



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-20

February 18, 1997

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

From: General Counsel 

Subject: Senate Bill No. 138 (Kopp/Ayala) Ralph M. Brown Act  
Open Meeting Requirements

**RECOMMENDATION(S)**

For information only.

**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.<sup>1</sup>

**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."

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

<sup>1</sup> 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.

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.

The full impact of the bill on other public agencies is still under review. ACWA and CMUA have a "watch" position on the bill. The bill has been assigned to the Senate Local Government Committee, but no hearing date has been scheduled.

#### **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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Introduced by Senators Kopp and Ayala

January 13, 1997

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An act to amend Sections 54952, 54952.2, and 54957 of the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 138, as introduced, Kopp. Open meetings: local agencies.

The Ralph M. Brown Act generally requires that the meetings of legislative bodies of local agencies be conducted openly. The act defines legislative body as including, among other things, a board, commission, committee, or other multimember body that governs a private corporation or entity that is created by the elected legislative body to exercise delegated authority.

This bill would revise that definition to include such a board, commission, committee, or other multimember body that is created or predominantly funded by the elected legislative body to exercise delegated authority.

The act defines "meeting" for purposes of the act and expressly excludes certain activities from the application of the act.

This bill would provide that the act does 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 that body, provided that the attending members of the legislative body who are not members of the standing committee do not participate in the proceedings.

The act authorizes the legislative body of a local agency to hold closed sessions for specified purposes including hearing of complaints or charges brought against a public employee by another person or employee, subject to written notice to the employee of his or her right to have the complaints or charges heard in an open session rather than a closed session.

This bill would instead authorize a closed session to hear complaints or charges brought against a public employee subject to written notice to the employee of his or her right to have the complaints or charges heard and deliberated in an open session rather than a closed session.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 54952 of the Government Code  
2 is amended to read:

3 54952. As used in this chapter, "legislative body"  
4 means:

5 (a) The governing body of a local agency or any other  
6 local body created by state or federal statute.

7 (b) A commission, committee, board, or other body of  
8 a local agency, whether permanent or temporary,  
9 decisionmaking or advisory, created by charter,  
10 ordinance, resolution, or formal action of a legislative  
11 body. However, advisory committees, composed solely of  
12 the members of the legislative body which are less than  
13 a quorum of the legislative body are not legislative bodies,  
14 except that standing committees of a legislative body,  
15 irrespective of their composition, which have a  
16 continuing subject matter jurisdiction, or a meeting  
17 schedule fixed by charter, ordinance, resolution, or  
18 formal action of a legislative body are legislative bodies  
19 for purposes of this chapter.

20 (c) (1) A board, commission, committee, or other  
21 multimember body that governs a private corporation or  
22 entity that either:

23 (A) Is created *or predominantly funded* by the elected  
24 legislative body in order to exercise authority that may

1 lawfully be delegated by the elected governing body to  
2 a private corporation or entity.

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

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

18 (d) The lessee of any hospital the whole or part of  
19 which is first leased pursuant to subdivision (p) of Section  
20 32121 of the Health and Safety Code after January 1, 1994,  
21 where the lessee exercises any material authority of a  
22 legislative body of a local agency delegated to it by that  
23 legislative body whether the lessee is organized and  
24 operated by the local agency or by a delegated authority.

25 SEC. 2. Section 54952.2 of the Government Code is  
26 amended to read:

27 54952.2. (a) As used in this chapter, "meeting"  
28 includes any congregation of a majority of the members  
29 of a legislative body at the same time and place to hear,  
30 discuss, or deliberate upon any item that is within the  
31 subject matter jurisdiction of the legislative body or the  
32 local agency to which it pertains.

33 (b) Except as authorized pursuant to Section 54953,  
34 any use of direct communication, personal  
35 intermediaries, or technological devices that is employed  
36 by a majority of the members of the legislative body to  
37 develop a collective concurrence as to action to be taken  
38 on an item by the members of the legislative body is  
39 prohibited.

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

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

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

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

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

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

1 (6) *The attendance of a majority of the members of a*  
2 *legislative body at an open and noticed meeting of a*  
3 *standing committee of that body, provided that the*  
4 *attending members of the legislative body who are not*  
5 *members of the standing committee do not participate in*  
6 *the proceedings.*

7 SEC. 3. Section 54957 of the Government Code is  
8 amended to read:

9 54957. Nothing contained in this chapter shall be  
10 construed to prevent the legislative body of a local agency  
11 from holding closed sessions with the Attorney General,  
12 district attorney, sheriff, or chief of police, or their  
13 respective deputies, on matters posing a threat to the  
14 security of public buildings or a threat to the public's right  
15 of access to public services or public facilities, or from  
16 holding closed sessions during a regular or special  
17 meeting to consider the appointment, employment,  
18 evaluation of performance, discipline, or dismissal of a  
19 public employee or to hear complaints or charges  
20 brought against the employee ~~by another person or~~  
21 ~~employee~~ unless the employee requests a public session.

22 As a condition to holding a closed session on ~~specific~~  
23 complaints or charges brought against an employee ~~by~~  
24 ~~another person or employee~~, the employee shall be given  
25 written notice of his or her right to have the complaints  
26 or charges heard *and deliberated* in an open session  
27 rather than a closed session, which notice shall be  
28 delivered to the employee personally or by mail at least  
29 24 hours before the time for holding the session. If notice  
30 is not given, any disciplinary or other action taken by the  
31 legislative body against the employee based on the  
32 ~~specific~~ complaints or charges in the closed session shall  
33 be null and void.

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

38 For the purposes of this section, the term "employee"  
39 shall include an officer or an independent contractor who  
40 functions as an officer or an employee but shall not

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

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

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

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

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

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

1 (6) *The attendance of a majority of the members of a*  
2 *legislative body at an open and noticed meeting of a*  
3 *standing committee of that body, provided that the*  
4 *attending members of the legislative body who are not*  
5 *members of the standing committee do not participate in*  
6 *the proceedings.*

7 SEC. 3. Section 54957 of the Government Code is  
8 amended to read:

9 54957. Nothing contained in this chapter shall be  
10 construed to prevent the legislative body of a local agency  
11 from holding closed sessions with the Attorney General,  
12 district attorney, sheriff, or chief of police, or their  
13 respective deputies, on matters posing a threat to the  
14 security of public buildings or a threat to the public's right  
15 of access to public services or public facilities, or from  
16 holding closed sessions during a regular or special  
17 meeting to consider the appointment, employment,  
18 evaluation of performance, discipline, or dismissal of a  
19 public employee or to hear complaints or charges  
20 brought against the employee ~~by another person or~~  
21 ~~employee~~ unless the employee requests a public session.

22 As a condition to holding a closed session on ~~specific~~  
23 complaints or charges brought against an employee ~~by~~  
24 ~~another person or employee~~, the employee shall be given  
25 written notice of his or her right to have the complaints  
26 or charges heard *and deliberated* in an open session  
27 rather than a closed session, which notice shall be  
28 delivered to the employee personally or by mail at least  
29 24 hours before the time for holding the session. If notice  
30 is not given, any disciplinary or other action taken by the  
31 legislative body against the employee based on the  
32 ~~specific~~ complaints or charges in the closed session shall  
33 be null and void.

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

38 For the purposes of this section, the term "employee"  
39 shall include an officer or an independent contractor who  
40 functions as an officer or an employee but shall not

1 include any elected official, member of a legislative body  
2 or other independent contractors. Nothing in this section  
3 shall limit local officials' ability to hold closed session  
4 meetings pursuant to Sections 1461, 32106, and 32155 of  
5 the Health and Safety Code or Sections 37606 and 37624.3  
6 of the Government Code. Closed sessions held pursuant  
7 to this section shall not include discussion or action on  
8 proposed compensation except for a reduction of  
9 compensation that results from the imposition of  
10 discipline.