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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-21

January 20, 1994

*To:* Board of Directors (Legal and Claims Committee--Information)  
(Special Committee on Legislation--Information)

*From:* General Counsel

*Subject:* Ralph M. Brown Act Requirements for 1994

**Report**

The Ralph M. Brown Act (Act), Government Code §§ 54950 et seq.,<sup>1</sup> 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. The amendments do not go into effect until April 1, 1994. Since the changes to the Brown Act will have significant impacts on 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 changes. In order to understand the changes, Attachment A is provided and summarizes the current and new provisions of the law.

The parties involved in negotiating and drafting the amendments have agreed to a "three-year truce" which restricts substantive changes and limits additional proposed Brown Act legislation to technical or consensus legislation.

However, at the close of the last session, it was recognized that a trailer bill might be needed to correct unintentional inconsistencies between the bills. Senator Kopp, one of the original authors of the bill, plans to amend SB 752 which will then serve as the legislative vehicle for the Brown Act trailer bill. Your Board will be apprised of the trailer legislation when information becomes available.

The most significant changes include:

- Definition of legislative body. The existing definitions of "legislative body" have been consolidated. Standing

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<sup>1</sup> All further Section references are to the Government Code unless otherwise stated.

committees, irrespective of their composition, which have a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action of the legislative body will be subject to the Act. Advisory committees, comprised solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies. Formal board action which results in the creation of commissions or committees, whether permanent or temporary, decision-making or advisory will require application of the Act. Furthermore, legislative bodies now include the governing board of certain private corporations that are created by local agencies to carry out their public functions or receive funds from a local agency and the membership of whose governing body includes an appointed member of the legislative body of the local agency.

- Definition of meeting. For the first time, a "meeting" is now defined in the Act. Generally, a meeting is defined to include a congregation of a majority of the members of a legislative body to conduct public, business, either physically, electronically or through personnel intermediaries. It generally excepts from the definition individual contacts or conversations between a board member and any other person, attendance at conferences and attendance at ceremonial occasions. While a board member may communicate with "any other person," seriatim contacts with other board members for the purpose of official business should be avoided.
- Location of Meetings. The amendments restrict the location of meetings to within the boundaries of the agency, with specified exceptions, which include inspection of a facility, participation in multi-agency meetings, meetings with state or federal officials, and meetings with the agency's legal counsel.
- Agenda Descriptions. Agenda descriptions for regular meetings will now require greater specificity and must include items to be discussed in closed session. The Act provides suggested agenda descriptions for closed session matters, which, if followed, should protect the agency from violation of the agenda description requirement. The existing limitation on the consideration of off-agenda items has been amplified to prohibit discussion as well as action; however, an exception is made for responses by members of the legislative body to statements or questions from the public and for direction to staff to report back on a matter.

- Conferring with Legal Counsel. The Act continues to allow closed sessions for the purpose of conferring with legal counsel when, on the advice of counsel, based on existing facts and circumstances there is significant exposure to litigation. The legislation adds a definition of "existing facts and circumstances" limiting this exception to one of five possible situations covering threats of litigation and potential litigation. The memorandum requirement has been deleted.
- Privileged Written Communications. The application of the closed session requirements to privileged written communications, an issue in recent litigation, has been specifically addressed with an exclusion which clarifies that the question of whether such documents are subject to disclosure is to be determined under the Public Records Act.
- Public Report of Closed Session Action and Vote. New language specifically delineates when a closed session action, **including each members'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.
- Written Materials. Written material distributed in connection with a matter subject to consideration at a public meeting must be made available for public inspection without delay, at the meeting in the case of material provided by the agency or a member of the legislative body, and after the meeting if provided by another person.
- Penalty for Unlawful Meeting. Current law makes it a misdemeanor to violate the Act "with knowledge" that the action is a violation. This Section changes the knowledge requirement to "wrongful intent to deprive the public of information to which it is entitled."
- Invalidating Local Agency's Decisions. Statute of Limitations. Current law allows individuals to sue to invalidate certain actions taken in violation of the Act. This Section now authorizes the District Attorney to bring similar actions. It additionally lengthens from 30 to 90 days the time period in which a lawsuit must be brought to invalidate an action taken outside an open meeting. Challenges to action taken in open meetings must still be brought in 30 days. The Section also precludes anyone who had actual notice of an item on the

agenda of a meeting from suing to invalidate an action by the local agency, even if the notice did not comply with all legal notice requirements.

**Board Committee Assignments**

This letter is referred for information to:

The Legal and Claims Committee because of its authority concerning legislation dealing with public agencies pursuant to Administrative Code Section 2462(f); and

The Special Committee on Legislation because of its authority over legislation concerning Metropolitan, pursuant to Administrative Code Section 2582(a) and (b).

**Recommendation**

For information only.

  
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Attachment

**ATTACHMENT A**

**RALPH M. BROWN ACT  
Government Code Sections 54950-54962**

**1.  
INTENT OF THE BROWN ACT**

Section 54950 provides that it is the intent of the law that actions of local public agencies be taken openly and their deliberations be conducted openly. This intent and this section have not been modified.

**2.  
LOCAL AGENCIES COVERED BY  
THE BROWN ACT**

Section 54951 provides that the "local agencies" covered by the Act include a general law or chartered county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency, or other local public agency. This includes community college districts and joint powers agencies. This section has not been modified.

Two additional sections defining "local agency," sections 54951.1 and 54951.7 are repealed as of April 1, 1994. These sections provide that "local agency" includes all private nonprofit organizations that receive public money to be expended for public purposes pursuant to the federal Economic Opportunity Act of 1964, and any nonprofit corporations created by one or more local agencies, to acquire, construct, reconstruct, maintain or operate any public work project.

**3.  
WHAT LEGISLATIVE BODIES ARE  
COVERED BY THE ACT?**

**CURRENT LAW**

Section 54952 defines "legislative body" as any commission, committee, or any board or commission which is supported in whole or in part by funds provided by that agency.

Section 54952.2 includes any board, commission, committee, or similar multi-member body which exercises any authority of a legislative body delegated to it by a legislative body.

Section 54952.3 further defines "legislative body" as including any advisory commission, advisory committee or advisory body of a local

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agency created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body. This section also provides that if an advisory committee elects to hold regular meetings, it shall provide bylaws or other means for the time and place for holding such regular meetings. No other notice of regular meetings is required.

Section 54952.5 also adds to the definition of "legislative body" planning commissions, library boards, recreation commissions, or commissions of a local agency.

Each of these sections defining "Legislative Body" (54952, 54952.2, 54952.3, and 54952.5 is repealed on April 1, 1994.

AMENDED LAW

Section 54952 redefines "legislative body" as:

- The governing body of a local agency or other local body created by state or federal statute;
- A commission, committee, board or other body of a local agency, whether permanent or temporary, decision-making or advisory, by any formal action of a legislative body;
- Advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or by any formal action of a legislative body are legislative bodies;
- A board, commission, committee, or other multi-member body that governs a private corporation or entity that either:
  - 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 or entity; or
  - 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 by the legislative body of the local agency.

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### HOW HAS THE AMENDED LAW IMPACTED THE COVERAGE OF THE BROWN ACT?

The repeal of current Sections 54952, 54952.2, 54952.3 and 54952.5 and the newly added Section 54952 has not significantly changed the coverage of the Brown Act. Please be aware of the following:

- On April 1, 1994, the Brown Act no longer applies to an advisory commission, committee or body appointed by formal action of a member of the legislative body.
- The amended Act provides that advisory committees, composed solely of members of the legislative body which are less than a quorum of the body are not legislative bodies. Although this is an amendment to the Act, the current Act has been so interpreted. Thus, this change makes the Act consistent with court interpretation of the Act.
- The amended Act applies to commissions, committees or boards which are permanent or temporary. This, too, is a change to the Act, but is consistent with interpretation of the current Act.

#### 4.

#### NEW SECTION ADDING TO DEFINITION OF "MEMBER OF A LEGISLATIVE BODY"

Nowhere in the Act is the term "member of a legislative body" defined. However, Section 54959 makes it a misdemeanor for a "member of a legislative body" to attend a meeting where a violation occurs with knowledge of the fact that the meeting violates the Act. The amendments to the Act add Section 54952.1 to provide an additional meaning to the term "member of a legislative body."

Section 54952.1 defines "member of a legislative body of a local agency" to include any person elected to serve as a member of the body and who has not yet assumed the duties of office. That person must conform his or her conduct to the requirements of the Act and shall be treated for purposes of enforcement of the Act as if he or she has already assumed office.

#### 5.

#### NEW SECTION ADDED DEFINING THE TERM "MEETING"

Even though the Act proscribes rules for open meetings, it has never defined the term "meeting." New section 54952.2 defines the term "meeting."

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Section 54952.2 defines "meeting" as any congregation of a majority of the members of a legislative body in the same time and place to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the legislative body or its local agency, and any use of direct communication, personal intermediaries, or technological devices employed by a majority of the members to develop a collective concurrence as to action to be taken on an item. The following are not meetings:

- Individual contacts or conversations between a board member and any other person;
- Attendance of a majority of members of the board or council at a conference or similar gathering open to the public that involves discussion of issues of general interest to the public or to public agencies of the type represented by the board or council, provided a majority of the members do not discuss among themselves specific business within the board's or council's jurisdiction. A meeting is open to the public even if the conference organizers charge a fee for attendance;
- Attendance of a majority of the members 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 among themselves specific business within the board's or council's jurisdiction;
- Attendance of a majority of the members at a purely social or ceremonial occasion provided a majority of the members do not discuss among themselves specific business within the board's or council's jurisdiction.

The new law excepts individual contacts or conversations between a board member and "any other person." While not free from doubt, "any other person" does not include a member of the legislative body, since such an interpretation would permit seriatim meetings. Seriatim meetings violate the intent of the Brown Act according to the Attorney General and case law.

### 6.

#### "ACTION TAKEN" BY A LEGISLATIVE BODY

The Brown Act refers in various places to "action taken" by a legislative body. Section 54952.6 provides that "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

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of the members to make a positive or negative decision, or an actual vote by a majority of the members when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance. This section has not been amended.

### 7.

#### **COPIES OF THE ACT GIVEN TO MEMBERS**

Section 54952.7, provides that a legislative body may require that a copy of the Act be given to each member of the body.

This section is amended to additionally permit the legislative body to require that a copy of the Act be given to any person elected to serve as a member of the legislative body who has not yet assumed office.

### 8.

#### **MEETINGS MUST BE OPEN--VIDEO TELECONFERENCING NO SECRET BALLOTS**

Section 54953(a) provides that except as otherwise provided by the Act, all meetings must be open and public and all persons shall be permitted to attend. This section has not been amended.

Section 54953(b), which was added in 1988, and was only to remain in effect until January 1, 1994, provides that the use of video teleconferencing (audio and visual participation by the legislative body and the public attending a meeting or hearing at a video teleconference center) by a legislative body is limited to the receipt of public comment or testimony by a legislative body. In addition, if video teleconferencing is used, the body must post agendas at all video teleconference locations and must adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or public appearing before the body. The amendments, repeal the deletion of this section. Thus, this section is permanently part of the Act.

The amendments also add Section 54953(c), which prohibits a legislative body from taking action at a meeting by secret ballot, whether preliminary or final.

### 9.

#### **TESTIMONY OF MEMBERS BEFORE A GRAND JURY**

Section 54953.1 provides that the Brown Act shall not be construed to prohibit members of a legislative body from giving testimony in

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private before a grand jury, either as individuals or as a body. This section has not been amended.

### 10.

#### **CONDITIONS TO ATTENDANCE AT MEETINGS**

Section 54953.3 provides that no person shall be required to give his/her name or provide other information as a condition of attendance at a meeting. If an attendance list, register, questionnaire or other similar document is posted at the meeting or is circulated, it shall state clearly that 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. This section has not been amended.

### 11.

#### **TAPE RECORDING OF MEETINGS--CHANGES INCLUDE VIDEO**

Section 54953.5 permits any person attending a meeting to record the proceedings on a tape recorder in the absence of a reasonable finding of the legislative body that such recording constitutes, or would constitute, a disruption to the proceedings.

This Section has been amended to permit recording by both audio and videotape or a still or motion picture camera, unless the body reasonably finds that the recording cannot continue without noise, illumination, or obstruction of the view that constitutes, or would constitute, a persistent disruption to the proceedings. This amendment also provides that any tape or film record of a meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the Public Records Act, but may be erased or destroyed 30 days after the taping or recording. Any inspection shall be provided without charge.

### 12.

#### **BROADCASTING MEETINGS**

Section 54953.6 is added to provide that no legislative body shall prohibit or otherwise restrict the broadcast of its proceedings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of the view that would constitute, a persistent disruption to the proceedings.

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**13.**

**ALLOWANCE OF GREATER ACCESS THAN PROVIDED BY THE ACT**

Section 54953.7 permits a legislative body to impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards of the Act. The section has not been amended.

**14.**

**TIME AND PLACE OF MEETINGS**

Section 54954 has been significantly amended.

**CURRENT LAW**

Section 54954 currently provides that a local agency must provide the time for holding regular meetings and that except as provided elsewhere in the Act, meetings need not be held within the boundaries of the territory of the agency. If a regular meeting falls on a holiday, the meeting shall be held on the next business day, and if an emergency exists which makes the regular meeting place unsafe, the presiding officer may designate another site for the duration of the emergency.

**AMENDED LAW**

The amended Section 54954 provides great detail as to when and where a meeting may take place:

First, it retains the provision that the legislative body of a local agency shall provide, by ordinance, resolution, by-laws, or by whatever other rule is required for the conduct of business by that body, the time for holding regular meetings.

Second, it provides that regular meetings must be held within the agency territory except to do any of the following:

- When necessary to comply with state law, federal law or court order;
- To inspect real or personal property which cannot be conveniently brought within the boundaries of the agency's territory;
- To participate in meetings or discussions of multi-agency significance that are outside the agency's territory. Any

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such meeting or discussion must take place within the jurisdiction of one of the participating agencies and be noticed by all participating agencies;

- To meet in the closest meeting facility if the agency has no facility within its territory over which it exercises jurisdiction, or at the principal office of the agency if located outside the agency's territory;
- To meet 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 agency and over which the federal or state officials have jurisdiction;
- To meet in or nearby a facility owned by the agency, where the meeting is limited to discussion of items directly related to the facility; and
- To visit the office of the local agency's legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.

Third, meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided under the exceptions above.

Fourth, if, by reason of fire, flood, earthquake, or other emergency, it is 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 in a notice to the local media that have requested notice by the most rapid means of communication available at the time.

Section 54954 also prescribes meeting requirements for school boards. Since these matters do not affect Metropolitan, discussion has been omitted.

### 15.

#### MAILED NOTICE OF MEETINGS

Section 54954.1 provides that mailed notice of every regular or special meeting shall be sent by the legislative body at least one week prior to the date of the meeting to any person who has filed a request for that notice. However, if a special meeting is called less than seven days before the time set for the meeting, the body shall give whatever notice is practical. Any request for notice is

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valid for one year unless a renewal request is filed. Renewal requests must be filed within 90 days of January 1. The agency may establish a reasonable annual fee to send the notice. This section has not been amended.

### 16. AGENDA FOR REGULAR MEETINGS

#### CURRENT LAW

Section 54954.2 provides that at least 72 hours before a regular meeting, the legislative body must post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. The agenda must specify the time and location of the regular meeting and be posted in a location that is freely accessible to members of the public.

In addition, except for the following exceptions, no action may be taken on any item not appearing on the posted agenda:

- A majority vote of the legislative body that an emergency situation exists;
- A two-thirds majority vote of the members, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that the need to take action arose subsequent to the agenda being posted; and
- The item was posted for a prior meeting 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.

#### AMENDED LAW

Section 54954.2 is amended as follows:

First, the brief general description of each item of business to be transacted or discussed at the meeting, which is contained in the agenda must also include items to be discussed in closed session.

Second, the brief general description of an item generally need not exceed 20 words.

Third, not only must no action be taken on any item if not posted on the agenda, but no discussion may take place on any item not appearing on the posted agenda, except that members may briefly

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respond to statements made or questions posed by persons exercising their public testimony rights. In addition, on their own initiative, or in response to questions posed by the public, members may ask a question for clarification, 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 or the body itself, may direct staff to place a matter of business on a future agenda.

Fourth, the second exception (above) to the no action or discussion on items not posted, is amended to provide that if a two-thirds majority vote of the members, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that the need to take immediate action came to the attention of the local agency (not just the board's) attention, subsequent to the agenda being posted.

Fifth, prior to utilizing any of the three exceptions, the legislative body must publicly identify the item it wishes to discuss or take action on.

### 17. PUBLIC OPPORTUNITY TO ADDRESS THE LEGISLATIVE BODY AT REGULAR (AND NOW SPECIAL) MEETINGS

#### CURRENT LAW

Section 54954.3 provides that every agenda for regular meetings must 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 consideration of the item, that is within the subject matter jurisdiction of the body.

However, in the case of a city council or county board of supervisors, the agenda need not provide an opportunity for members of the public to address the council or board on an item that has already been considered by committee, composed exclusively of members of the council or board, at a public meeting where 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.

In addition, the legislative body may adopt reasonable regulations to ensure that the above is carried out, including, but not limited to regulations restricting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

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AMENDED LAW

Section 54954.3 has been amended as follows:

First, now all agencies subject to the Act, not just city councils and boards of supervisors, need not provide an opportunity for persons to address the legislative body on any item that has already been considered by a committee, composed exclusively of members, at a public meeting where 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.

Second, 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 item prior to action on the item.

Third, a legislative body 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.

**18.**

**CLOSED SESSION DESCRIPTIONS**

As mentioned above under paragraph 16, the agenda must now also include items to be discussed in closed session. Section 54954.5 has been added to provide a format for describing closed session items. No legislative body or elected official shall be in violation of Section 54954.2 (see paragraph 16 above) 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 format. The ability of a legislative body to go into closed session is limited by exceptions provided in the Act. These exceptions will be discussed in more detail in paragraphs 24 to 28 below.

(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

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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 - 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 Section 54956.9(b): (Specify number of potential cases); Initiation of litigation pursuant to Section 54956.9(c): (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); 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); DISCIPLINE/DISMISSAL/RELEASE - (No additional information is required in connection with a closed session to consider discipline, dismissal, or release);

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6: CONFERENCE WITH LABOR NEGOTIATOR - Agency negotiator: (Specify name); EMPLOYEE ORGANIZATION: (Specify name of organization representing employee(s)); or Unrepresented employee(s): (Specify position title(s) of subject unrepresented employee(s));

(g) With respect to closed sessions called pursuant to Section 54957.8: CASE REVIEW/PLANNING;

(h) With respect to every item of business discussed in closed session pursuant to Section 54962 and 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

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privileges, report of medical audit committee, or report of quality assurance committee).

### 19.

#### TAX ASSESSMENTS

In 1992, Section 54954.6 was added to the Act to require that the legislative body of any city, county or special district, before adopting any new or increased general tax or any new or increased assessment, must conduct at least one public meeting, with 45 days' notice, regarding the proposed new or increased general tax or new or increased public assessment in addition to the noticed public meeting at which the legislative body proposed to enact or increase the general tax or assessment. The notice must be mailed at least 45 days prior to the hearing date and must include additional information relating to the assessment and protests of the assessment. Section 54954.6 also permits a local agency to recover the costs of the hearing and notice from the proceeds of the tax or assessment. This section was not amended this year.

### 20.

#### ADJOURNMENT OF MEETINGS

Section 54955 provides that a legislative body may adjourn any meeting or adjourned meeting to a time and place specified in the order of adjournment. If all members are absent from a regular or regular adjourned meeting, the clerk or secretary may declare the meeting adjourned to a stated time and place and give notice to each of the members. A copy of the notice of adjournment must be conspicuously posted or near the door of the place where the meeting was held within 24 hours of the adjournment 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. This section has not been amended.

### 21.

#### CONTINUANCE OF HEARINGS

Section 54955.1 provides that any hearing being held, or notice or order to be held at any meeting may by order or notice of continuance be continued or re-continued to any subsequent meeting in the same manner and to the same extent as provided by Section 54955 for the adjournment of meetings (see paragraph 20 above). However, 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 must be posted immediately following the

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meeting at which the order or declaration of continuance was adopted or made. This section has not been amended.

**22.**

**CALLING SPECIAL MEETINGS - NOTICE**

Section 54956 provides that a special meeting may be called at any time by the presiding officer of the legislative body or by a majority of the members, by delivering personally or by mail written notice to each member and to each local newspaper of general circulation, radio or television station requesting written notice. The notice shall be delivered personally or by mail and shall be received at least 24 hours before the time of the meeting. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at these meetings. The written notice may be dispensed with as to any member who files a waiver of the notice with the clerk or secretary. 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 is required whether or not action is taken. Finally, the notice and call must be posted at least 24 hours prior to the special meeting at a location freely accessible to members of the public. This section has not been amended.

**23.**

**EMERGENCY MEETINGS IN EMERGENCY SITUATIONS**

Section 54956.5 provides that in the case of an emergency situation involving matters upon which prompt action is necessary, a legislative body may hold an emergency meeting without complying with either the 24-hour notice and/or posting requirements of section 54956 (see paragraph 22 above). An emergency situation means:

- Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members; and
- Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members.

Each local newspaper of general circulation, radio or television station requesting written notice of special meetings must be notified by the presiding officer of the legislative body one hour prior to the emergency meeting by telephone. This must be done by telephone, and all telephone numbers listed in the request for

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notice must be called. If such notice cannot be made, the notice requirement is waived. The legislative body must then notify those newspapers, radio and television stations of the facts of the holding of the emergency meeting and action taken at the meeting as soon as possible.

No portion of an emergency meeting may take place in closed session.

The minutes of an emergency meeting, a list of persons notified or who the body attempted to notify, a copy of the roll-call vote, and action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

This section has not been amended.

**24.**  
**CLOSED SESSIONS - LICENSE**  
**APPLICATIONS - REHABILITATED**  
**CRIMINALS**

Section 54956.7 permits closed sessions for the purposes of license applications and renewals thereof. Since this section is not relevant to Metropolitan and has not been amended, discussion has been omitted.

**25.**  
**CLOSED SESSIONS -**  
**REAL PROPERTY TRANSACTIONS**

Section 54956.8 provides that a legislative body 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 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 which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

This section has not been amended.

26.

**CLOSED SESSIONS--PENDING LITIGATION**

CURRENT LAW

Section 54956.9 provides that a legislative body, based on advice of its legal counsel, may hold 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.

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

Litigation is considered pending when any of the following circumstances exist:

- litigation to which the local agency is a party, has been initiated formally;
- a point has been reached where, in the legislative body's opinion on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation;
- based on existing facts and circumstances, the legislative body is meeting only to decide whether a closed session is authorized; or
- based on existing facts and circumstances, the legislative body has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant this section, the legislative body must state publicly under which of the four circumstances it is meeting in closed session. If the session is closed because the agency is a party to formally initiated litigation, the body shall 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. This section also requires the legal counsel of the legislative body to prepare and submit to the body a memorandum stating the specific reasons and legal authority for the closed session. If litigation has been initiated, it must include the title of the litigation. If litigation has not been formally

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initiated, the memorandum must include the existing facts and circumstances on which it is based. The legal counsel must submit the memorandum to the body prior to the closed session if possible, and in any case no later than one week after the closed session. The memo is exempt from disclosure pursuant to Section 6254.1 of the Public Records Act.

### AMENDED LAW

The amendments make several changes to Section 54956.9.

First, "litigation" includes any adjudicatory proceedings; including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

Second, as mentioned above, there are three provisions which provide that based on existing facts and circumstances, a legislative body may go into closed session to discuss pending litigation. For purposes of this section, "existing facts and circumstances" shall consist only of one of the following:

- Facts and circumstances that might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed;
- 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;
- 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;
- A statement made by a person in an open and public meeting threatening litigation made on a specific matter within the responsibility of the legislative body;
- A statement threatening litigation made by a person outside an open and public meeting made on a specific matter within the responsibility of the local agency so long as the official or employee of the legislative body receiving knowledge of the threat makes a contemporaneous or other record of the

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statement prior to the meeting which record shall be available for public inspection. 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 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; or

- 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.

Third, 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. Thus, now, the basis for the closed session may simply be stated on the agenda, rather than being stated in open session. Either method is permissible.

Fourth, a local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee 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.

Fifth, the memorandum requirement has been repealed.

**27.**

**CLOSED SESSIONS - INSURANCE POOLING; TORT LIABILITY LOSSES;  
PUBLIC LIABILITY LOSSES; WORKERS' COMPENSATION LIABILITY**

Section 54956.95 provides that a joint powers agency formed for purposes of insurance pooling or a local agency member of a joint powers agency, may hold a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency.

This section also permits a Local Agency Self-Insurance authority or a local agency member of the authority to hold a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member. This section has not been amended.

**28.**

**CLOSED SESSIONS--INCLUDING EMPLOYEE DISCIPLINE**

**CURRENT LAW**

Section 54957 provides that a legislative body may hold a closed session 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 to consider the appointment, employment, evaluation of performance, 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 hearing. The legislative 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.

For purposes of this section, the term employee does not include any person elected to office or appointed to an office by a legislative body. However, the nonelective positions of city manager, county administrator, city attorney, county counsel or department head or similar administrative officer are considered employee positions. In addition, the non-elective positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer, or tax collector of any government district supplying services within limited boundaries are deemed employee positions.

Finally, a board, commission, committee or other body organized and operated by a private organization may hold a closed session to consider matters affecting national security, the appointment, employment, evaluation of performance, or dismissal of an employee or to hear complaints or charges brought against such employee unless such an employee requests a public hearing.

**AMENDED LAW**

First, 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. The 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.

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Second, the definition of who is an employee is repealed. A modified definition is added. It provides that for the purposes of this section, the term "employee" includes an officer or an independent contractor who functions as an officer or an employee but does 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.

Third, the provisions above regarding closed sessions for private organizations are repealed.

### 29.

#### PUBLIC REPORT OF ACTION TAKEN IN CLOSED SESSION

##### CURRENT LAW

Section 54957.1 provides that a legislative body shall publicly report at the public meeting in which the closed session is held or at its next public meeting any action taken, and any roll call vote, to appoint, employ or dismiss a public employee arising out of any closed session.

##### AMENDED LAW

This section has been significantly amended to provide:

- 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:
- Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final as specified below:
- 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;
- 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;
- Approval given to the body's legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to

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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;

- Approval given to the body's 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:
  - If the 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.
  - 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;
- Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 (insurance pooling through JPAs) 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;
- 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

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change in compensation. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the non-renewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any;

- Approval of an agreement concluding labor negotiations 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(s) approved and the other party or parties to the negotiation.
- 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 request for notice of meetings, 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 complete during normal business hours, provided that the presiding officer of the legislative body orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.
  - The documentation referred to in the above paragraph 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.
  - Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.
  - 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.

**30.**

**MINUTE BOOK RECORD OF CLOSED SESSIONS**

Section 54957.2 provides that the legislative body may, by ordinance or resolution, designate a clerk or other officer or employee who shall then attend each closed session and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book is not a public record and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of the Act is alleged to have occurred at a closed session, to a Court. Such minute book may, but need not, consist of a recording of the closed session. This section does not require that a minute book be kept.

This section has not been amended.

**31.**

**INSPECTION OF DOCUMENTS DISTRIBUTED AT PUBLIC MEETINGS**

**CURRENT LAW**

Section 54957.5 provides agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a legislative body by a member, officer, employed or agent of such body for discussion or consideration at a public meeting of the body, are public records under the California Public Records Act as soon as distributed and shall be made available. However, this section shall not include any writing exempt from public disclosure under the Public Records Act.

Writings which are public records and which are distributed prior to the commencement of a public meeting shall be made available for public inspection prior to commencement of the meeting. If made available during a meeting but prior to their discussion, the writings must be made available prior to commencement of, and during, their discussion. Finally, if writings are distributed during their discussion, they should be made available for public inspection immediately or as soon thereafter as practicable.

Nothing in this section 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.

**AMENDED LAW**

Most of the changes to this section are technical changes which do not change the agency's obligations under the Act. However, you

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should be aware of the following:

First, this section is now triggered when documents are distributed to all, or a majority of all, of the members of a legislative body by any person in connection with a matter.

Second, writings which are public 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.

Third, 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.

**32.**

**CLOSED SESSIONS--SALARIES OR FRINGE BENEFITS**

CURRENT LAW

Section 54957.6 provides that a legislative body 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. Such closed sessions shall be for the purpose of reviewing its position and instructing the local agency's designated representatives. Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. A legislative body may also meet with a state conciliator who has intervened in the proceedings.

A 1985 Amendment provided that a legislative body subject to the Meyers-Milias-Brown Act may hold closed sessions with its designated representatives on any mandatory subjects within the scope of bargaining -- not just salaries and fringe benefits.

AMENDED LAW

There are two amendments to this section.

First, the closed session authorized by this section may also take place for an agency to discuss any other matters related to their represented employees within the statutorily-provided scope of representation. The provision above regarding the Meyers-Milias-Brown Act is repealed, because all agencies subject to the Act may discuss scope of representation issues in closed session.

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Second, 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.

**33.**

**CLOSED SESSION--STATEMENT OF REASONS**

**CURRENT LAW**

Section 54957.7 provides that prior to or after holding any closed session, the legislative body shall state the general reason(s) for the closed session, and may cite the statutory authority 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 must be made as part of the notice provided for the meeting.

**AMENDED LAW**

Some new obligations are added by the Amendment.

Prior to holding any closed session, the legislative body shall disclose, in an open meeting the item or items to be discussed in the closed session. The disclosure may take the form of 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, 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. The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

**34.**

**CLOSED SESSIONS -  
MULTI-JURISDICTIONAL DRUG LAW  
ENFORCEMENT AGENCY**

Section 54957.8 permits closed sessions for the purposes of drug enforcement matters. Since this section is not relevant to Metropolitan and has not been amended, discussion has been omitted.

**35.**

**DISORDERLY CONDUCT OF  
GENERAL PUBLIC DURING MEETING**

Section 54957.9 provides that 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 infeasible 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 the 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 pursuant to this section. The legislative body may establish a procedure for re-admitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

This section has not been amended.

**36.**

**PENALTY FOR UNLAWFUL MEETING**

**CURRENT LAW**

Section 54959 provides that each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of the Act with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor. This section has been amended as follows:

**AMENDED LAW**

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 is guilty of a misdemeanor.

**37.**

**ACTION TO PREVENT VIOLATIONS OR  
DETERMINE APPLICABILITY OF THE ACT**

**CURRENT LAW**

Section 54960 provides that any interested person may commence an action for mandamus, injunction or declaratory relief for the

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purpose of stopping or preventing violations of the Brown Act by members of a legislative body or to determine the applicability of the Act to actions or threatened future action of the legislative body.

### AMENDED LAW

This section has been significantly amended to provide additional obligations.

The district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief to stop or prevent violations or threatened violations of the Act by members of a legislative body or to determine the applicability of the Act 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 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.

A court, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, (the closed session provisions of the Act) may 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.

Each recording must 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. The tapes will be subject to the following discovery procedures:

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 the Act 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 a court with notice to the governmental agency which has custody and control of the tape recording.

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

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

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governmental agency which has custody and control of the recording.

An affidavit which contains specific facts indicating that a violation of the Act occurred in the closed session.

If the court finds that there is good cause to believe that a violation has occurred, the court may review the recording of that portion of the closed session alleged to have violated the Act.

If, following the 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 the Act, the court shall, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

Nothing in this section shall permit discovery of communications which are protected by the attorney/client privilege.

**38.**

**UNLAWFUL ACTION BY  
LEGISLATIVE BODY - PREREQUISITES  
FOR COURT ACTION**

**CURRENT LAW**

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 in violation of Section 54953, 54954.2, 54954.6, or 54956 is null and void under this section. A legislative body may cure or correct an action challenged pursuant to this section.

Prior to any action being commenced, the interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation. The written demand shall be made within 30 days from the date the action was taken. Within 30 days of receipt of the demand, the legislative body must 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 the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or

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correct the challenged action, and the 15-day period to commence the action shall commence to run the day after the 30-day period to cure or correct expires. Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, the expiration of the 30-day period to cure or correct, or not cure or correct, whichever is earlier, the demanding party shall be required to commence the action or thereafter be barred from commencing the action.

An action taken that is alleged to have been taken in violation of Sections 54953, 54954.2, 54954.6, and 54956 shall not be determined to be null and void if any of the following conditions exist:

- The action taken was in substantial compliance with these sections;
- 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;
- The action taken gave rise to a contractual obligation, including a contract let by competitive bid, upon which a party has, in good faith detrimentally relied; and
- The action taken was in connection with the collection of any tax.

During any action seeking a judicial determination, 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, 54954.6 or 54956 has been cured or corrected by a subsequent action of the legislative body, the action filed shall be dismissed with prejudice.

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 the Act.

### AMENDED LAW

There are several amendments to Section 54960.1.

First, now the district attorney or any interested person may commence an action to challenge a violation.

Second, Section 54954.5, the newly added section requiring closed session descriptions (see paragraph 18 above) has been added to the sections of which a violation may be challenged pursuant to this section.

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Third, the time to file the written demand required by the person challenging the action has been increased from 30 days to 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 (the agenda requirement, see paragraph 16, above) in which case the written demand must still be filed within 30 days.

Fourth, an action will not be determined to be null and void if 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.

Fifth, an additional exception has been provided, which, if taken, will not be determined to be null and void: Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with Section 54954.2(a) (the agenda requirement), Section 54956, (calling special meetings) Section 54956.5 (calling emergency meetings) 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.

### 39.

#### **COSTS AND ATTORNEY FEES**

Section 54960.5 provides that a court may award court costs and reasonable attorney fees to the plaintiff in any action brought pursuant to 54960 and 54960.1 where it is found that the legislative body violated the Act. The costs and fees must be paid by the local agency and shall not become a personal liability of any public officer or employee of the agency.

A court may award court costs and attorney fees to a defendant in any action 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.

This section has not been amended.

**40.**

**USE OF FACILITY ALLOWING DISCRIMINATION**

**CURRENT LAW**

Section 54961 provides that no local agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any persons on the basis of race, religious, creed, color, national origin, ancestry, or sex.

**AMENDED LAW**

This section has been amended to now apply to a legislative body of a local agency. In addition, this section now applies to a facility that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase.

Finally, no notice, agenda, announcement, or report required under the Act need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

**41.**

**CLOSED SESSION PROHIBITED**

The last section of the Brown Act, Section 54962, provides that except as expressly authorized by the exceptions to the Act, or by certain sections related to hospital districts, no closed session may be held by any legislative body of any local agency.

This section also has been amended to address issues related to the Education Code and school districts. Since this provision do not impact Metropolitan, discussion has been omitted.

**42.**

**AGENDA FOR SCHOOL DISTRICTS**

**CURRENT LAW**

The bills amending the Brown Act also amended a provision of the Education Code relating to agenda requirements for school districts. Since this section does not impact Metropolitan, discussion has been omitted.