

APR 12 1994



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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

[Signature]
EXECUTIVE SECRETARY

March 9, 1994

To: Board of Directors (Legal and Claims Committee--Action)
(Executive Committee--Action)

From: General Counsel

Subject: Implementation of Ralph M. Brown Act Requirements for 1994 and
Amendment of Administrative Code to Comport with 1994 Requirements

Executive Summary

On April 1, 1994, California's 40-year old Ralph M. Brown Act requiring open meetings of local boards, councils and commissions changed in several ways significant for all concerned--public officials, citizen observers and the news media. Three pieces of 1993 legislation signed by Governor Wilson--SB 36 (Kopp), AB 1426 (Burton) and SB 1140 (Calderon) and the 1994 trailer bill--SB 752 (Kopp) created new rules on when the Act applies, who it affects, what it requires and what can be done to enforce it. The following summary has been prepared to familiarize your Board with the new requirements necessary in the conduct of Metropolitan's business.

- ▶ Committees Affected. All standing, special, ad hoc, and advisory committees are subject to the Brown Act, unless certain criteria is met to justify an exemption.
- ▶ Meetings. A meeting includes any congregation of a majority of the legislative body at the same time and place to hear, discuss, or deliberate upon any item within its subject matter jurisdiction. A meeting also includes any use of direction communications, personal intermediaries or technological devices employed by a majority of members of the legislative body to develop a collective concurrence regarding action on an item. A meeting does not include individual contacts between the public and members, conferences or gatherings dealing with issues of "general interest," purely social gatherings, community meetings and meetings of other local agencies provided business of a specific nature within the legislative body's jurisdiction is not discussed.
- ▶ Criminal Standard. Under the 1994 legislation, a member who attends a meeting of a legislative body where action is taken 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, is guilty of a misdemeanor. The district attorney is authorized to sue for any civil remedy or enforcement measure provided by the Act.

- ▶ Agendas. Agendas items must be described with more specificity. In particular, closed session items must adhere to a specific format depending on the nature of the item under consideration. No discussion or action is permitted if an item is not on the agenda. However, members may respond to statements or questions from the public and direct to staff to report back on a matter. In exceptional situations, matters may be added to the agenda at the time of the meeting.
- ▶ Public Report of Closed Session Action. Following consideration of a closed session matter, a public report of each member's vote, the approval/disapproval of the agenda item and the substance of the agreement (or matter under consideration), must be reported in open session. The specificity of the report will vary depending the nature of the agenda item.
- ▶ Public Inspection of Written and Videotaped Materials. Unless specifically exempt under the Public Records Act or Attorney-Client privilege, written and videotaped materials prepared by staff or a Board member relating to an agenda item must be made available for public inspection at the time of the meeting. If such materials are prepared by someone other than staff or a Board member, the materials must be made available after the meeting.
- ▶ Recording and Broadcast of Proceedings. The public has a right to audio-video tape the proceedings. This right can be restricted if the legislative body makes a reasonable finding such actions create a persistent disruption of the meetings.

Detailed Report

The Ralph M. Brown Act (Act), Government Code §§ 54950 et seq., has been significantly amended by three bills (A.B. 1426, S.B. 36, and S.B. 1140 - Chapters 1136 - 1138, Stats. 1993) which were signed into law on October 10, 1993. These amendments become effective on April 1, 1994.

Senator Kopp, one of the original authors of the bill, sponsored a trailer bill, SB 752, which corrects technical inconsistencies between the bills. Under the trailer bill, the attendance of a majority of members of a legislative body at an open and noticed meeting of another body of the local agency is not a meeting under the Act, provided that the members do not discuss among themselves, other than as part of the scheduled meeting, matters within the subject matter jurisdiction of the legislative body of the local agency. Under the October 1993 legislation, a member could be guilty of a misdemeanor if he or she acted with "wrongful intent to deprive the public of information to which it is entitled." The trailer bill amends the standard for criminal prosecution--proof of "wrongful intent" is eliminated. Instead, a member is guilty of a misdemeanor when he or she attends a meeting where action is taken in violation of the Act and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled.¹ SB 752 has been signed by the Governor and will take effect on April 1, 1994, simultaneously with last year's Brown Act changes. A copy of SB 752 is provided in Attachment D.

Since the changes to the Brown Act will impact the manner in which Metropolitan's Board and committees consider matters involving litigation, employment, labor relations, personnel, and real property related matters, it is necessary that directors and staff become aware of the procedural changes Metropolitan will implement.

Because Metropolitan has been consistently sensitive to the requirements of the Brown Act, many of Metropolitan's existing procedures already meet the 1994 requirements. Consequently, the 1994 amendments will not significantly alter Metropolitan's current practices. Nonetheless, modified procedures concerning agenda requirements, distribution of written materials and disclosure of closed session information must be implemented.

Applicability of the Act. Unless exempted, the Act applies to all formally created committees of the Board which have

¹ The new standard proposed in the trailer bill arose in part because a Monterey County jury voted 7-5 that Seaside Mayor Lance McClair did not violate the Brown Act when he knowingly called a closed session meeting to discuss suspension of the police chief. The jury was unable to determine whether McClair possessed the requisite "wrongful intent" to deprive the public of information when he called the meeting. Under the new standard, McClair would likely be convicted of violation since "wrongful intent" is no longer required.

continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution or other formal action.

Creation of Committees. The Act no longer applies to an advisory commission, committee or body appointed by formal action of a member of the legislative body. For example, the Act does not apply to an ad hoc committee created by the Chairman of the Board for the purpose of researching a matter and subsequently reporting back to the Chairman.

Videotaping, Tape Recording and Broadcast of Meetings. Metropolitan currently permits the videotaping, tape recording and broadcast of its meetings. However under the 1994 requirements, Metropolitan cannot prohibit or restrict the tape recording, videotaping or broadcast of its meetings in the absence of a reasonable finding that such techniques cannot be accomplished without noise, illumination or obstruction of view that would constitute a persistent disruption to the proceedings.

Agenda Descriptions. Metropolitan currently identifies items to be heard in open and closed sessions. Under the new requirements, however, agenda descriptions for regular meetings will now require greater specificity (generally need not exceed 20 words) and must include items to be discussed in closed session. The Act provides suggested agenda descriptions for closed session matters. The existing limitation on the consideration of items not on the agenda has been amplified to prohibit discussion as well as action; however, an exception is made for responses by board members to statements or questions from the public and for direction to staff to report back on a matter.

Public Report of Closed Session Action and Vote. The public report of closed session action and vote will create the most notable changes in Metropolitan's procedures. The new requirements specifically delineate when a closed session action, including each member's vote or abstention, must be reported in open session or upon inquiry by any person. The content is also specified for reporting action on pending litigation, personnel matters and other closed session actions. For example, if a closed session is held for the purpose of approving a settlement offer for pending litigation in which Metropolitan is a party and Metropolitan's approval of the offer renders the agreement final, the approval, vote of each member and the substance of the agreement must be reported in open session. Attachment A provides a brief checklist on Action and Vote Disclosure in Open Session After Closed Sessions. Staff will be prepared to assist the Board to ensure compliance with the reporting requirements.

Written and Videotape Materials. Metropolitan currently allows public inspection of non-exempt written and videotape materials distributed in connection with a board item at the time of the meeting. Privileged communications and other records protected under the California Public Records are exempt from this requirement. Under the new law, written materials prepared by Board members in connection with a matter subject to consideration must also be open and available for public inspection at the time of the meeting and written materials prepared by others must be made available after the meeting. It is suggested that where questions arise as to the privileged nature of a document, prior to distribution, the General Counsel should be consulted.

General Counsel's Memorandum for Closed Session Authorization. The General Counsel's memorandum stating the specific reasons and legal authority for a litigation exception closed session has been deleted under the new law. However, the statutory authorization for the closed session must be identified on the agenda or announced in open session.

Metropolitan's Administrative Code codifies the significant requirements of the Brown Act. The 1994 requirements necessitate amendments to Metropolitan's Administrative Code to comport with the new law. Attachment B sets forth the code language after proposed amendments. Attachment C sets forth the proposed amendments where overstrikes reflect deletions and underlining reflect additions to the existing language.

These actions are exempt from the provisions of the California Environmental Quality Act in that there is no possibility that they may have a significant effect on the environment.

Board Committee Assignments

This letter is referred for action to:

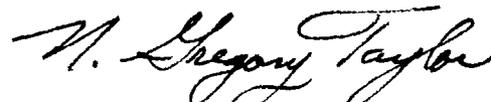
The Legal and Claims Committee because of its authority concerning the organization and contents of the Administrative Code pursuant to Administrative Code section 2462(h); and

The Executive Committee because of its authority concerning policies and procedures to be considered by the Board pursuant to Administrative Code section 2417(e).

Recommendation

LEGAL AND CLAIMS AND EXECUTIVE COMMITTEES FOR ACTION.

It is recommended that the Metropolitan Water District Administrative Code be amended to read as set forth in Attachment B.


N. Gregory Taylor

ATTACHMENT A

**Checklist on Action and Vote Disclosure
in Open Session After Closed Sessions
Government Code Section 54957.1**

AGREEMENTS CONCLUDING REAL ESTATE NEGOTIATIONS

WHEN GENERALLY: After agreement is final

If Board Action Finalizes Agreement

When To Report

After the closed session
In open session
During the same meeting

What To Report

The approval action
Substance of the agreement
Voting tally

If Other Party Must Finalize Agreement

When To Report

As soon as other party has informed Metropolitan of its approval and upon inquiry

What To Report

State approval rests with other party. Upon inquiry by any person and approval by other party, disclose:

The approval action
Substance of the agreement
Voting tally

APPROVAL OF LITIGATION DEFENSE, APPELLATE REVIEW, OR AMICUS CURIAE PARTICIPATION

When To Report

After closed session
In open session
During same meeting

What To Report

The approval action
Adverse parties (if known)

Substance of the litigation
Voting tally

**APPROVAL GIVEN TO INITIATE OR APPROVAL GIVEN TO INTERVENE IN
LITIGATION**

Before Action Has Been Commenced

When To Report

After closed session
In open session
During same meeting

What To Report

Direction to initiate/intervene given
The action, defendants and other
particulars will be disclosed
upon inquiry, once action formally commenced, *unless*
disclosure jeopardizes process service/conclusion
settlement negotiations

After Action Formally Commenced

If Disclosure Does Not Jeopardize Service of Process/Existing
Settlement Negotiations

When To Report

Upon inquiry

What To Report

The approval action
Voting tally
Defendant(s)
Other particulars, presumably including substance of
litigation

If Disclosure Jeopardizes Service of Process/Existing
Settlement Negotiation Conclusion

When To Report

No disclosure required until process served/settlement
negotiations concluded. Thereafter, disclosure required
only upon inquiry.

What To Report

Once process served/settlement negotiations concluded
disclose:

The approval action
Voting tally
Defendant(s)
Other particulars, presumably
including substance of litigation

APPROVAL OF PENDING LITIGATION SETTLEMENTS

WHEN GENERALLY: After settlement is final

If Board Action Finalizes

When To Report

After closed session
In open session
During same meeting

What To Report

The acceptance action
Substance of agreement
Voting tally

If Other Party Or Court Finalizes

When To Report

As soon as other party informs Metropolitan of its
approval

What To Report

No report is required; however,
upon inquiry by any person, disclose:

The fact of approval action
Substance of agreement
Voting tally

DISPOSITION OF JOINT POWERS AGENCY CLAIMS

When To Report

As soon as disposition of the claim is reached
(Statute does not specify whether an open session report
must be made or whether disclosure upon inquiry is
sufficient)

What To Report

Voting tally
Name of claimant

Name of local agency claimed against
Substance of claim
Monetary amount approved for payment
and agreed upon by the claimant, if any

ACTIONS AFFECTING EMPLOYMENT STATUS OF PUBLIC EMPLOYEES

When To Report

If dismissal or non-renewal of employment contract is subject to further administrative remedies report deferred until first public meeting following exhaustion of administrative remedies

All Other Employment Actions

After the closed session
In open session
During same meeting

What To Report

Any action taken to
Appoint
Employ
Dismiss
Accept the resignation of, or
Otherwise affect employment status of public employee
Voting tally
Title of position
Any change in compensation

APPROVAL OF AGREEMENTS CONCLUDING LABOR NEGOTIATIONS

When To Report

After agreement is final, and has been accepted or ratified by other party (Statute does not specify whether open session report must be made or whether disclosure upon inquiry is sufficient)

What To Report

The item approved
Voting tally
Other party (ies) to the negotiations

ATTACHMENT B**§ 2105. Closed Meeting Procedure.**

(a) The Chair shall be responsible for ensuring that procedural requirements, other than requirements for notice, are fulfilled when a closed meeting is held. The Executive Secretary shall be responsible for fulfilling any notice requirements relating to closed meetings.

(b) No person attending a closed session may disclose any matter discussed in the session where to do so would be contrary to the purpose for which the session was held. Any director who has not attended a closed session and wishes to be advised of the content of the session may inquire of any director who attended the closed session. The person contacted may advise the inquiring director of the content of the session. The advised director shall not disclose the matter for which the session was held.

(c) If a director, a Department Head, or a person other than a District staff member is reported to have violated Section 2105(b), the matter shall be referred to the Executive Committee for investigation and consideration of any appropriate action warranted including, but not limited to, legal action, censure, removal from one or more committee assignments, and recommendation to the member's appointing agency that steps be taken to remove that individual from the Board. Before taking any action and as part of the consideration, the Executive Committee shall provide the person under investigation with an opportunity to meet with it or a subcommittee appointed by it, and present reasons and evidence why action should not be taken.

(d) If a member of the staff is reported to have violated Section 2105(b), the matter shall be referred to the appropriate Department Head for investigation; the Department Head shall report to the Executive Committee any action taken including, but not limited to, legal action and initiation of discipline.

§ 2109. Board Agenda.

(a) The deadline for submission to the Executive Secretary of items for the Board agenda shall be in conformity with rules promulgated by the General Manager from time to time.

(b) Any matter not on the Board agenda may be presented to the Board following public identification of the matter and upon motion duly made and carried at the Board meeting:

- (1) Upon a determination by a majority vote of the Board that an emergency situation exists, as defined in Government Code Section 54956.5;
- or

(2) Upon a determination by a two-thirds vote of the Board, 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 to take action came to the District's attention subsequent to the agenda being posted; or

(3) If the item was posted for a prior meeting of the Board 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) The Board agenda shall make provision for public appearances before matters on which action is taken.

(d) The Executive Secretary shall be responsible for any required posting of agendas which shall be in the public lobby of the District's Headquarters Building.

(e) Videotapes of informational presentations prepared by District staff which are distributed in advance of a Board meeting to Board members shall be identified on the Board agenda, and shall be made available to the public for inspection upon request.

(f) The Board agenda shall identify open and closed session matters and provide a brief general description of each item, which need not exceed 20 words or as set forth in Government Code Section 54954.5.

§ 2143. Appearances before Board and Committees.

(a) Persons desiring to appear before the Board at a regular or special meeting shall so signify when asked by the Chair to do so at the time the agenda item required by Section 2109(d) is called. They shall state the purpose of their appearance. They shall, if the purpose relates to an item already or to be considered by a committee, be referred by the Chair of the Board to the appropriate committee unless the Chair determines that referral is not appropriate or the person expresses a desire to address the Board directly. The person may address the Board on matters within the Board's subject matter jurisdiction subject to reasonable time limits on the issue and individual speakers as established by the Chair.

(b) Upon referral, or if the request is made to the committee in the first instance, the Committee Chair shall place the matter on the committee's agenda. If the committee determines that the matter should be referred to the Board, or if it is considered by the Board in the first instance, the Chair of the Board shall place the matter on the agenda.

§ 2145. Availability for Public Inspection of Certain Board and Committee Material.

The Executive Secretary shall make available, for inspection by the public prior to commencement of and during a Board or Board committee meeting, copies of the meeting agenda and of any written or videotaped materials that are not exempt from public disclosure under Sections 10200 - 10205 and that have been distributed in advance to the Board or committee members for discussion or consideration at the meeting. If non-exempt written or videotaped materials are prepared by the District or a Board member and distributed to the members during their discussion at the meeting, copies thereof shall be made available for public inspection at the meeting, or after the meeting if prepared by some other person. Upon request, the District shall provide facilities for public viewing of videotaped materials distributed to Board members without charge.

ATTACHMENT C

§ 2105. Closed Meeting Procedure.

(a) The Chair shall be responsible for ensuring that procedural requirements, other than requirements for notice, are fulfilled when a closed meeting is held. The Executive Secretary shall be responsible for fulfilling any notice requirements relating to closed meetings. ~~The General Counsel shall be responsible for the preparation of any documents required by Government Code Section 54956.9 with regard to litigation.~~

(b) No person attending a closed session may disclose any matter discussed in the session where to do so would be contrary to the purpose for which the session was held. Any director who has not attended a closed session and wishes to be advised of the content of the session may inquire of any director who attended the closed session. The person contacted may advise the inquiring director of the content of the session. The advised director shall not disclose the matter for which the session was held.

(c) If a director, a Department Head, or a person other than a District staff member is reported to have violated Section 2105(b), the matter shall be referred to the Executive Committee for investigation and consideration of any appropriate action warranted including, but not limited to, legal action, censure, removal from one or more committee assignments, and recommendation to the member's appointing agency that steps be taken to remove that individual from the Board. Before taking any action and as part of the consideration, the Executive Committee shall provide the person under investigation with an opportunity to meet with it or a subcommittee appointed by it, and present reasons and evidence why action should not be taken.

(d) If a member of the staff is reported to have violated Section 2105(b), the matter shall be referred to the appropriate Department Head for investigation; the Department Head shall report to the Executive Committee any action taken including, but not limited to, legal action and initiation of discipline.

§ 2109. Board Agenda.

(a) The deadline for submission to the Executive Secretary of items for the Board agenda shall be in conformity with rules promulgated by the General Manager from time to time.

(b) Any matter not on the Board agenda may be presented to the Board following public identification of the matter and upon motion duly made and carried at the Board meeting:

- (1) Upon a determination by a majority vote of the Board that an emergency situation exists, as defined in Government Code Section 54956.5;
- or

(2) Upon a determination by a two-thirds vote of the Board, 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 to take action arose came to the District's attention subsequent to the agenda being posted; or

(3) If the item was posted for a prior meeting of the Board 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) The Board agenda shall make provision for public appearances before matters on which action is taken.

(d) The Executive Secretary shall be responsible for any required posting of agendas which shall be in the public lobby of the District's Headquarters Building.

(e) Videotapes of informational presentations prepared by District staff which are distributed in advance of a Board meeting to Board members shall be identified on the Board agenda, and copies of the videotapes shall be made available to the public for inspection upon request.

(f) The Board agenda shall identify open and closed session matters and provide a brief general description of each item, which need not exceed 20 words or as set forth in Government Code Section 54954.5.

§ 2143. Appearances before Board and Committees.

(a) Persons desiring to appear before the Board at a regular or special meeting shall so signify when asked by the Chair to do so at the time the agenda item required by Section 2109(d) is called. They shall state the purpose of their appearance. They shall, if the purpose relates to an item already or to be considered by a committee, be referred by the Chair of the Board to the appropriate committee unless the Chair determines that referral is not appropriate or the person expresses a desire to address the Board directly. The person may address the Board on matters within the Board's subject matter jurisdiction subject to reasonable time limits on the issue and individual speakers as established by the Chair.

(b) Upon referral, or if the request is made to the committee in the first instance, the Committee Chair shall place the matter on the committee's agenda. If the committee determines that the matter should be referred to the Board, or if it is considered by the Board in the first instance, the Chair of the Board shall place the matter on the agenda.

§ 2145. Availability for Public Inspection of Certain Board and Committee Material.

The Executive Secretary shall make available, for inspection by the public prior to commencement of and during a Board or Board committee meeting, copies of the meeting agenda and of any written or videotaped materials that are not exempt from public disclosure under Sections 10200 - 10205 and that have been distributed in advance to the Board or committee members for discussion or consideration at the meeting. If non-exempt written or videotaped materials are prepared by the District or a Board member and distributed to the members during their discussion at the meeting, copies thereof shall be made available for public inspection at the meeting, or after the meeting if prepared by some other person same time or as soon thereafter as practicable. Upon request, the District shall provide facilities for public viewing of videotaped materials distributed to Board members without charge.

AMENDED IN ASSEMBLY MARCH 10, 1994
AMENDED IN ASSEMBLY FEBRUARY 18, 1994
AMENDED IN ASSEMBLY AUGUST 16, 1993

SENATE BILL

No. 752

**Introduced by Senators Kopp and Calderon
(Coauthor: Assembly Member Burton)**

March 3, 1993

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

HISTORICAL NOTE: Prior to February 18, 1994, SB 752 addressed a subject other than the Brown Act. On February 18, the prior contents were stricken and the bill became a technical cleanup bill for last year's three bills which amended the Brown Act. This document shows the sections as they were amended by SB 752 and as they will take effect on April 1, 1994. Except as otherwise noted, additions to the 1993 law or prior existing law are shown in italics, and deletions from the 1993 law or prior existing law are shown in strikeout.

ATTACHMENT "D"

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

SECTION 1. Section 1214.1 of the Penal Code is

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

~~(54952.1)~~ 54925.1. As used in this chapter, "member of a legislative body of a local agency" includes, but is not limited to, any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

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

54952.1. As used in this chapter, "member of a legislative body of a local agency" includes, but is not limited to, any Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

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

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

~~(1)~~ Any any congregation of a majority of the members of a legislative body in at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

~~(2)~~ Any

(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.

~~(b)~~

NOTE on Section 54952.1: SB 752 corrects an incorrect numbering of Sec. 54952.1. It was numbered 54925.1 in last year's bills.

NOTE on Section 54952.2: Subparagraph (4) of last year's bills is renumbered as subparagraph (5) and amended as shown, and a new subparagraph (4) is added as shown.

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

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

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

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

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

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

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

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

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

(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. ~~If~~

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

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

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

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

54953.5.—(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a *video or tape recorder player* made available by the local agency.

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

54953.6. No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its ~~proceedings~~ *open and public meetings* in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

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

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

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

- (1) ~~Otherwise comply~~ *Comply* with the 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 either any of the following:

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

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

(3) Interview a potential employee from another district.

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

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

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

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

NOTE on Section 54954.2: This section was amended on both February 18 and on March 10. The underlining shows the additions made on February 18. The printed version is from the March 10 version.

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, ~~members 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, or request staff to report back to the body at a subsequent meeting concerning any matter. ~~Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may~~, or take action to direct staff to place a matter of business on a future agenda.

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

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

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

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

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

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting ~~at which action is proposed to be taken on an item~~ shall provide an opportunity for members of the public to directly address the legislative body concerning ~~that any item prior to action on the item that has been described in the notice for the meeting before or during consideration of that item.~~

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

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

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

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

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

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION

(Subdivision (a) of Section ~~54956~~ 54956.9)

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

or

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

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

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

NOTE on Section 54954.5: The underlined language was added on February 18. Other language relating to discussion of compensation was added on February 18 and deleted on March 10, so it is not shown.

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

54956. A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. The notice shall be delivered personally or by mail and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted *or discussed*. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. ~~Notice shall be required pursuant to this 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.

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

54956.8. Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to ~~give instructions grant authority~~ to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

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

For the purpose of this section, the negotiator may be a member of the legislative body of the local agency.

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

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

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

54956.9. Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

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

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

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

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

(b) (1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

~~For~~

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

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

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

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

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

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

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

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

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

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

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

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment,

evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

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

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

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

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

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

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

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

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

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

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

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

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

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

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

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

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

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

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

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

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are *disclosable* public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available pursuant to Sections 6253 and 6256 upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6257.

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

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

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily-provided scope of representation. Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives. Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

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

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

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

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

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

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

54959. Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, ~~with wrongful intent~~ and where the member intends to deprive the public of information to which ~~it~~ the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

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

54960. (a) The district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine ~~the validity under the laws of this state or of the United States~~ of whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members *is valid or invalid under the laws of this state or of the United States*, or to compel the legislative body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency which has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording.

(ii) An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

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

54960.1. (a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

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

The

(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. ~~Within~~

(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. ~~If~~

(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. ~~Within~~

(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 ~~Sections~~ Section 54953, 54954.2, 54954.5, 54954.6, and or 54956 shall not be determined to be null and void if any of the following conditions exist: 14

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

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

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

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

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

~~(d)~~

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

~~(e)~~

(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 section.

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

54961. (a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

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

54962. Except as expressly authorized by this chapter, or by Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to ~~hospital districts~~ hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

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

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

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