

- **Board of Directors**
Communications and Legislation Committee

June 12, 2007 Board Meeting

9-3

Subject

Report on AB 1393, SB 343 and SB 964 – Amending the Public Records Act and Brown Act

Description

Three bills amending the California Public Records Act (“PRA”; Gov. Code § 6250 et seq.) and the Ralph M. Brown Act (“Brown Act”; Gov. Code § 54950 et seq.) are currently being considered by the California Legislature. This letter describes the pertinent provisions of these bills and their potential impacts on Metropolitan.

AB 1393 (Leno, D-San Francisco; Maze, R-Visalia) – This bill ([Attachment 1](#)) would amend the Public Records Act (“PRA”) to provide that, within specified time limits, including permitted extensions of time, a person who has had a written PRA request denied by a local public agency can request a review of this denial by the Attorney General. The Attorney General would issue a written decision within 20 days of receipt of the request unless this time period is extended for another 30 days for good cause, which includes such reasons as staff shortages or workload issues within the Attorney General’s office. The Attorney General’s decisions would be made available on the Internet and published annually. This provision would not impact existing rights of persons to seek access to the records, including court actions.

Governor Schwarzenegger vetoed a similar bill, AB 2927 (Leno), in 2006. AB 2927 required the Attorney General to review denials of PRA requests by state and local agencies. His veto message stated that the bill was unduly burdensome for the Attorney General and presented conflicts of interest because the Attorney General advises state agencies on their response to PRA requests. To remove this conflict of interest, the provisions of AB 1393 described above apply only to local agencies.

This bill also would require state agencies with Internet sites to post instructions for submitting a request for public records from the agency on its Web site.

In addition to existing remedies for failure of a local agency to produce public records, the bill adds that the court can impose a penalty on a state or local agency (not to exceed \$100 per day for each day up to a maximum of \$10,000) if the agency’s action resulted in the denial of the plaintiff’s right to copy or inspect the record or records in question, or if the court determines that the agency acted in bad faith or with reckless disregard of the agency’s PRA obligations.

California Aware, a government accountability watchdog nonprofit, is the sponsor of this measure. As of April 24, the University of California is opposed to the measure.

SB 343 (McLeod, D-San Bernardino) – This bill ([Attachment 2](#)) would amend the Brown Act to provide that, as of July 1, 2008, no action or discussion could be undertaken during a meeting on any agenda item unless all writings, as defined in the PRA, “...that relate to that item and are included in the agenda packet prepared by the local agency or its employees or agents are made available to the public no later than the date the agency posts the agenda that includes that item.” According to the Senate policy committee analysis, this bill is directed at stopping the practice of distributing documents related to agenda items, such as staff reports, just prior to the time that an agency considers the item. However, “agenda packet” is not defined in the bill or in the Brown Act, so the language of the bill is ambiguous as to whether the prohibition includes all materials that are ultimately considered by members concerning an item, or just the items that are sent to them at the time the agenda is posted. For example, references in an agenda to reports, such as environmental documents, available for viewing at an

established location and last minute reports made available at a meeting are not actually “included in the packet” sent to directors.

Nevertheless, despite the ambiguous language, the legislative intent expressed in the Senate policy committee analysis could prevail and prohibit consideration of any item unless all related materials considered by the members were made available to the public as of the date the agenda is posted, which is at least 72 hours prior to a regularly scheduled meeting. At a minimum, the legislation would probably require a local agency to list every document to be considered by the agency’s governing body for consideration of an item and to indicate where the public can view each document at the time the agenda is posted. These provisions would also prevent legislative bodies from being apprised of late-breaking information concerning an agenda item, would discourage early posting of agendas, and encourage special meetings (which are not covered by the bill) to consider matters. As of April 30, the California Association of Realtors, American Federation of State, County and Municipal Employees, and the Orange County Association of Realtors support the bill. The League of California Cities and the Nipomo Community Services District have opposed it.

SB 964 (Romero, D-Los Angeles) – The stated purpose for this bill is to overturn the 2006 opinion of the Court of Appeals in *Wolfe v. City of Fremont* (144 CA4th 533), in which the court held that a series of meetings between members of a legislative body are prohibited under the Brown Act only if the meetings result in a collective concurrence of members of the body on the issue. The bill (**Attachment 3**) provides that the process of acquiring information and discussing a matter pursuant to a series of meetings within the subject matter jurisdiction of the local agency is prohibited, regardless whether a collective concurrence on an issue is reached. The interpretation of serial meetings in the bill is consistent with the interpretation of serial meeting rules that had been promulgated by the Attorney General prior to the appellate court decision.

The bill also would prohibit a local agency, when members of a legislative body of that agency are authorized to access a writing of the body or the agency as permitted by law in the administration of their duties, from discriminating between or among any of those members as to which writing or portion of a writing is made available or when it is made available. In addition, an agency would be prohibited from charging any of its members a fee to inspect or obtain a copy of a writing they are authorized to obtain. As of May 10, the California News Publishers Association, California Broadcasters Association, California Aware, City of La Mesa, and some individual members of local agency bodies support this bill. It is opposed by the California Contract Cities Association, Association of California School Administrators, City Clerks Association, Torrance Police Officers’ Association, and numerous local public agencies including the Santa Clara Valley Water District cities of Alhambra, Arcadia, Azusa, Baldwin Park, Bellflower, Brea, Buena Park, Burbank, Costa Mesa, Diamond Bar, El Monte, Monrovia, and Palmdale, among others.

Policy

Metropolitan Water District Administrative Code Section 2100 et seq.: Procedures pertaining to board, committees and directors

Government Code Section 6250, et seq.: California Public Records Act

Government Code Section 54950, et seq.: Ralph M. Brown Act

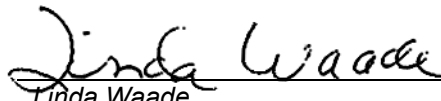
Fiscal Impact

The Attorney General opinions required pursuant to AB 1393 could reduce costs if the opinions help resolve disputes without litigation. Increased fines for violations of the PRA found by a court to have been made in bad faith or with reckless disregard of an agency’s PRA obligations could be imposed up to a maximum of \$10,000 per records request.

The deadlines for making documents in agenda packets available to the public in SB 343 could impose considerable additional costs in terms of making all documents available to the public by the date of posting the agenda or listing all items to be considered by the legislative body for items to be considered at its meeting.

The overturning of the appellate court decision in SB 964 would be in accord with current practices being followed by Metropolitan and not result in additional costs. However, implementation of the appellate court

decision could reduce costs by permitting staff to communicate information to directors about policy-related matters as long as a majority of the Board or a committee does not reach a collective concurrence regarding a matter.



Linda Waade
Deputy General Manager, External Affairs

5/25/2007
Date



Jeffrey Kightlinger
General Manager

5/25/2007
Date

Attachment 1 – AB 1393

Attachment 2 – SB 343

Attachment 3 – SB 964

BLA #5463

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1393

**Introduced by Assembly Members Leno and Maze
(Coauthor: Assembly Member Aghazarian)**

February 23, 2007

An act to amend Sections 6258 and 6259 of, and to add Sections 6253.3, 6257, and 6259.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1393, as amended, Leno. Public records.

The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure.

This bill would, as of January 1, 2009, require any state agency that publishes an Internet Web site to include on the homepage of that site specified information that is not exempt from disclosure under the act about how to contact the agency, how to request records under the act, and a form for submitting online requests for records. It would authorize any person to bring an action to enforce the duty of a state agency to post this information and would provide for penalties including monetary awards to be paid by the agency, with specified provisions to become operative on January 1, 2009.

The bill would also authorize a person to request the Attorney General to review a ~~state or~~ local agency's denial of a written request to inspect or receive a copy of a public record and would require the Attorney General to issue a written decision within 20 working days of the date

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the written request and written response or lack of response of an agency is received by the Attorney General. The bill would require the Attorney General to maintain copies of the opinions issued pursuant to these provisions, to publish the opinions annually in a special volume, and to make them available on the Internet.

This bill would require the Department of Justice to convene an advisory task force with a specified membership, to consider specified issues with respect to a statutory standard governing the posting of certain activities under the act, and to report its findings and recommendations to the Governor and the Legislature by no later than September 30, 2008.

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

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

- 1 SECTION 1. Section 6253.3 is added to the Government Code,
2 to read:
3 6253.3. Every state agency that publishes an Internet Web site
4 shall include on the homepage of that site, prominently displayed
5 without scrolling, the words "Public Records Center," which shall
6 be followed by, or shall link to, on another page, both of the
7 following:
8 (a) Under the words "Whom to Contact," the title, mailing
9 address, telephone number, and e-mail address of the public
10 information officer or other person or persons to whom requests
11 for inspection or copying of records pursuant to the California
12 Public Records Act, or informal requests for simple factual
13 information, should be directed.
14 (b) (1) Under the words "How to Request Records," the written
15 guidelines authorized or required under subdivision (a) of Section
16 6253.4, and an HTML form for submitting online requests under
17 the California Public Records Act, consisting of all of the following
18 labeled fields:
19 (A) Today's date.
20 (B) My name (optional).
21 (C) My e-mail address (optional).
22 (D) My postal address (optional).
23 (E) My telephone number (optional).
24 (F) I am interested in the following records or information:

1 (G) Where can I inspect these records?

2 (H) Send me copies of the records.

3 (I) Send me a fee estimate before copying.

4 (2) The HTML form shall be designed to send a copy of the
5 request immediately and automatically to the e-mail address listed
6 on the HTML form, if an e-mail address is provided by the person
7 submitting the form.

8 (c) This section shall become operative on January 1, 2009.

9 SEC. 2. Section 6257 is added to the Government Code, to
10 read:

11 6257. (a) (1) A person may request the Attorney General to
12 review ~~a state or~~ local agency's denial of a written request to
13 inspect or receive a copy of a public record by delivering a copy
14 of the request and the written response by the agency denying, in
15 whole or in part, the request to the office of the Attorney General
16 within 20 days of receipt of the agency's written denial. In the case
17 of the failure of an agency to provide any response under Section
18 6253 to a public records request within the time limits specified
19 by this chapter, the person may seek review by the Attorney
20 General by providing a copy of the request and the circumstances
21 under which it was sent to the agency no less than 20 days and no
22 more than 40 days after the request was delivered or mailed to the
23 agency. The Attorney General may grant relief from the 40-day
24 time limit upon a showing by the person seeking relief that he or
25 she refrained from requesting review within the 40-day time limit
26 because the person reasonably relied upon representations of the
27 agency that a response would be forthcoming.

28 (2) The person seeking review shall demonstrate by means of
29 written proof of service or other credible and reliable means that
30 a copy of his or her request for review has been delivered to the
31 denying agency. Within 20 working days of receipt of the request
32 for review that complies with the requirements of this subdivision,
33 the Attorney General shall issue a written opinion stating whether
34 the agency's response or lack of response complied with this
35 chapter.

36 (b) For good cause, the Attorney General may extend by 30
37 working days the time to issue an opinion under this section by
38 sending written notice to the complaining party and a copy to the
39 denying agency stating the reasons for the extension and the day

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1 on which a decision is expected to be issued. As used in this
2 section, “good cause” means any of the following:

3 (1) The need to obtain additional information from the agency
4 or the requester.

5 (2) The need to conduct research on issues of first impression.

6 (3) An unmanageable workload.

7 (4) Unanticipated absence of staff assigned to a particular
8 request, or similar unavoidable circumstance.

9 (c) The Attorney General may solicit additional information or
10 explanation from the denying agency, including copies of the
11 records claimed to be exempt, or a detailed explanation of the
12 content of the information in those records. The denying agency
13 may, within 10 working days from the date of receipt of the request
14 pursuant to subdivision (a), submit any additional information or
15 explanation it deems relevant. However, the records or other
16 information for which an exemption is claimed shall not be
17 provided except in response to a request by the Attorney General
18 and shall not be disclosed by the Attorney General. The Attorney
19 General shall return or destroy nondisclosable records received
20 under this subdivision upon completion of the review and shall
21 not use the records for any other purpose. The agency need not
22 provide records or information but failure to do so without adequate
23 justification under the circumstances of the case may be considered
24 in assessing the sufficiency of the agency’s written denial under
25 review.

26 ~~(d) If the Attorney General or the Department of Justice is the~~
27 ~~agency that is the subject of the public records request, the request~~
28 ~~for review under this section shall be treated as a request for~~
29 ~~reconsideration and, when possible, shall be reviewed by members~~
30 ~~of the Attorney General’s office not involved in the original~~
31 ~~decision.~~

32 (e)

33 (d) Upon completion of the opinion pursuant to this section, the
34 Attorney General shall immediately mail a copy of it to the person
35 requesting review and to the state or local agency that denied access
36 to the record in question.

37 (f)

38 (e) The Attorney General shall maintain copies of opinions
39 issued pursuant to this section at each of his or her legal offices
40 for purposes of public inspection. The Attorney General shall cause

1 to be published annually a special volume of opinions issued under
2 this section and shall make the opinions available on the Internet.
3 The Attorney General may charge a fee for the sale of the volumes
4 not to exceed the reasonable cost of publication and distribution.

5 ~~(g) Notwithstanding any other provision of law, except when~~
6 ~~the records of the Attorney General or the Department of Justice~~
7 ~~are at issue, neither the Attorney General, nor the Department of~~

8 *(f) Notwithstanding any other provision of law, neither the*
9 *Attorney General, nor the Department of Justice, nor any of its*
10 *staff shall be subject to suit or to discovery in any suit for any*
11 *action taken as a result of review under this section.*

12 ~~(h)~~

13 *(g) An opinion issued under this section does not affect the right*
14 *of a person to enforce his or her right to inspect or to receive a*
15 *copy of any public record through an action pursuant to Sections*
16 *6258 and 6259. A person shall not be required to exhaust the*
17 *administrative remedies available in this section prior to filing a*
18 *legal action. If a person elects to bring an action under Sections*
19 *6258 and 6259, the Attorney General shall not proceed under this*
20 *section. If a person elects to seek review under this section, no*
21 *legal action may be brought against the agency whose decision is*
22 *the subject of the opinion until 10 days after the issuance and*
23 *mailing of the opinion. A person may withdraw, by written notice,*
24 *his or her request for review under this section if the withdrawal*
25 *notice is received by the Attorney General prior to the issuance of*
26 *an opinion.*

27 ~~(i) (1) Representation of a state agency by the Attorney General~~
28 ~~involving advice as to a request for inspection or copies of public~~
29 ~~records may provide a basis for that agency to claim an~~
30 ~~attorney-client relationship that would preclude the Attorney~~
31 ~~General from providing an opinion under this section regarding~~
32 ~~that request.~~

33 ~~(2) A state agency against which an action is brought pursuant~~
34 ~~to Sections 6258 and 6259, after a receipt of an adverse opinion~~
35 ~~under this section, is authorized to retain counsel other than the~~
36 ~~Attorney General.~~

37 ~~(3) Except as provided in this section, the Attorney General's~~
38 ~~review under this section does not preclude the Attorney General's~~
39 ~~representation of the affected state agency on any matter.~~

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1 ~~(j) The time limits for the Attorney General to respond pursuant~~
2 ~~to subdivisions (a) and (b) are directory not mandatory.~~

3 ~~(k) This section shall not apply to a request for public records~~
4 ~~made to a state agency by a party to a pending proceeding involving~~
5 ~~the state agency or an employee of the state agency, or a pending~~
6 ~~investigation by the state agency, if the Attorney General has~~
7 ~~provided or is providing legal advice or representation to the state~~
8 ~~agency with regard to the proceeding or investigation.~~

9 SEC. 3. Section 6258 of the Government Code is amended to
10 read:

11 6258. Any person may institute proceedings for injunctive or
12 declarative relief or writ of mandate in any court of competent
13 jurisdiction to enforce his or her right to inspect or to receive a
14 copy of any public record or class of public records under this
15 chapter, or to enforce the duty of a state agency to post information
16 in its office and on its Internet Web site, if any, in compliance with
17 Section 6253.3. The times for responsive pleadings and for hearings
18 in these proceedings shall be set by the judge of the court with the
19 object of securing a decision as to these matters at the earliest
20 possible time.

21 SEC. 4. Section 6259 of the Government Code is amended to
22 read:

23 6259. (a) Whenever it is made to appear by verified petition
24 to the superior court of the county where the records or some part
25 thereof are situated that certain public records are being improperly
26 withheld from a member of the public, the court shall order the
27 officer or person charged with withholding the records to disclose
28 the public record or show cause why he or she should not do so.
29 The court shall decide the case after examining the record in
30 camera, if permitted by subdivision (b) of Section 915 of the
31 Evidence Code, papers filed by the parties, and any oral argument
32 and additional evidence as the court may allow.

33 (b) If the court finds that the public official's decision to refuse
34 disclosure is not justified under Section 6254 or 6255, he or she
35 shall order the public official to make the record public. If the
36 judge determines that the public official was justified in refusing
37 to make the record public, he or she shall return the item to the
38 public official without disclosing its content with an order
39 supporting the decision refusing disclosure.

1 (c) In an action filed on or after January 1, 1991, an order of
2 the court, either directing disclosure by a public official or
3 supporting the decision of the public official refusing disclosure,
4 is not a final judgment or order within the meaning of Section
5 904.1 of the Code of Civil Procedure from which an appeal may
6 be taken, but shall be immediately reviewable by petition to the
7 appellate court for the issuance of an extraordinary writ. Upon
8 entry of any order pursuant to this section, a party shall, in order
9 to obtain review of the order, file a petition within 20 days after
10 service upon him or her of a written notice of entry of the order,
11 or within any further time not exceeding an additional 20 days as
12 the trial court may for good cause allow. If the notice is served by
13 mail, the period within which to file the petition shall be increased
14 by five days. A stay of an order or judgment shall not be granted
15 unless the petitioning party demonstrates it will otherwise sustain
16 irreparable damage and probable success on the merits. Any person
17 who fails to obey the order of the court shall be cited to show cause
18 why he or she is not in contempt of court.

19 (d) The court shall award court costs and reasonable attorney's
20 fees to the plaintiff should the plaintiff prevail in litigation filed
21 pursuant to this section. The costs and fees shall be paid by the
22 public agency of which the public official is a member or employee
23 and shall not become a personal liability of the public official. If
24 the court finds that the plaintiff's case is clearly frivolous, it shall
25 award court costs and reasonable attorney's fees to the public
26 agency.

27 (e) (1) If a state or local agency (A) declines to comply with a
28 request to inspect or copy a record that is publicly accessible
29 pursuant to this chapter; (B) delays in responding to the request,
30 or in producing the requested records, for reasons that are unstated
31 to the requester, or that are unsupported by compelling
32 circumstances, or that otherwise demonstrate a lack of the diligence
33 required to make records available promptly, without delay or
34 obstruction, pursuant to the standards and deadlines of Section
35 6253; (C) imposes conditions precedent to access to records that
36 are not authorized by this chapter, including, but not limited to,
37 the payment of copy fees in excess of an applicable statutory fee
38 or the direct cost of duplication pursuant to Section 6253 or 6253.9;
39 or (D) otherwise frustrates timely and complete access; and the
40 court determines that the agency acted in bad faith or with reckless

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1 disregard of the agency's obligations under this chapter, the court,
2 in its discretion, may make an award not to exceed one hundred
3 dollars (\$100) per day for each day, as determined by the court,
4 that the agency's action resulted in the denial of the plaintiff's
5 right to copy or inspect the record or records in question.

6 (2) In determining the amount of an award under this
7 subdivision, the court shall consider all the facts and circumstances
8 surrounding the agency's decision, including, but not limited to,
9 all of the following:

10 (A) Whether the agency unreasonably failed to respond within
11 the time periods set forth in Section 6253 or otherwise engaged in
12 conduct that caused undue delay.

13 (B) Whether the agency's justification for denying the request
14 was reasonably based upon its perceived obligation to protect the
15 rights of persons or entities identified in the requested records.

16 (C) Whether the agency has developed publicly accessible
17 internal operating procedures or guidelines under Section 6253.4.

18 (D) Whether the plaintiff acted in good faith in pursuing the
19 request.

20 (E) Whether the agency's denial or other conduct inconsistent
21 with this chapter was based on a reasonable interpretation of the
22 law.

23 (f) An award pursuant to this section shall not exceed a total of
24 ten thousand dollars (\$10,000) for the record or records in question.

25 SEC. 5. Section 6259.1 is added to the Government Code, to
26 read:

27 6259.1. (a) Whenever it is made to appear by verified petition
28 to the superior court of the county wherein the plaintiff resides
29 that a state agency has failed to comply with the requirements of
30 Section 6253.3, the court shall order the officer or person charged
31 with posting the information as required by that section, or if no
32 such person has been appointed, the senior officer in the agency,
33 to effectuate compliance forthwith or show cause why he or she
34 should not do so. The court shall decide the case after examining
35 papers filed by the parties and any oral argument and additional
36 evidence as the court may allow.

37 (b) If the court finds that the agency has failed to comply with
38 Section 6253.3, he or she shall order the officer or person ordered
39 to show cause to effectuate compliance forthwith.

1 (c) Upon entry of any order pursuant to this section, a party
2 shall, in order to obtain review of the order, file a petition within
3 20 days after service upon him or her of a written notice of entry
4 of the order, or within any further time not exceeding an additional
5 20 days as the trial court may for good cause allow. If the notice
6 is served by mail, the period within which to file the petition shall
7 be increased by five days. A stay of an order or judgment shall not
8 be granted unless the petitioning party demonstrates that it will
9 otherwise sustain irreparable damage and probable success on the
10 merits. Any person who fails to obey the order of the court shall
11 be cited to show cause why he or she is not in contempt of court.

12 (d) If the plaintiff prevails in an action filed pursuant to this
13 section, the court shall award court and discovery costs and
14 reasonable attorney's fees to the plaintiff. The costs and fees shall
15 be paid by the state agency of which the public official is a member
16 or employee and shall not become a personal liability of the public
17 official. If the court finds that the plaintiff's case is clearly
18 frivolous, it shall award court costs and reasonable attorney's fees
19 to the agency.

20 (e) This section shall become operative on January 1, 2009.

21 SEC. 6. (a) The Department of Justice shall convene an
22 advisory task force to consider and make recommendations for a
23 statutory standard governing the posting of requests and denials,
24 and public documents that are subject to disclosure, under the
25 California Public Records Act (Chapter 3.5 (commencing with
26 Section 6250) of Division 7 of Title 1 of the Government Code),
27 on the Internet Web sites of state agencies.

28 (b) Members of the task force shall include all of the following:

29 (1) State agency or board representatives.

30 (2) Representatives of the Department of Information
31 Technology.

32 (3) Representatives of organizations with expertise in technical
33 policy and practices of Internet disclosure.

34 (4) Representatives of organizations with expertise in privacy
35 policy relevant to Internet disclosure.

36 (5) Representatives of organizations with expertise in fostering
37 public integrity and accountability.

38 (6) Representatives of organizations with expertise in informed
39 electoral participation.

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1 (7) Representatives of organizations with expertise in
2 investigative journalism.

3 (8) Representatives of legislative staff, at the option of the
4 applicable legislative oversight entities, and to the extent not in
5 conflict with their legislative duties.

6 (c) The task force shall consider at least all of the following
7 issues:

8 (1) Whether it is of greater value to the public for state agencies
9 to automatically post, with appropriate security and privacy
10 controls, certain public records that are subject to disclosure under
11 the act on agency Internet Web sites rather than making those
12 records available to requesters on a request-only basis. Specific
13 consideration shall be given to records that relate to the
14 compensation and economic interests of key public officials and
15 consultants, and the performance of public agencies, including,
16 but not limited to, the settlement of litigation. Specific
17 consideration should also be given to what specific advantages or
18 disadvantages may be associated with an affirmative Internet
19 posting requirement.

20 (2) Whether eventual cost savings or increases in efficiency, or
21 both, are likely to offset the implementation and management costs
22 of requiring state agencies to automatically post disclosable public
23 records on their Internet Web sites, and whether certain types of
24 public records are better suited to automatic disclosure based on
25 these cost and efficiency considerations.

26 (3) Whether appropriate security measures are available, and
27 cost effective, to ensure that the personal or proprietary information
28 contained in a public record that is posted on the Internet is
29 protected from the possibility of identity theft or other forms of
30 misuse.

31 (4) Whether appropriate security measures are available, and
32 cost effective, to ensure that disclosable public records posted on
33 the Internet are protected from alteration by third parties or other
34 forms of misuse.

35 (5) Other issues that might arise from a statutory requirement
36 that certain public records be automatically posted on agency
37 Internet Web sites.

- 1 (d) The task force shall report its findings and recommendations
- 2 to the Governor and the Legislature by no later than September
- 3 30, 2008, at which time it shall cease to exist.

O

AMENDED IN SENATE APRIL 9, 2007

AMENDED IN SENATE MARCH 27, 2007

SENATE BILL

No. 343

Introduced by Senator Negrete McLeod

February 20, 2007

An act to amend Section 54954.2 of the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 343, as amended, Negrete McLeod. Local agencies: open meetings: documents.

The Ralph M. Brown Act requires that any meeting of a legislative body of a local agency be open and public and all persons be permitted to attend. The act requires the body to post an agenda at least 72 hours before a regular meeting, requires that agendas and all writings distributed to a body be made available to the public, and prohibits action or discussion on any item not appearing on the posted agenda, with specified exceptions.

This bill would provide, notwithstanding any other provision of law, that no action or discussion shall be undertaken *during an open and public regular meeting* on any agenda item unless all writings that relate to that item that are included in the agenda packet prepared by the local agency or its employees or agents are made available to the public no later than the date the agency posts the agenda that includes that item.

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

SB 343

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

1 SECTION 1. Section 54954.2 of the Government Code is
2 amended to read:

3 54954.2. (a) (1) At least 72 hours before a regular meeting,
4 the legislative body of the local agency, or its designee, shall post
5 an agenda containing a brief general description of each item of
6 business to be transacted or discussed at the meeting, including
7 items to be discussed in closed session. A brief general description
8 of an item generally need not exceed 20 words. The agenda shall
9 specify the time and location of the regular meeting and shall be
10 posted in a location that is freely accessible to members of the
11 public. If requested, the agenda shall be made available in
12 appropriate alternative formats to persons with a disability, as
13 required by Section 202 of the Americans with Disabilities Act of
14 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
15 adopted in implementation thereof. The agenda shall include
16 information regarding how, to whom, and when a request for
17 disability related modification or accommodation, including
18 auxiliary aids or services may be made by a person with a disability
19 who requires a modification or accommodation in order to
20 participate in the public meeting.

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

35 (3) *On and after July 1, 2008, no action or discussion shall be*
36 *undertaken during an open and public meeting on any agenda*
37 *item unless all writings, as defined in subdivision (g) of Section*
38 *6252, that relate to that item and are included in the agenda packet*

1 *prepared by the local agency or its employees or agents are made*
2 *available to the public no later than the date the agency posts the*
3 *agenda that includes that item.*

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

9 (1) Upon a determination by a majority vote of the legislative
10 body that an emergency situation exists, as defined in Section
11 54956.5.

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

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

24 ~~(e) Notwithstanding any other provision of law, no action or~~
25 ~~discussion shall be undertaken on any agenda item unless all~~
26 ~~writings, as defined in subdivision (g) of Section 6252, that relate~~
27 ~~to that item and are included in the agenda packet prepared by the~~
28 ~~local agency or its employees or agents are made available to the~~
29 ~~public no later than the date the agency posts the agenda that~~
30 ~~includes that item.~~

31 ~~(d)~~

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

AMENDED IN SENATE MAY 2, 2007

AMENDED IN SENATE APRIL 9, 2007

AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 964

Introduced by Senator Romero

February 23, 2007

An act to amend Section 54952.2 of, and to add Section ~~54963.1~~ 6252.7 to, the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 964, as amended, Romero. Local agencies.

The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference. *An appellate court in Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533 held that a violation of this prohibition occurs only if a series of meetings by members of a body results in a collective concurrence.*

This bill would ~~instead prohibit any use of technological devices to conduct a meeting of a legislative body among members who are in different locations. It also would prohibit any use of substantive serial communications by members of a legislative body of a local agency, or by any officer, employee, consultant, or designee of the members of the legislative body or of the local agency, to conduct deliberations, as defined, by a majority of the members of that legislative body a majority~~

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of members of a legislative body of a local agency from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. It also would state the Legislature's declaration that it disapproves the holding of the court in the case named above to the extent it construes the prohibition on serial meetings and would state its intention that the changes made by this bill supersede that holding.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure. The Ralph M. Brown Act provides that, notwithstanding any other provision of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act unless exempt from disclosure under that act. The Ralph M. Brown Act requires that these writings 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.

This bill would provide that, notwithstanding any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available, and shall not charge any of those members a fee to inspect or obtain a copy of that writing.

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. (a) The Legislature hereby declares that it
2 disapproves the court's holding in *Wolfe v. City of Fremont* (2006)
3 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the
4 prohibition against serial meetings by a legislative body of a local
5 agency, as contained in the Ralph M. Brown Act (Chapter 9

1 *(commencing with Section 54950) of Part 1 of Division 2 of Title*
2 *5 of the Government Code, to require that a series of individual*
3 *meetings by members of a body actually result in a collective*
4 *concurrence to violate the prohibition rather than also including*
5 *the process of developing a collective concurrence as a violation*
6 *of the prohibition.*

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

10 *SEC. 2. Section 6252.7 is added to the Government Code, to*
11 *read:*

12 *6252.7. Notwithstanding Section 6252.5 or any other provision*
13 *of law, when the members of a legislative body of a local agency*
14 *are authorized to access a writing of the body or of the agency as*
15 *permitted by law in the administration of their duties, the local*
16 *agency, as defined in Section 54951, shall not discriminate between*
17 *or among any of those members as to which writing or portion*
18 *thereof is made available or when it is made available, and shall*
19 *not charge any of those members a fee to inspect or obtain a copy*
20 *of that writing.*

21 **SECTION 4.**

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

24 *54952.2. (a) As used in this chapter, "meeting" includes any*
25 *congregation of a majority of the members of a legislative body*
26 *at the same time and place to hear, discuss, or deliberate upon*
27 *location, including teleconference locations as permitted by Section*
28 *54953, to hear, discuss, deliberate, or take action on any item that*
29 *is within the subject matter jurisdiction of the legislative body or*
30 *the local agency to which it pertains.*

31 ~~*(b) (1) Except as authorized pursuant to Section 54953, any use*~~
32 ~~*of technological devices to conduct a meeting of a legislative body*~~
33 ~~*among members who are in different locations is prohibited.*~~

34 ~~*(2) Any use of substantive serial communications by members*~~
35 ~~*of a legislative body of a local agency, or by any officer, employee,*~~
36 ~~*consultant, or designee of the members of the legislative body or*~~
37 ~~*of the local agency, to conduct deliberations by a majority of the*~~
38 ~~*members of that legislative body is prohibited. For this purpose,*~~
39 ~~*deliberations include, but are not limited to, both of the following:*~~

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1 ~~(A) Any communication that advances or clarifies a member's~~
2 ~~understanding of an issue, facilitates an agreement or compromise~~
3 ~~among members on an issue, or advances the ultimate resolution~~
4 ~~of an issue.~~

5 ~~(B) Any communication of information that is not otherwise~~
6 ~~part of the agenda packet for a publicly noticed meeting of the~~
7 ~~legislative body if that information relates to an item on an agenda~~
8 ~~for a meeting of the legislative body, or is likely to be placed upon~~
9 ~~an agenda of a meeting in the near future. Deliberations do not~~
10 ~~include communication of information that relates solely to the~~
11 ~~time and place of meetings, travel arrangements, delivery of~~
12 ~~meeting materials, or similar procedural matters.~~

13 *(b) A majority of the members of a legislative body shall not*
14 *use a series of communications of any kind, directly or through*
15 *intermediaries, to discuss, deliberate, or take action on any item*
16 *of business that is within the subject matter jurisdiction of the*
17 *legislative body.*

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

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

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

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

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

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

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

18 ~~SEC. 2.— Section 54963.1 is added to the Government Code, to~~
 19 ~~read:~~

20 ~~54963.1.— (a) Notwithstanding Section 6252.5 or any other~~
 21 ~~provision of law, when the members of a legislative body of a local~~
 22 ~~agency are authorized to access a writing of the body or of the~~
 23 ~~agency as permitted by law in the administration of their duties,~~
 24 ~~the local agency shall not discriminate between or among any of~~
 25 ~~those members as to which writing or portion thereof is made~~
 26 ~~available or when it is made available, and shall not charge any of~~
 27 ~~those members a fee to inspect or obtain a copy of that writing.~~

28 ~~(b) For purposes of this section, a writing is defined pursuant~~
 29 ~~to subdivision (g) of Section 6252.~~