

Application of this chapter to county boards of education when determining matter of school district attendance of student. 57 Ops. Cal. Atty. Gen. 189.

Democratic Central Committee meetings are not subject to Ralph M. Brown Act regarding open and public meetings of local agencies. 59 Ops. Cal. Atty. Gen. 162.

Meetings of the academic senate or faculty council of a California community college are subject to the open meeting requirements of the Ralph M. Brown Act. 66 Ops. Cal. Atty. Gen. 252.

Meetings of board of directors and executive committee of Solano Economic Development Corporation are not subject to open meeting requirements of Government Code §§ 54950 et seq. since members of board of supervisors and various city councils do not serve upon board of directors in their "official capacity". (1984) 67 Ops. Cal. Atty. Gen. 487.

### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

### ↗ Notes of Decisions:

- ↕ 1. Generally
- ↕ 2. Pleadings
- ↕ 3. Privilege
- ↕ 4. Informal Development
- ↕ 5. Remedies

### ↗ 1. Generally

Statutory requirement that all meetings of legislative body of local agency be open and public was not directed at anything less than formal meeting of city council's or one of city's subordinate agencies. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

By failing to designate what, if any, laws are superseded, Gov C § 54958, making open disclosure at meetings, deliberations and actions applicable to legislative bodies

"notwithstanding the conflicting provisions of any other state law," has no greater force than a repeal by implication, and therefore subordinates or repeals existing law only to the extent that the two laws are irreconcilable. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

## ✦ 2. Pleadings

A complaint filed by a newspaper against the members of a city's redevelopment agency, seeking injunctive relief as well as a declaration that defendants' past and threatened deliberations and decisionmaking policies violated the notice and open-meeting requirements of the Brown Act (Gov C §§ 54950 et seq.), stated a cause of action. The alleged participation by defendants, a majority of the legislative body of the agency, in a series of one-to-one nonpublic and unnoticed telephone conversations with the agency's attorney for the commonly agreed purpose of collectively deciding to approve the transfer of ownership in redevelopment project property constituted a "meeting" at which "action" was taken in violation of the Brown Act. *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391.

## ✦ 3. Privilege

A county board of supervisors did not violate the open meeting requirements of the Brown Act (Gov C §§ 54950 et seq.), by conferring privately with the county counsel during a public hearing at which an environmental impact report (EIR) on a proposed food processing plant was being considered, where it reasonably inferred that a statement by counsel for plaintiffs that the EIR before it had significant defects which precluded the board from legally approving it was a threat of a specific lawsuit. The Brown Act does not abrogate the evidentiary privilege of attorney-client confidential communications, under which the opportunity for private legal consultation is assured for public as well as private clients. *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981, Cal App 3d Dist) 122 Cal App 3d 813, 176 Cal Rptr 342, 1981 Cal App LEXIS 2128.

## ✦ 4. Informal Development

In view of former Gov C § 65543, requiring planning commission to consult with public officials, utility companies, civic and private organizations and citizens generally with relation to carrying out master or general zoning plan, requirement that all meetings of legislative body of local agency be open and public, contemplated and did not forbid informal development of facts pertaining to zoning problems. *Adler v. City Council of Culver City* (1960, Cal App 2d Dist) 184 Cal App 2d 763, 7 Cal Rptr 805, 1960 Cal App LEXIS 1932, superseded by statute as stated in *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985, Cal App 3d Dist) 171 Cal App 3d 95, 214 Cal Rptr 561, 1985 Cal App LEXIS 2391, superseded by statute as stated in *Centinel Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, superseded by statute as stated in *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363, 20 Cal Rptr 2d 330, 853 P2d 496, 1993 Cal LEXIS 3190.

## ✦ 5. Remedies

In a mandamus proceeding, the trial court erred in ordering a school board to set aside its decision to transfer a teacher to another school in the district on the ground that the teacher made a request for a public hearing on the matter, but that the board denied the request and

that such denial constituted a violation of the Brown Act (Gov C §§ 54950-54960), prohibiting executive sessions when an employee requests a public hearing, as the only remedy for violation of the act is the criminal remedy prescribed in the statute. *Griswold v. Mt. Diablo Unified Sch. Dist.* (1976, Cal App 1st Dist) 63 Cal App 3d 648, 134 Cal Rptr 3, 1976 Cal App LEXIS 2116.

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Terms: 54952.1

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Section: **Cal Gov Code § 54959**

*Cal Gov Code § 54959*

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Cal Gov Code § 54959 (2013)

**§ 54959. Criminal penalty for violation of chapter**

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

**History:**

Added Stats 1961 ch 1671 § 5. Amended Stats 1993 ch 1136 § 16 (AB 1426), operative April 1, 1994, ch 1137 § 16 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 18 (SB 752), effective March 30, 1994, operative April 1, 1994.

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  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

More...



**⌘ Notes:**

- ⌘ 1. Amendments
- ⌘ 2. Note

- ⌘ 1. Amendments:
  - ⌘ 1993 Amendment
  - ⌘ 1994 Amendment

**⌘ 1993 Amendment:**

Substituted **(1)** "that" for "such" after "meeting of"; and **(2)** "wrongful intent to deprive the public of information to which it is entitled under this chapter" for "knowledge of the fact that the meeting is in violation thereof". (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

**⌘ 1994 Amendment:**

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

**⌘ 2.****Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 also provides:

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

**⌘ Related Statutes & Rules:**

Proceeding to prevent violation of chapter: Gov C § 54960.

Proceeding to determine validity of action; Demand for correction: Gov C § 54960.1.

"Misdemeanor" defined: Pen C § 17.

Punishment for misdemeanor: Pen C §§ 19, 19.2.

**⌘ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

Witkin & Epstein, Criminal Law (3d ed), Punishment §§ 125.

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**Notes of Decisions:**

1. Construction

**1. Construction**

To "deliberate" is to examine, weigh and reflect on the reasons for or against a choice, and in the context of the Brown Act (Gov C §§ 54950 et seq), requiring that meetings and deliberations of local legislative bodies be conducted openly, "deliberation" connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision, and it is only the misdemeanor penalty which is restricted to meetings "where action is taken" (Gov C § 54959). "Meetings" include any informal sessions designed for the discussion of public business. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54960**

*Cal Gov Code § 54960*

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**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54960 (2013)

**§ 54960. Proceeding to prevent violation of chapter; Recording closed sessions; Procedure for discovery of audio recordings**

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

**Practitioner's Toolbox**

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- Related Statutes & Rules**
- Collateral References**
  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 303 "Injunctions".
  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 395 "Parties".
  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

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

**(c)**

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

**(2)** The 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.

#### **History:**

Added Stats 1961 ch 1671 § 6. Amended Stats 1969 ch 494 § 2; Stats 1993 ch 1136 § 17 (AB 1426), operative April 1, 1994, ch 1137 § 17 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 19 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2009 ch 88 § 58 (AB 176), effective January 1, 2010; Stats 2012 ch 732 § 1 (SB 1003), effective January 1, 2013.

#### **Notes:**

- 1. Amendments
- 2. Note

✚ 1. Amendments:

- ✚ 1969 Amendment
- ✚ 1993 Amendment
- ✚ 1994 Amendment
- ✚ 2009 Amendment
- ✚ 2012 Amendment

✚ **1969 Amendment:**

(1) Deleted "either" after "action"; (2) substituted the comma for "or" before "injunction"; (3) added "or declaratory relief" before "for the purpose"; and (4) added "or to determine the applicability of this chapter to actions or threatened future action of the legislative body" after "local agency".

✚ **1993 Amendment:**

Added (1) subdivision designation (a); (2) "The district attorney or"; (3) ", or to determine the validity under the laws of this state or of the United States of any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members, or to compel the legislative body to tape record its closed sessions as hereinafter provided"; and (4) subds (b) and (c). (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

✚ **1994 Amendment:**

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

✚ **2009 Amendment:**

(1) Added the comma after "injunction" in subd (a); (2) substituted "audio record" for "tape record" in subds (a) and (b); (3) substituted "audio recordings" for "tape recordings" in subd (b); (4) substituted "audio recordings" for "tapes" in the introductory clause of subd (c)(2); (5) amended the first sentence of subd (c)(2)(A) by substituting (a) "audio recording" for "tape" after "disclosure of the"; (b) "that" for "which" after "closed session"; and (c) substituting "audio recording" for "tape recording" at the end; (6) substituted "that has custody" for "which has custody" in the first sentence of subd (c)(2)(A) and in subd (c)(2)(B)(i); (7) substituted "that contains" for "which contains" in subd (c)(2)(B)(ii); and (8) substituted "that" for "which" in subd (c)(5).

✚ **2012 Amendment:**

(1) Amended subd (a) by (a) adding "ongoing"; (b) substituting "future actions" for "future action"; and (c) adding "the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine"; and (2) amended subd (c)(5) by (a) deleting "Nothing in" at the beginning; and (b) substituting "shall not permit" for "shall permit".

✚ 2.

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

Stats 2012 ch 732 provides:

SEC. 4. The provisions of this act shall not apply to past actions of a legislative body that occurred before January 1, 2013.

**⚡ Comments:**

**Law Revision Commission Comments:**

**2009**

Section 54960 is amended to reflect advances in recording technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio technology," "audio recording," or "audio record," as context required).

**⚡ Related Statutes & Rules:**

"Action taken": Gov C § 54952.6.

Criminal penalty for violation of chapter: Gov C § 54959.

Proceeding to determine validity of action; Demand for correction: Gov C § 54960.1.

Costs and attorney fees: Gov C § 54960.5.

**⚡ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 303 "Injunctions".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 395 "Parties".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**⚡ Notes of Decisions:**

- ⚡ 1. Standing
- ⚡ 2. Pleadings
- ⚡ 3. Remedies

## ⚡ 1. Standing

The Sacramento Newspaper Guild was an "interested person" authorized by a provision of the Brown Act (Gov C § 54960), to seek legal restraint of violations or threatened violations of that act (Gov C §§ 54950-54961), the objective of which is to prevent closed meetings of local legislative bodies, where, although its members had an interest in access to news as saleable merchandise, the guild appeared as exponent of a California statutory policy against secrecy in local government. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1967, Cal App 3d Dist) 255 Cal App 2d 51, 62 Cal Rptr 819, 1967 Cal App LEXIS 1238.

The right under the Brown Act (Gov C §§ 54950 et seq.) to open disclosure at meetings, deliberations and actions of local legislative bodies, as an attribute of citizenship, is not possessed in any increased degree by those whose interest in the news is economic, but, although a labor organization of professional newsmen had only a questionable standing to sue for injunctive relief for violations of such act by a city board of supervisors, its action in doing so complied sufficiently with the "interested person" provision of Gov C § 54960, to be accepted on appeal, especially where the county failed to raise the issue at trial, and where, had it done so, the complaint could have been appropriately adjusted. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

Citizen of the State of California was an "interested person" within the meaning of Gov C §§ 54960, 54960.1 of the Ralph M. Brown Act; Gov C §§ 54950 et seq., and had standing to sue a school district for violations of the Brown Act. *McKee v. Orange Unified School Dist.* (2003, Cal App 4th Dist) 110 Cal App 4th 1310, 2 Cal Rptr 3d 774, 2003 Cal App LEXIS 1160, review denied (2003, Cal) 2003 Cal LEXIS 8866.

## ⚡ 2. Pleadings

In citizens' declaratory relief action against a city under the open meeting provisions of the Ralph M. Brown Act (Brown Act) (Gov C § 54960(a)), alleging that the city violated the Brown Act and the city charter by conducting closed meetings in which it reduced an electric company's obligation to place power lines underground, the trial court erred in sustaining the city's demurrer. Plaintiffs' complaint alleged the existence of an actual controversy between the parties for which declaratory relief was available. The ripeness doctrine did not require that plaintiffs allege and prove a pattern or practice of past violations; rather, it was sufficient to allege that there was a controversy over whether a past violation of law had occurred. An action for declaratory relief lies when the parties are in fundamental disagreement over the construction of particular legislation, or they dispute whether a public entity has engaged in conduct or established policies in violation of applicable law. In this case, a controversy existed between the parties, since plaintiffs alleged that the city did not meet the requirements of the Brown Act and the city charter, and the city believed its actions were proper. Further, plaintiffs raised an issue of substantial public importance, and the allegations of the complaint strongly suggested that in the absence of declaratory relief plaintiffs would have difficulty preventing future violations. *California Alliance for Utilities etc. Education v. City of San Diego* (1997, Cal App 4th Dist) 56 Cal App 4th 1024, 65 Cal Rptr 2d 833, 1997 Cal App LEXIS 610, review denied (1997, Cal) 1997 Cal LEXIS 7599.



Where a member of a local school board, filed suit against defendants county and county district attorney seeking declaratory and injunctive relief under the Ralph M. Brown Act (Gov C §§ 54950 et seq.), and the allegations of the complaint stemmed from statements made in a press release by the district attorney that there had been minor violations of the Brown Act by several board members, the trial court did not err when it sustained a demurrer without leave to amend. Defendants were protected by prosecutorial immunity (Gov C § 821.6), the statements made by the district attorney were privileged (CC § 47(a)), and plaintiff failed to state a cause of action under the Brown Act (Gov C § 54960(a)). As to the last point, the Brown Act does not provide for declaratory or injunctive relief against these defendants under the circumstances presented here. *Ingram v. Flippo* (1999, Cal App 6th Dist) 74 Cal App 4th 1280, 89 Cal Rptr 2d 60, 1999 Cal App LEXIS 845, review denied (1999, Cal) 1999 Cal LEXIS 8842.

### ¶ 3. Remedies

A preliminary injunction to a city board of supervisors and its committees, restraining the holding of any closed meeting at which three or more members are present except under the statutory exceptions for personnel and national security matters, was too broad and must be modified to allow the board to consult privately with the county counsel, or other attorney representing the board, under circumstances in which the lawyer-client privilege conferred by E C §§ 950-962 could lawfully be claimed. *Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968, Cal App 3d Dist) 263 Cal App 2d 41, 69 Cal Rptr 480, 1968 Cal App LEXIS 2179, superseded by statute as stated in *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (1993, Cal App 3d Dist) 14 Cal App 4th 715, 18 Cal Rptr 2d 39, 1993 Cal App LEXIS 311.

In an action to compel a city council to comply with its duties under the Brown Act (Gov C §§ 54950 et seq.) in closed session discussions with its real estate negotiators regarding the development of a ballpark, the trial court was justified in concluding that the council's conduct in pursuing its contentions that it could interpret and adjust the requirements of the Brown Act as it saw fit, in dealing with a particular project, clearly demonstrated that more than past violations had occurred or would reasonably probably occur in the immediate future. The Brown Act authorized injunctive relief that was based, in relevant part, on a showing of "past actions and violations that are related to present or future ones," and there was no abuse of discretion in the trial court's grant of injunctive relief against future such actions and violations. Further, under Gov C § 54960(a), injunctive relief could be issued "for the purpose of stopping or preventing violations or threatened violations of" the act; therefore, the section authorized the injunctive relief afforded here. *Shapiro v. San Diego City Council* (2002, Cal App 4th Dist) 96 Cal App 4th 904, 117 Cal Rptr 2d 631, 2002 Cal App LEXIS 2410.

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TOC: [Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > § 54960. Proceeding to prevent violation of chapter; Recording closed sessions; Procedure for discovery of audio recordings](#)

Terms: 54952.1

Focus: 54952.2 (Exit FOCUS™)

Section: **Cal Gov Code § 54960**

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54960.1**

*Cal Gov Code § 54960.1*

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GOVERNMENT CODE  
 Title 5. Local Agencies  
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Cal Gov Code § 54960.1 (2013)

**§ 54960.1. Proceeding to determine validity of action; Demand for correction**

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

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

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Notes of Decisions

**Resources & Practice Tools**

Related Statutes & Rules

Collateral References

> Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 395 "Parties".

> Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

legislative body and nature of the alleged violation.

**(c)**

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

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

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

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

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

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

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

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

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

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

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

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

chapter.

#### History:

Added Stats 1986 ch 641 § 9. Amended Stats 1987 ch 1327 § 2; Stats 1992 ch 1234 § 3 (SB 1977); Stats 1993 ch 1136 § 18 (AB 1426), operative April 1, 1994, ch 1137 § 18 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 20 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2002 ch 454 § 23 (SB 1326).

#### Notes:

1. Amendments

2. Note

#### 1. Amendments:

1987 Amendment

1992 Amendment

1993 Amendment

1994 Amendment

2002 Amendment

#### 1987 Amendment:

Added "not to cure or correct, within 15 days of or within" in the sixth sentence of subd (b).

#### 1992 Amendment:

(1) Added "54954.6," wherever it appears; and (2) added "that is alleged to have been taken in violation of Sections 54953, 54954.2, 54954.6, and 54956" in subd (c).

#### 1993 Amendment:

(1) Added "The district attorney or" in subds (a); (2) added "54954.5," wherever it appears; (3) added "district attorney or" in the first sentence of subd (b); (4) amended the first sentence of the second paragraph of subd (b) by (a) substituting "90 days" for "30 days"; and (b) adding "unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken"; (5) amended the last sentence of the second paragraph of subd (b) by (a) adding "or not to cure or correct, or within 15 days of"; and (b) deleting "or not to cure or correct, within 15 days of or within 75 days from the date the challenged action was taken," before "whichever is earlier,"; (6) amended subd (c)(3) by adding (a) "other than compensation for services in the form of salary or fees for professional services"; and (b) "and without notice of a challenge to the validity of the action"; and (7) added subd (c)(5). (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

#### 1994 Amendment:

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

#### 2002 Amendment:

(1) Substituted "54956, or 54956.5" for "or 54956" in subds (a), (b), (d) and (e); and (2) substituted "54956, and 54956.5" for "and 54956" in subd (d).

✚ 2.

**Note**

Stats 1993 ch 1137 provides:

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

Stats 1994 ch 32 provides:

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

**✚ Related Statutes & Rules:**

"Action taken": Gov C § 54952.6.

Criminal penalty for violation of chapter: Gov C § 54959.

Proceeding to prevent violation of chapter: Gov C § 54960.

Costs and attorney fees: Gov C § 54960.5.

**✚ Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 395 "Parties".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**✚ Notes of Decisions:**

- ✚ 1. Standing
- ✚ 2. Pleadings
- ✚ 3. Procedure
- ✚ 4. Substantial Compliance
- ✚ 5. Cure

**✚ 1. Standing**

Citizen of the State of California was an "interested person" within the meaning of Gov C §§ 54960, 54960.1 of the Ralph M. Brown Act, Gov C §§ 54950 et seq., and had standing to sue a school district for violations of the Brown Act. McKee v. Orange Unified School Dist. (2003, Cal App 4th Dist) 110 Cal App 4th 1310, 2 Cal Rptr 3d 774, 2003 Cal App LEXIS 1160, review denied (2003, Cal) 2003 Cal LEXIS 8866.

## ¶ 2. Pleadings

In a proceeding by a hospital association challenging a city's grant to a psychiatric service of a special use permit to build a 15-bed crisis psychiatric facility, the trial court did not err in dismissing a cause of action alleging that certain "private meetings" between the city attorney and members of the city council violated the Brown Act, Gov C § 54953, which requires legislative bodies of local agencies to hold open meetings. There was no allegation that during such discussions any action was taken. Thus, the petition failed to state grounds for relief under Gov C § 54960.1, which provides that an interested person may commence an action to obtain a judicial determination that an action taken by a legislative body in violation of Gov C § 54953, is null and void. *Centinela Hospital Assn. v. City of Inglewood* (1990, Cal App 2d Dist) 225 Cal App 3d 1586, 275 Cal Rptr 901, 1990 Cal App LEXIS 1283, review denied (1991, Cal) 1991 Cal LEXIS 1133.

A complaint alleging that defendant city council violated the Ralph M. Brown Act (Gov C §§ 54950 et seq.) was properly dismissed after sustaining a demurrer without leave to amend. Plaintiff contended that at two separate meetings, the city council discussed matters it had not properly and timely placed on the agenda. Although the city council did not properly and timely post its agenda as required by statute, the complaint stated no cause of action under the Act. As to the first meeting, there was no "action taken," and the city council later exercised its statutory discretion to "correct or cure" the alleged violation. As to the second meeting, plaintiff did not file a timely complaint as required by Gov C § 54960.1(c)(3). *Boyle v. City of Redondo Beach* (1999, Cal App 2d Dist) 70 Cal App 4th 1109, 83 Cal Rptr 2d 164, 1999 Cal App LEXIS 228.

Former public employees' claim for violations of the Brown Act was dismissed because plaintiffs failed to plead facts showing that the Brown Act was violated, and that plaintiffs made a timely demand to cure the violations under Gov C § 54960.1(b). *Grosz v. Lassen Cmty. College Dist.* (2007, ED Cal) 2007 US Dist LEXIS 90896.

## ¶ 3. Procedure

Prior to pursuing a judicial determination that an action in violation of the Brown Act is null and void, an interested person or the district attorney must first demand that the legislative body cure or correct its mistake. Depending on the particular violation, the demand must be made within 30 or 90 days from the date of the action. Suit can then be brought within 15 days of receiving written notice of a decision to cure or correct, or not to cure or correct, or within 15 days of expiration of the 30-day cure period, whichever happens first. Thereafter, if the legislative body proves that it cured or corrected its action, the court must dismiss the action with prejudice. Moreover, if the action substantially complied with the Brown Act, a court cannot pronounce it null and void. *County of Del Norte v. City of Crescent City* (1999, Cal App 1st Dist) 71 Cal App 4th 965, 84 Cal Rptr 2d 179, 1999 Cal App LEXIS 369.

In a proceeding resulting in the termination of a high school football coach, the school district violated the Brown Act's written notice requirement (Gov C § 54957) where a closed meeting evolved into a "complaint or charge" presented by other employees and another person once they presented findings of undue influence as a basis for disciplining the coach. As such, the coach was entitled to an opportunity to respond. Nor did the trial court abuse its discretion in issuing a temporary restraining order (TRO) before the statutory 30-day period had run for the district to cure or correct the Brown Act violation (Gov C § 54960.1). The premature filing of suit and the issuance of a TRO did not restrict or diminish the district's option to correct the alleged violation. In fact, the statutory scheme expressly anticipated potential correction following the filing of an action. *Bell v. Vista Unified School Dist.* (2000, Cal App 4th Dist) 82 Cal App 4th 672, 98 Cal Rptr 2d 263, 2000 Cal App LEXIS 594, review denied (2000, Cal) 2000 Cal LEXIS 7446.

#### ¶ 4. Substantial Compliance

Where plaintiff former librarian of defendant community college contended that defendant's Board of Trustees violated the Brown Act by taking action regarding plaintiff's employment in closed session rather than an open public meeting, plaintiff's argument that the Board mischaracterized the agenda item pursuant to which her employment was reviewed, thereby violating Gov C § 54954.5, which sets forth the posting requirements for describing closed session items was rejected. Plaintiff's assertion that the "public employee performance evaluation" agenda classification is inappropriate "for consideration of matters constituting charges and complaints against the employee and for which discipline and/or dismissal is contemplated," and that the appropriate agenda item was "Public employee discipline/dismissal/release was incorrect. Section 54960.1 denies relief if the agenda item was in "substantial compliance" with §§ 54954.2 and 54954.5. (Gov C § 54960.1(d)(1)), and here, the Board was found to have been in substantial compliance with those statutes. *Furtado v. Sierra Community College* (1998, Cal App 3d Dist) 68 Cal App 4th 876, 80 Cal Rptr 2d 589, 1998 Cal App LEXIS 1047.

#### ¶ 5. Cure

Trial court did not err in finding that the city had failed to cure its failure to indicate in its agenda that action to terminate a public employee's employment would be considered at a special meeting. The agenda for the council's subsequent meeting only referenced the employee's tort claim, and the only action reported after that meeting was the denial of his tort claim. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

Cure provisions of Gov C § 54960.1 do not apply to a violation of Gov C § 54957. When there has been a failure to give an employee advance notice of a hearing on specific complaints or charges, 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 under § 54957. *Moreno v. City of King* (2005, Cal App 6th Dist) 127 Cal App 4th 17, 25 Cal Rptr 3d 29, 2005 Cal App LEXIS 291.

Trial court should have overruled the demurrers of a community college district and its former superintendent to a district resident's cause of action for violation of Gov C § 54956.9 where the resident's allegations that individual trustees of the district board of trustees regularly and repeatedly left the room to meet with a judge, after which time they reached a consensus to enter into a settlement with the superintendent, showed more than merely discussing and approving proposed settlement terms and conditions, as they suggested the sort of collective acquisition and exchange of facts preliminary to an ultimate decision that had to occur openly. Issuance of a notice identifying the superintendent as the litigant, and minutes showing the board had reconsidered and approved her settlement agreement, did not establish a cure of the board's acts in impermissibly conducting information gathering in the course of mediating and negotiating with the superintendent in a closed meeting, actions that fell outside the pending litigation exception of California's Ralph M. Brown Act, Gov C §§ 54950.5 et seq. *Page v. Miracosta Community College Dist.* (2009, 4th Dist) 180 Cal App 4th 471, 102 Cal Rptr 3d 902, 2009 Cal App LEXIS 2031, rehearing denied *Page v. Miracosta Community College District* (2009, Cal. App. 4th Dist.) 2009 Cal. App. LEXIS 2041.

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*Cal Gov Code § 54960.2*

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Cal Gov Code § 54960.2 (2013)

**§ 54960.2. Proceeding to determine the applicability of chapter to past actions of legislative body; Conditions; Cease and desist letter**

(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:

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**(2)** An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

**(3)** An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

**(4)** Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

**(d)** If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

**(e)** The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on 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.

#### **History:**

Added Stats 2012 ch 732 § 2 (SB 1003), effective January 1, 2013.

#### **Notes:**

##### **Note**

Stats 2012 ch 732 provides:

SEC. 4. The provisions of this act shall not apply to past actions of a legislative body that occurred before January 1, 2013.

#### **Hierarchy Notes:**

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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Section: **Cal Gov Code § 54960.5**

*Cal Gov Code § 54960.5*

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Cal Gov Code § 54960.5 (2013)

**§ 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

**Practitioner's Toolbox**  

-  **History**
-  **Notes**
-  **Notes of Decisions**

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  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".
  - > Cal. Legal Forms, (Matthew Bender) § 13.31.

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.

#### History:

Added Stats 1975 ch 959 § 10. Amended Stats 1981 ch 968 § 35; Stats 1986 ch 641 § 10; Stats 2012 ch 732 § 3 (SB 1003), effective January 1, 2013.

#### Notes:

- 1. Amendments
- 2. Note

- 1. Amendments:
  - 1981 Amendment
  - 1986 Amendment
  - 2012 Amendment

#### 1981 Amendment:

Added "a legislative body of" in the first paragraph.

#### 1986 Amendment:

Substituted **(1)** "Section 54960 or 54960.1" for "Section 54960" wherever it appears; **(2)** "this chapter. The" for "the provisions of this article. Such"; and **(3)** "of the local agency" for "thereof" at the end of the first paragraph.

#### 2012 Amendment:

Amended the first paragraph by (1) substituting "Section 54960, 54960.1, or 54960.2" for "Section 54960 or 54960.1" in the first sentence; and (2) adding the second sentence.

#### 2.

#### Note

Stats 2012 ch 732 provides:

SEC. 4. The provisions of this act shall not apply to past actions of a legislative body that occurred before January 1, 2013.

#### Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

Cal. Legal Forms, (Matthew Bender) § 13.31.

#### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

**⌘ Notes of Decisions:**

- ⌘ 1. Legislative Intent
- ⌘ 2. Construction With Other Law
- ⌘ 3. Entitlement
- ⌘ 4. No Entitlement
- ⌘ 5. Remand

**⌘ 1. Legislative Intent**

After plaintiff obtained a judgment declaring members of a city council violated the Brown Act (Gov C §§ 54960 et seq.) by taking official action in secret, the trial court committed reversible error in failing to properly exercise its discretion in denying plaintiffs' attorney fees under Gov C § 54960.5, permitting such an award. There was no authority for the trial court to incorporate the standards of CCP § 1021.5, providing for fees in actions resulting in the enforcement of an important right affecting the public interest into the Brown Act, which was enacted two years earlier. The Brown Act provides specific legislative authorization for attorney fees in actions brought to enforce a public policy in a context in which actual recoverable damages are likely to be trivial, and attorney fees are presumptively appropriate unless the defendant can show special circumstances that would render such an award unjust. The statute does not require that fees be awarded only when issues of statewide or federal significance are involved, but is intended to be applied in matters of local significance. Considerations which the trial court should weigh in exercising its discretion include the necessity for the lawsuit, lack of injury to the public, the likelihood the problem would have been solved by other means and the likelihood of recurrence of the unlawful act in the absence of the lawsuit. *Common Cause v. Stirling* (1981, Cal App 4th Dist) 119 Cal App 3d 658, 174 Cal Rptr 200, 1981 Cal App LEXIS 1775.

**⌘ 2. Construction With Other Law**

In an action by a football coach against a school district alleging a Brown Act violation and other causes of action, the trial court abused its discretion in awarding attorney fees and costs under Gov C § 54960.5 without first apportioning out those fees and costs unrelated to the single Brown Act violation. Here the primary economic focus underlying the remaining 11 causes of action was wrongful termination and retaliatory firing. These causes of action and the Brown Act violation constituted two separate and distinct claims, one entitled to statutory fees and the other not. Nor was the coach entitled to fees and costs under the private attorney general theory (CCP § 1021.5), since the primary focus of the litigation was personal. This was not a case where the plaintiff's expenses in bringing suit were disproportionate to his personal stake in the outcome, but rather one where the enforcement of the public interest was merely incidental to the obtaining of personal goals. *People v. Jones* (2000, Cal App 2d Dist) 82 Cal App 4th 663, 98 Cal Rptr 2d 724, 2000 Cal App LEXIS 590, review denied (2000, Cal) 2000 Cal LEXIS 8778.

**⌘ 3. Entitlement**

In an action by a private plaintiff under Gov C § 54960, in which it was determined that a city council's use of a circulated letter, signed by a majority of the council members, to initiate city action was a violation of the Brown Act (the open meeting law; Gov C §§ 54950 et seq.), the trial court abused its discretion in refusing to award attorney fees to plaintiff on the basis of a lack of public benefit. Gov C § 54960.5, gives the trial court discretion to grant "reasonable attorney fees" where a violation of the Brown Act has been found. In the absence of the filing of



the lawsuit, neither plaintiff nor any other person concerned with the actions of the city council could have been assured that further violations of the Brown Act in the same manner would not occur. While the trial court might have been correct that there would be no recurrence, this did not support the conclusion that the public benefit from plaintiff's action was not sufficient to support an award of attorney fees. The benefit obtained through the lawsuit was not exclusively for plaintiff. The action was filed for the public benefit and the conclusion that the use of the circulated letters constituted a Brown Act violation supported a grant of attorney fees. *Common Cause v. Stirling* (1983, Cal App 4th Dist) 147 Cal App 3d 518, 195 Cal Rptr 163, 1983 Cal App LEXIS 2215.

In mandamus proceedings filed by a labor union and associated plaintiffs in which the trial court properly determined that the board of directors of the Los Angeles Export Terminal, Inc., a private corporation formed to design, construct, and operate a facility for the export of coal on land leased from the Los Angeles harbor commission, was a legislative body subject to the open meeting requirements of the Brown Act (Gov C §§ 54950 et seq.), the trial court did not abuse its discretion in awarding plaintiffs attorney fees since the public benefit from plaintiffs' action was sufficient to support such award under Gov C § 54960.5. Here, defendant asserted it was a private entity beyond the reach of the Act, meaning that had plaintiffs not brought this action, defendant would have engaged in recurring violations of the Act. Nor did the trial court err in basing the award on market rates rather than the hourly rate plaintiffs paid their attorneys since plaintiffs acted in a manner analogous to a private attorney general. *International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999, Cal App 2d Dist) 69 Cal App 4th 287, 81 Cal Rptr 2d 456, 1999 Cal App LEXIS 31, rehearing denied (1999, Cal App 2d Dist) 69 Cal App 4th 1219c, 1999 Cal App LEXIS 107, review denied (1999, Cal) 1999 Cal LEXIS 2228.

Where a county board of supervisors was found to have violated the Ralph M. Brown Act, Gov C §§ 54950 et seq., by discussing non-agenda items at three closed meetings, including plans to change the protocol for closed meetings, the county counsel denied that any violations of the Act had occurred by such incidents and demanded the return of closed meeting documents inadvertently released to the press, and only by review of such documents was it disclosed that one of the judicially determined violations occurred, the trial court erred in determining that the action filed by a newspaper and a public record rights coalition to enforce compliance with the Act was unnecessary and, therefore, the denial of the newspaper and coalition's request for attorneys fees for that reason was also improper. *Los Angeles Times Communications v. Los Angeles County Bd. of Supervisors* (2003, Cal App 2d Dist) 112 Cal App 4th 1313, 5 Cal Rptr 3d 776, 2003 Cal App LEXIS 1617, review denied (2004, Cal) 2004 Cal LEXIS 994.

Where a county board of supervisors was found to have violated the Ralph M. Brown Act, Gov C §§ 54950 et seq., by discussing non-agenda items at three closed meetings, including plans to change the protocol for closed meetings, the county counsel denied that any violations of the Act had occurred by such incidents and demanded the return of closed meeting documents inadvertently released to the press, and only by review of such documents was it disclosed that one of the judicially determined violations occurred, the trial court erred in denying the newspaper and coalition's request for attorneys fees on the ground that fees were not needed for the newspaper and coalition to attract competent counsel because the newspaper, a fully-funded major metropolitan area newspaper, had plenty of incentive other than fees to bring the action. *Los Angeles Times Communications v. Los Angeles County Bd. of Supervisors* (2003, Cal App 2d Dist) 112 Cal App 4th 1313, 5 Cal Rptr 3d 776, 2003 Cal App LEXIS 1617, review denied (2004, Cal) 2004 Cal LEXIS 994.

Attorney fees were properly awarded to a member of a common interest development following a wrongful failure to produce board-meeting minutes for inspection. Applying reasoning developed under the Brown Act, the court found that, given the history of relations between the parties, it was not an abuse of discretion for the trial court to conclude that the problem would not have been resolved in the absence of the lawsuit. *Moran v. Oso Valley Greenbelt Assn.* (2004, Cal App 4th Dist) 117 Cal App 4th 1029, 12 Cal Rptr 3d 435, 2004 Cal App LEXIS 564.

#### ✚ 4. No Entitlement

The Brown Act (Gov C §§ 54950 et seq.), providing that all meetings of the legislative body of a local agency shall be open and public, did not require that ad hoc advisory committees, created by a board of education and composed solely of members of the governing body of the district which constituted less than a quorum of the governing body, meet in public session in evaluating and interviewing candidates for a vacancy on the board. The amendment of the act by the addition of former Gov C § 54952.3 created an exception to the open and public meeting requirements in case of ad hoc advisory committees comprised solely of members of the governing body of the local agency and which were less than a quorum of the governing body. Accordingly, plaintiffs who sought to restrain the board from conducting such private meetings were not entitled to attorney fees under Gov C § 54960.5, authorizing an award of fees and costs in an action to prevent violations of threatened violations of the act, since the board neither violated nor threatened to violate any of the provisions of the act. *Henderson v. Board of Education* (1978, Cal App 2d Dist) 78 Cal App 3d 875, 144 Cal Rptr 568, 1978 Cal App LEXIS 1354.

In an action for injunctive and declaratory relief by an individual against a city, city council, the mayor, the city attorney, and private lawyers and a law firm, alleging that defendant city council violated the Ralph M. Brown Act (Gov C §§ 54950 et seq.), which was dismissed after sustaining a demurrer without leave to amend, the city defendants were not entitled to attorney fees since there was no finding "that the action was clearly frivolous and totally lacking in merit." Outside counsel were, however, entitled to costs and, since plaintiff's appeal as to them was totally lacking in merit, they were therefore entitled to attorney fees and costs on appeal. *Boyle v. City of Redondo Beach* (1999, Cal App 2d Dist) 70 Cal App 4th 1109, 83 Cal Rptr 2d 164, 1999 Cal App LEXIS 228.

#### ✚ 5. Remand

Trial court erred in its determination that no California Ralph M. Brown Act, Gov C §§ 54950 et seq., violation was shown where property owner established that a public utility district had violated the act by failing to provide opportunity for public comment and failing to make required disclosures prior to going into closed session because district could not prohibit the owner from presenting her public comments simply because the comments related to pending litigation or a possible basis for settlement thereof; because trial court assumed that no violation occurred, it never properly exercised its discretion whether to grant attorney fees pursuant to Gov C § 54960.5 to the owner as a prevailing party, and thus remand was required to consider that issue. *Galbiso v. Orosi Public Utility Dist.* (2008, 5th Dist) 167 Cal App 4th 1063, 84 Cal Rptr 3d 788, 2008 Cal App LEXIS 1677.

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TOC: **Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > § 54960.5. Costs and attorney fees**

Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54960.5**

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TOC: [Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > § 54961. Meeting place with discriminatory admission policies; Identification of victim of sexual or child abuse](#)

Terms: 54952.1

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Section: [Cal Gov Code § 54961](#)

*Cal Gov Code § 54961*

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GOVERNMENT CODE  
 Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
 Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
 Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54961 (2013)

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

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

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

**Practitioner's Toolbox**

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**Collateral References**

- > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 112 "Civil Rights: Government-Funded Programs And Activities".
- > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

**History:**

Added Stats 1970 ch 383 § 2. Amended Stats 1981 ch 968 § 36; Stats 1993 ch 1136 § 19 (AB 1426), operative April 1, 1994, ch 1137 § 19 (SB 36), operative April 1, 1994, ch 1138 § 9 (SB 1140), operative April 1, 1994; Stats 1994 ch 32 § 21 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2007 ch 568 § 35 (AB 14), effective January 1, 2008.

**Notes:**

- 1. Amendments
- 2. Note

**1. Amendments:**

- 1981 Amendment
- 1993 Amendment
- 1994 Amendment
- 2007 Amendment

**1981 Amendment:**

Substituted "Section 54951, 54951.1, or 54951.7" for "Section 54951".

**1993 Amendment:**

Substituted the section for the former section which read: "No local agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. This section shall apply to every local agency as defined in Sections 54951, 54951.1, or 54951.7." (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

**1994 Amendment:**

(1) Added the subdivision (a) designation; and (2) added subd (b).

**2007 Amendment:**

Substituted "on the basis of ancestry or any characteristic listed or defined in Section 11135" for "on the basis of race, religious creed, color, national origin, ancestry, or sex" in subd (a).

**2.****Note**

Stats 1993 ch 1138 provides:

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

Stats 1994 ch 32 provides:

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

Stats 2007 ch 568 provides:

SECTION 1. The Legislature finds and declares as follows:

(a) Even prior to passage of the Unruh Civil Rights Act, California law afforded broad protection against arbitrary discrimination by business establishments. The Unruh Civil Rights Act was enacted to provide broader, more effective protection against arbitrary discrimination. California's interest in preventing that discrimination is longstanding and compelling.

(b) In keeping with that history and the legislative history of the Unruh Civil Rights Act, California courts have interpreted the categories enumerated in the act to be illustrative rather than restrictive. It is the intent of the Legislature that these enumerated bases shall continue to be construed as illustrative rather than restrictive, and, consistent with the Unruh Civil Rights Act, that the civil rights provisions of this act that reference Section 51 of the Civil Code also be interpreted to be illustrative rather than restrictive.

SEC. 1.5. This act shall be known and may be cited as the Civil Rights Act of 2007.

#### 🔗 Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 112 "Civil Rights: Government-Funded Programs And Activities".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

#### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54961**

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TOC: [Deerings California Code Annotated, Court Rules and ALS > / . . . / > Chapter 9. Meetings > § 54962. Prohibition against closed sessions except as expressly authorized](#)

Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

Section: **Cal Gov Code § 54962**

*Cal Gov Code § 54962*

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GOVERNMENT CODE  
 Title 5. Local Agencies  
 Division 2. Cities, Counties, and Other Agencies  
 Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
 Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54962 (2013)

**§ 54962. Prohibition against closed sessions except as expressly authorized**

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

**History:**

Added Stats 1987 ch 1320 § 6. Amended Stats 1988 ch 1346 § 1, effective September 24, 1988; Stats 1993 ch 1136 § 20 (AB 1426), operative April 1, 1994, ch 1137 § 20 (SB 36), operative April 1, 1994, ch 1138 § 10 (SB 1140), operative April 1, 1994; Stats 1994 ch 32 §

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  - > Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".
- Atty General's Opinions**



22 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1995 ch 529 § 6 (SB 614), effective October 4, 1995; Stats 2006 ch 157 § 2 (SB 1801), effective January 1, 2007.

**Notes:**

- 1. Amendments
- 2. Note

- 1. Amendments:**
- 1988 Amendment
  - 1993 Amendment
  - 1994 Amendment
  - 1995 Amendment
  - 2006 Amendment

**1988 Amendment:**

Added "or by Sections 32106 and 32155 of the Health and Safety Code as they apply to hospital districts,".

**1993 Amendment:**

Added "or by any provision of the Education Code pertaining to school districts and community college districts," (As amended Stats 1993 ch 1137, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 1136. See Gov C § 9605.)

**1994 Amendment:**

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

**1995 Amendment:**

Added "1462,".

**2006 Amendment:**

Substituted "Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3" for "Health and Safety Code Sections 37606 and 37624.3".

**2.**

**Note**

Stats 1993 ch 1138 provides:

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

Stats 1994 ch 32 provides:

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

### ✦ Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

### ✦ Attorney General's Opinions:

A county retirement board may permit an applicant for a disability retirement and his or her representative to attend a closed session at which the employee's medical records are discussed and evaluated. 88 Cal. Ops. Atty. Gen. 16.

### Hierarchy Notes:

Tit. 5, Div. 2, Pt. 1, Ch. 9 Note

### ✦ Notes of Decisions:

✦ 1. Legislative Intent

#### ✦ 1. Legislative Intent

The Brown Act was adopted to ensure the public's right to attend the meetings of public agencies. Accordingly, the Act requires that the legislative bodies of local agencies, including city councils, hold their meetings open to the public except as expressly authorized by the Act. The Act authorizes closed sessions to be held with regard to certain matters, one of which is real property negotiations. The need for closed sessions in this circumstance is obvious. No purchase would ever be made for less than the maximum amount the public body would pay if the public (including the seller) could attend the session at which that maximum was set, and the same is true for minimum sale prices and lease terms and the like. *Kleitman v. Superior Court* (1999, Cal App 6th Dist) 74 Cal App 4th 324, 87 Cal Rptr 2d 813, 1999 Cal App LEXIS 762, rehearing denied (1999, Cal App 6th Dist) 74 Cal App 4th 1231b, 1999 Cal App LEXIS 824, review denied (1999, Cal) 1999 Cal LEXIS 7978.

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Terms: 54952.1

Focus: **54952.2** (Exit FOCUS™)

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Terms: 54952.1

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Section: **Cal Gov Code § 54963**

*Cal Gov Code § 54963*

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GOVERNMENT CODE  
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 Chapter 9. Meetings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Gov Code § 54963 (2013)

**§ 54963. Disclosure of confidential information acquired in closed session prohibited; Disciplinary action for violation**

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

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

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

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

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

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

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

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

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

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

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

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

#### History:

Added Stats 2002 ch 1119 § 1 (AB 1945).

#### Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 470B "Public Agency Meetings".

#### Hierarchy Notes:

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**COUNTY COUNSEL GUIDE  
TO  
BROWN ACT REQUIREMENTS**

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**2013**



## FORWARD

The following is a brief outline on the key provisions of the Brown Act and how they apply to the Board of Supervisors and County commissions, committees, etc.

This is an overview and is not intended to be a comprehensive summary.

The Ralph M. Brown Act was enacted by the Legislature in 1953. Beginning at Government Code section 54950<sup>1</sup>, it contains a myriad of detailed and technical requirements governing the conduct of meetings of local agencies<sup>2</sup>, as well as the conduct of the governing officials of those agencies.

Although there have been some revisions throughout the years, two key provisions of the Brown Act have remained unchanged since its passage. The first is the intent section, which provides as follows:

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

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating their authority, do not give their public servants the right to decide what is good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (Section 54950)

The second key provision of the Act is contained in section 54953:

"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."

The main focus of the Brown Act is the public's right to attend and participate in the decision making process of local legislative bodies.

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<sup>1</sup> All references to sections refer to the Government Code.

<sup>2</sup> The terms "legislative body, local agency, and body," are used throughout this summary to refer to government entities subject to the Brown Act.

## I. APPLICABILITY OF THE ACT

Section 54952 sets forth a comprehensive definition of "legislative body" which includes commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.

Advisory committees comprised solely of less than a quorum of the legislative body are not legislative bodies as long as they are not standing committees. (Section 54952(b)) Standing committees of the legislative body, despite their composition, which have continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of the legislative body, are legislative bodies for purposes of the Act. (Section 54952(b))

## II. WHAT IS A MEETING?

If official business is discussed, any gathering of a quorum, no matter how informal, is a "meeting" subject to the requirements of the Brown Act. (61 Ops.Atty.Gen. 220 (1978).)

The Brown Act does not apply to:

- A) individual contacts between a member and any other person that do not violate section 54952.2(b) (Section 54952.2(c)(1));
- B) attendance by the majority at a conference or similar gathering open to the public that involves a discussion of issues of general interest, provided a majority of the members do not discuss business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(2));
- C) attendance by a majority at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided a majority of the members do not discuss business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(3));
- D) attendance by a majority at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of another legislative body of another local agency, provided that a majority do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency (Section 54952.2(c)(4));
- E) attendance by a majority at a purely social or ceremonial occasion, provided a majority of the members do not discuss

business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(5)); and

- F) attendance by a majority at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers (Section 54952.2(c)(6)).

### III. AGENDA REQUIREMENTS

#### Regular Meetings

At least 72 hours before a regular meeting, the legislative body, 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 is defined to generally 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.

In general, no action can be taken if the item is not listed on the agenda.

One exception is made upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as required. (Section 54954.2(b)(2))<sup>3</sup>

Action may also be taken on an item not listed in the agenda if a determination is made, by a majority vote, that an "emergency situation" exists. (Section 54954.2(b)(1)). "Emergency situation" is defined narrowly as either a work stoppage or other activity which severely impairs the public health or safety, or a crippling disaster which severely impairs public health or safety. (Section 54956.5)

Each legislative body shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required, for the conduct of business of that body, and the time and place for holding regular meetings. This requirement does not apply to advisory and standing committees. (Section 54954)

Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting, shall be considered as regular meetings of those bodies. (Section 54954)

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<sup>3</sup> For our Board, if 5 members are present, two-thirds vote is 4; if 4 members are present, two-thirds vote is 3; and if 3 members are present, a unanimous vote is required.

### Special Meetings

A special meeting may be called at any time by the presiding officer of the legislative body, or by a majority of the members of the legislative body, by delivering personally or by any other means, written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing.

The notice shall be received at least 24 hours before the meeting and shall specify the time and place, and the business to be transacted or discussed. No other business shall be considered by the legislative body.

The written notice may be dispensed with as to any member who at, or prior to the time that the meeting convenes, files with the clerk or secretary of the legislative body a written waiver of the 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.

Notice shall be required pursuant to the section, regardless of whether any action is taken at the special meeting. 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. (Section 54956)

### Emergency Meetings

There are two definitions of emergency situations which can result in the necessity for a legislative body to hold an emergency meeting.

Emergency situations are defined as either 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.

Dire emergency situations are defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist act that poses immediate and significant peril as determined by a majority of the members of the legislative body.

In both situations, the legislative body may hold an emergency meeting without complying with either the 24 hour notice or posting requirements. Instead, notice shall be given by telephone by the presiding officer of the legislative body to each local newspaper of general circulation and radio or television station that has requested notice of special meetings. Such notice shall be given one hour prior to the emergency meeting, or in the case of a dire emergency meeting, at or near the time that the presiding officer notifies the members of the legislative body of the emergency meeting.

All telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings must be exhausted. In the event that telephone services are not functioning, the notice requirements are waived and the legislative body or designee of the legislative body must notify those newspapers, radio stations,

or television stations, as soon as possible after the meeting, of the purpose of the meeting and any action taken

During an emergency meeting, the legislative body may meet in closed session if agreed to by two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by unanimous vote. In addition, with the exception of the 24 hour notice requirement, all of the requirements of special meetings must apply to emergency meetings. (Section 54956.5)

#### Regular & Special Meetings- Standing Request for Notice

Any person may request a copy of the agenda, or a copy of all documents constituting the agenda packet of any meeting of the legislative body. Upon receipt of the written request, the legislative body or its designee shall mail the materials at the time the agenda is posted or upon distribution to the legislative body, whichever occurs first. Any request for mailed copies of agendas shall be valid for the calendar year in which it is filed, and must be renewed the following January 1 of each year. The legislative body may establish a fee that does not exceed the cost of providing the service.

Failure of the requesting person to receive the agenda 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 was not received. (Section 54954.1)

#### Supporting Documentation

All disclosable writings related to an agenda item that are distributed to a majority of the members of the legislative body must be made available to the public upon request without delay. (Section 54957.5(a))

If these writings are distributed to a majority of the members of the legislative body less than 72 hours before the meeting (i.e. after the agenda is posted), they must be made available for public inspection at a public office or location designated by the local agency. (Section 54957.5(b)(1)) The address of the designated office or location must be listed on the agenda. (Section 54957.5(b)(2))

If these writings are distributed to a majority of the members of the legislative body during the meeting, they must be made available for public inspection at the meeting if prepared by the local agency or a member of the legislative body, or after the meeting if prepared by another person. (Section 54957.5(c))

#### Compliance with ADA

The agenda and all disclosable writings related to an agenda item which are distributed to a majority of the members of the legislative body must be made available in appropriate alternate formats upon request by a person with a disability, as required by the Americans with Disabilities Act of 1990. (Sections 54954.2(a)(1) and 54957.5(c))

The agenda must 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. (Section 54954.2(a)(1))

#### IV. TELECONFERENCING PERMITTED

All meetings of the legislative body shall be open and public, and all persons shall be permitted to attend any meeting, except as otherwise provided. Notwithstanding any other provision of law, the legislative body may use teleconferencing for the benefit of the public in connection with any meeting.

Teleconferencing may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during the teleconference meeting shall be by roll call. If the legislative body 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.

Each teleconference location shall be identified in the agenda and shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly at each location. (Section 54953.)

#### V. WHAT IS ACTION TAKEN?

"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 negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body, upon a motion, proposal, resolution, order or ordinance. (Section 54952.6)

Many items are discussed when no action is taken. However, if discussion has proceeded to a point where a general consensus by a majority of the members has been reached, a court could conclude that action has been taken, even though a formal vote is put off to a later date.

#### VI. KNOWINGLY TAKING ACTION IN VIOLATION OF THE ACT MAY BE A CRIME

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of the Act, with wrongful intent to deprive the public of information to which it is entitled under this chapter, is guilty of a misdemeanor. (Section 54959)

Examples of conduct which could constitute a violation are:

- (1) taking action on an item in closed session when an open meeting is required;
- (2) taking action on an item not listed on the agenda; and
- (3) taking action at a meeting held without notice.

The standard for criminal culpability in terms of a mental state is "wrongful intent" to deprive the public of information to which it is entitled to, pursuant to the Brown Act. This is a very difficult standard to prove and there are no reported cases involving criminal liability.

#### VII. PUBLIC COMMENT

Every agenda for regular meetings must include an opportunity for members of the public to address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item.

Every notice for a special meeting shall provide an opportunity for members of the public to address the legislative body concerning any item that has been described in the notice before or during consideration of that item.

#### VIII. PUBLIC'S RIGHTS WHILE ATTENDING A MEETING

In order to attend a public meeting of a legislative body, a member of the public shall not be required to register his or her name, to complete a questionnaire, or otherwise to fulfill any condition in order to attend the meeting. (Section 54953.3)

If an attendance list or similar document is posted or circulated, it must clearly state that signing or completing it is voluntary.

In the absence of a reasonable finding by the legislative body that the recording would constitute a disruption of the proceeding, any member of the public has a right to record the proceeding with an audio, videotape recorder or motion picture camera. (Section 54953.5)

#### IX. CLOSED SESSIONS

Agenda items may be discussed in closed session under certain limited circumstances. The most frequently used exceptions are:

- (1) litigation - to discuss actual or the threat of litigation involving the local agency (section 54956.9);
- (2) personnel - to discuss matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or facilities, to consider the appointment, employment, performance evaluation,

discipline, or dismissal of a public employee, or to hear complaints or charges brought against the employee, unless the employee requests a public session (section 54957);

- (3) real estate negotiations - to discuss the purchase, sale, exchange or lease of real property by or for the local agency (section 54956.8); and
- (4) labor negotiations - to discuss with designated representatives the salaries, salary schedules, or compensation paid in the form of fringe benefits for represented and unrepresented employees (section 54957.6).

The legislative body shall describe the closed session item on the agenda and state the section that authorizes the closed session. (Section 54954.5) The local agency must disclose the name(s) of its real property negotiators prior to discussing the purchase, sale, exchange or lease of real property. This requirement also applies to disclosing the name(s) of designated representatives regarding labor negotiators. (Section 54954.5)

While still in open session, the local agency, must identify the negotiators, the real property and the persons with whom the negotiators may negotiate. Negotiators may be members of the local agency. (Section 54956.8)

The local agency must also identify its designated representatives, to discuss the salary, salary schedules, or fringe benefits of its represented and unrepresented employees, (Section 54957.6)

Prior to adjournment, the body must reconvene in open session and publicly report any reportable action taken in closed session. (Section 54957.1)

Disclosure of confidential information that is acquired during closed session is prohibited unless the legislative body authorizes such disclosure. Confidential information is defined as a communication made in closed session that is specifically related to the basis for the legislative body to lawfully meet in closed session.

## X. CIVIL REMEDIES AND ENFORCEMENT

A civil action may be commenced to stop or prevent violations, including past and/or continued violations, or threatened violations of the Act. (Section 54960, 54960.2, and 54960.5) A civil action may also be commenced to set aside an action taken in violation of the open meeting requirement, the agenda posting requirements, or the special meeting requirements. (Section 54960.1)

If a court determines that the Brown Act was violated, court costs and reasonable attorney fees may, and in some situations must, be awarded to the complaining party. (Section 54960.5)





## BROWN ACT BASICS

### I. WHAT IS THE BROWN ACT

- Ralph M. Brown Act/Open Meeting Laws
- enacted by the State Legislature in 1953
- codified in Government Code sections 54950 et seq.
- law requires public agencies to conduct business in an open forum, with limited exceptions.
- the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.
- promotes accountability of public officers and allows for public oversight; helps the public to understand the process

### II. WHO DOES THE BROWN ACT APPLY TO

- Public commissions, boards and councils, including committees created by the legislative body.
- Commissions created by the Board of Supervisors.
- Standing committees versus ad hoc committees.
- Such bodies are supposed to arrive at collaborative decisions through public discussions and debate.

### III. WHAT IS REQUIRED BY THE BROWN ACT

#### A. Agenda Posting Requirements

- Public must be given notice of the time and place where the meeting is to be held. Public can make a standing request to receive agendas; written request is effective for 1 year, fee for copying and postage costs can be charged, failure to send packet could result in invalidation of action taken at meeting.
- Agenda must be posted at least 72 hours (3 days) in advance.
- For the most part, cannot discuss anything not listed on the agenda so be careful to include all items to be discussed.

Exception - immediate action required and came to the attention of body subsequent to agenda posting, finding must be made by 2/3 vote of the members of the legislative body present at the meeting, or, if less than 2/3 of the members are present, a unanimous vote of those members present.

- Description must be sufficient to give the public a reasonable idea of what will be discussed. It must contain enough information on the subject matter under consideration so that the public can determine whether or not to monitor or participate in the meeting. Vague, general language is not sufficient. Generally not to exceed 20 words.
- Public comment entry required on each agenda.
- Public availability of agenda materials. Public is entitled to access to copies of the agenda packet/documents associated with the agenda item.

B. Definition of Meeting

- A gathering of a quorum (generally a simple majority) of the legislative body, no matter how informal, where public business is transacted or discussed.
- Three types of meetings:
  1. Regular
  2. Special- 24 hours advance notice required (cannot discuss other matters - only special item)
  3. Emergency- True emergency must exist, immediate action is needed.  
two types of emergencies (emergency and dire emergency)  
agenda posting waived
- Action taken collective commitment or promise by majority to make positive or negative decision.
- Use of teleconferencing requirements:
  - At least a quorum of members must participate from locations within LA County.
  - An agenda must be posted at each location.
  - The address of each location must be listed in the notice and agenda.
  - Each location must be fully accessible to the public.

- Each location must be ADA-compliant.
- The public's right to testify at each location must be ensured.
- All votes taken must be by roll call.

C. Conducting Meetings

- Must be held outside the agency's jurisdiction, with limited exceptions.
- Cannot be held in a place that discriminates or that requires the making of a payment or purchase; must be ADA compliant.
- Cannot require a person to register or provide information as a condition to attendance.
- Cannot prohibit use of tape recorders, cameras or even broadcasting unless the body makes a finding that noise, illumination or obstruction of view would disrupt the meeting.
- Any tape or film record made by the body must be made available for public inspection. Public can be charged for agency's copies of tapes and/or videos but can't be charged to listen to or view agency's tape or video.
- Public comment- reasonable rules can be adopted.

D. Closed Session

- Threshold question: does the legislative body have jurisdiction over a subject matter that may be discussed in closed session?
- All items must be listed on the agenda.
- Must publicly announce item to be discussed in closed session.
- Personnel matters exception.  
To consider the appointment, employment, evaluation of performance, discipline or dismissal of public employees or to hear complaints or charges brought against the employee, unless the employee requests a public session.
- Public security threat exception.  
To discuss matters of threat to the security to public services or public facilities.

- Litigation exception- anticipated/pending, initiation of litigation.  
Applies to cases in court or any proceeding in which the agency is represented by counsel which involves formal rules of evidence, determination of rights of the adverse parties.  
Agenda must identify the case.  
Attorney must be present or by conference call.  
Implications of a proposed or future action is not appropriate.  
Opposing counsel cannot participate.  
OK to receive confidential memos under the attorney/client privilege.  
Records remain confidential, any closed session minutes are confidential
- Labor negotiations exception.  
To instruct bargaining representatives on employee salaries and fringe benefits for union and non-union employees; must identify the negotiator(s) in open session prior to going into closed session.
- Real estate negotiations exception. (54956.8)  
To meet with real estate negotiator(s) prior to the purchase, sale, exchange of personal or real property by or for the agency and to grant authority to the negotiator(s) regarding the sale and terms of payment; other "reasonably related" topics are allowed.
- Closed session for emergency meetings upon proper finding.

#### IV. CONSEQUENCES FOR VIOLATING THE ACT

- Civil action to stop or prevent violations. (Notice of corrective action first required.) (54960.1)
- Civil action to declare action null and void. (54960.1)
- Court costs and reasonable attorney's fees maybe awarded if court finds Brown Act violation. (54960.5)