

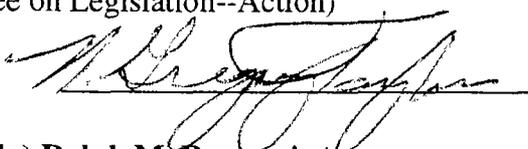


MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Revised
9-20

March 10, 1997

To: Board of Directors (Committee on Legislation--Action)
From: General Counsel 
Subject: Senate Bill No. 138 (Kopp/Ayala) Ralph M. Brown Act
Open Meeting Requirements

RECOMMENDATION(S)

It is recommended that Metropolitan cooperate with the Association of California Water Agencies (ACWA) in ACWA's lead role in the analysis and drafting of Senate Bill No. 138 consistent with Metropolitan's concerns as stated in proposed language in Exhibit B.

EXECUTIVE SUMMARY

This bill would provide that the Ralph M. Brown Act would not apply to the attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of the parent body, provided that non-standing committee members do not participate in the proceedings.¹ *The original letter for Item 9-20 dated February 18, 1997, was presented to the Legal and Claims Committee on March 10, 1997. This letter has been revised to reflect comments received from the Legal and Claims Committee with changes noted in "italics."*

PURPOSE/BACKGROUND

The Ralph M. Brown Act (Act) applies to the meetings of multi-member legislative bodies. Under existing law, ad hoc and advisory committees of less than a quorum of the parent legislative body are exempt from the definition of "legislative body." However, a standing committee, no matter what its composition, is included if it has "continuing subject matter jurisdiction, or a meeting fixed by charter, ordinance, resolution, or formal action."

¹ The bill would also revise the definition of "legislative body" to include a corporation or entity that, while not created by the legislative body, is nevertheless "predominately fund" by the legislative body. The bill would also allow a public employee to have a complaint or charge heard in open or closed session. If a matter is heard in open session, the charges will be heard and deliberated in open session.

The applicability of the Act to ad hoc and advisory committee meetings has been addressed in an opinion recently published by the California Attorney General (70 Ops. Cal. Atty. Gen. 69 [June 10, 1996]). In this opinion, the Attorney General opined that the fourth member of a seven-member public water district board could not attend, as a member of the public, an open and noticed meeting of less than a quorum advisory committee, without violating the notice, agenda, and public participation requirements of the Act applicable to the parent body's meetings. The underlying rationale focused on the public's right to participate meaningfully in the parent body's deliberative process. Because of frequent overlapping subject matter jurisdiction between a committee and its parent body, the public could not be assured that an item would be appropriately noticed on the parent body's future agenda to maximize full public participation. Furthermore, even if an item were properly noticed on the agendas of the committee and parent body, an item could be resolved at the subcommittee level by a quorum of the full membership and thereby be "rubber-stamped" at the parent body's subsequent meeting.

The Attorney General's opinions are not binding precedent, but they are accorded substantial weight by the courts (*State of California ex. rel. State Lands Comm. v. Superior Court* (1995) 11 Cal.4th 50). Because of the potential precedential effect of the attorney general's opinion and as a clean-up to the 1994 Act Amendments, Senators Kopp and Ayala sponsored Senate Bill No. 138 (Bill). This bill would provide, in pertinent part, that the Act would not apply to the attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of the parent body, provided that such non-standing committee members do not participate in the proceedings.

Because Metropolitan has been consistently sensitive to the requirements of the Act, Metropolitan staff is monitoring the impact of the Attorney General's opinion on the meeting requirements of other public agencies. Presently, Metropolitan's standing, ad hoc, advisory committee meetings are noticed to the public. All directors have the right to attend any committee meeting (MWD Admin. Code § 2307). The proposed bill would allow Metropolitan directors to be spectators at committee meetings without the risk of creating a quorum for purposes of a full meeting of the Board of Directors. Directors, however, would be prohibited from commenting at the meeting.

While the legislation is under review, members of the Legal and Claims Committee suggested investigating the practices of other agencies in response to the Attorney General's opinion. For instance, some agencies notice their subcommittee meetings as joint meetings with their parent legislative body. Other members of the Legal and Claims Committee expressed their desire to participate in meetings where they are not committee members and advocated an amendment to ensure this continued practice. Until final legislative resolution, Metropolitan will modify its subcommittee agendas to reflect the joint meetings with its board of directors and the affected subcommittees.

The full impact of the bill on other public agencies is still under review. *On February 28, 1997, (subsequent to the preparation of the original board letter for this matter) representatives of the State Legislative Committee of the Association of California Water Agencies (ACWA) met to discuss the ramifications on the bill on their respective agencies. ACWA will recommend taking a "support if amended" position and seek to allow participation by an observing member within the confines of the noticed agenda of the affected committee.* The bill has been assigned to the Senate Local Government Committee, but no hearing date has been scheduled.

It is recommended that Metropolitan work with ACWA in its lead role for the analysis and drafting of Senate Bill No. 138. Metropolitan will propose to ACWA language for a legislative amendment reflective of Metropolitan's concerns. The proposed language is attached hereto as Exhibit B.

CEQA COMPLIANCE/ENVIRONMENTAL DOCUMENTATION

The proposed action is exempt from the provisions of the California Environmental Quality Act because it does not have the potential to cause a significant effect on the environment.

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