Supreme Court of California
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Supreme Court of California
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CASE NO. S260209

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MICHAEL GOMEZ DALY et al.,

Petitioners (in superior court) and Respondents (on appeal),

v.

BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, et al.,

Respondents and Real Party in Interest (in superior court) and Appellants,

---

After Order by the Court of Appeal
Fourth Appellate District, Division Two
Civil No. E073730

EXHIBITS TO APPELLANTS' MOTION FOR JUDICIAL NOTICE

VOLUME III OF VI, PAGES 594 – 833 OF 1653

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EXHIBIT L - cont'd

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March 7, 1986

Editorials

Blame Item No. 53

When the Assembly Local Government Committee opens hearings next Tuesday in Sacramento on Assembly Bill 2674, city and county governing bodies around the state can blame the Los Angeles City Council and Item No. 53 for it.

AB 2674 would give the Brown Act, California's open-meetings law, a few teeth to back up its abundant spirit. Until now, the Brown Act has been little more than a few nice passages of prose in the state law about how the public ought to be allowed in on its own business. You won't find much in it that would allow the public to chew up — or even nibble on — an offending elected official.

The amendment to the law would allow actions of a government agency taken in a meeting that violated the Brown Act to be declared null and void. At the very least, it would mean the agency would have to do it all over again, out in the sunshine where interested observers might be able to make their feelings known on the issue.

What brings us to this particular juncture is the L.A. City Council and Item 53 and the fact that they rubbed Dorothy Green's nose in it a little too hard.

The L.A. council, last June 5, unanimously passed Item 53 on its agenda. That's all the agenda said, just Item 53. Just before passing Item 53, the council voted to suspend its normal rule of having its clerk read the subject matter aloud before the vote. This one was just slam-dunked on a very fast break.

Turns out that Item 53 was a 10 percent pay raise for council members, the mayor, the city attorney and the city controller. Dorothy Green was outraged. She took the city to court.

Technically, there was no violation of the Brown Act, the court found. The action occurred in an open, legal meeting. But Superior Court Judge Raymond Cardenas found that the council had violated the spirit of the law. He also voided the pay hikes because they violated the city's charter.

This little episode got the attention of Lloyd Connelly, a Democratic assemblyman from Sacramento. He wrote AB 2674 to plug the holes the in Brown Act through which the L.A. council slithered.

The amendment would require specific meeting agendas to be posted 72 hours in advance of a local body's regular meeting. That means the public is guaranteed advance warning that their elected officials will undertake such efforts as giving themselves pay raises. The Palomar-Pomerado Hospital District's directors pulled one of those a couple of years ago on an item added quietly at the last minute to their agenda. The public outcry was immense, but the horse was already out of the barn.

Connelly's bill would bring the horse back. It would allow a member of the public to ask the courts to nullify any action taken at a meeting that violated the Brown Act. Prosecution under the Brown Act is now all but impossible; it must be proven that the offending official intended to violate the law. And few who favor open government are interested in seeing elected officials behind bars; most just want to see them while they carry out the public's business. Connelly's bill would give California citizens the opportunity to enforce openness without the messy matter of criminal prosecution.

Gene Erbin, legal counsel to the Assembly subcommittee on the administration of justice, observes that it will be "difficult" for any politician to come out against such a motherhood-apple-pie issue as open meetings during an election year. You might want to reinforce that prediction with a telephone call on Monday to Bill Bradley or Bill Frazee, North County's own assemblymen, both of whom sit on the Local Government Committee.

Erbin also says he expects "concern if not outright opposition" to the bill from the League of California Cities and the County Supervisors Association. Connelly, however, has not left them [illegible]ch room for complaint. The bill features a couple of safety valves. For an action to be nullified, the violation of the Brown Act must be more than a minor technicality. And an agency would have that second chance to take the action in a legitimate public meeting.

But if the cities and counties really want to gripe about AB 2674, they ought to be complaining to the L.A. council. Pull a few minor transgressions against the Brown Act and you get a few outraged editors up in arms. Pull an Item 53 and you get the whole state after you.

LEGISLATIVE INTENT SERVICE (800) 666-1917

OCEANSIDE BLADE TRIBUNE - SAN DIEGO COUNTY

18 — Blade-Tribune Sunday, March 2, 1986

B-T editorial

Plug the loophole

The California Legislature this year will consider another bill to add teeth to the state's open meeting laws.

This year, AB 2674 proposes to put enforcement teeth in the Brown Act, the state's first and most meaningful open meeting law.

It would add amendments to the Ralph M. Brown Act which would require that local governmental agencies post specific agendas for meetings 72 hours in advance of regular meetings and 24 hours in advance of special meetings, and would authorize private citizens and organizations to seek and obtain judicial invalidation of actions taken in violation of the act.

At the moment, any governmental agency can add last-minute agenda items, thus avoiding public scrutiny, and can take legally-binding action upon them without prior notice.

This quite clearly subverts the spirit and intent of the Brown Act as well as the Bagley-Keene Open Meeting Act.

A favorite tactic of those who would subvert the state's open meeting laws is to wait until the audience attending late night meetings has departed, and then bring up items which they seek to hide from the public.

A classic example of this occurred two weeks ago at the Fallbrook Elementary School Board meeting. School boards, unlike city councils or other public agencies, are specifically forbidden from bring up off-agenda items.

But Fallbrook Elementary School trustees evaded that law by "not taking a vote" while approving appointments to a school site selection committee. Trustees, instead of voting verbally, nodded their heads — at the suggestion of school board president Mitch Rolin — as a means of endorsing the item without taking a formal vote.

The board conducted this outrageous violation of the state's open meeting laws as a means of circumventing it. There is nothing to force their action to be repealed — but AB 2674 would do so.

A more outrageous example of voting on off-agenda items occured at a recent Los Angeles city council meeting, where council members voted themselves a pay raise on an off-agenda item. Because this particular action did not violate the Brown Act, which does not have an off-agenda item clause, the action is legal, even though every Los Angeles citizen was deprived of the right to comment on the pay raise.

To conduct the public's business in such a manner deprives the public of input to those issues acted upon under such circumstances.

San Diego County city attorneys recently met and voted to oppose AB 2674. We wonder why these "men of the law" would oppose such a law to protect the public, unless they enjoy undermining the spirit and intent of the state's open meeting laws by finding loopholes in them.

If city attorneys oppose such a law, it should be impetus for every conscientious citizen to support it, for city attorneys frequently become devious instruments of city councils, instead of defenders of the public's rights.

There are so many abuses of the Brown Act and the state's open meeting laws that it is high time the Brown Act had teeth, and the public started biting back at nefarious board actions.

AB 2674 is sponsored by Common Cause, and supported by the League of Women Voters, California's attorney general, the California District Attorneys Association, the Los Angeles District Attorney, and many other groups.

The League of California Cities, the body composed of representatives from the city agencies which are abusing the state's open meeting laws, is opposed to the bill.

We suggest you contact your local state assembly and senate representatives and tell them how you feel about AB 2674.

You can contact State Sen. Bill Craven's office at 438-3814, Assemblyman Robert Frazee's office at 434-1749, and Assemblywoman Sunny Mojonnier's office at 457-8775.

It's time the state's public bodies were made fully accountable to the public, and bring an end to the continuing violations to the state's open meeting laws.

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SP - 55b

Ontario, CA
(San Bernardino Co.)
Ontario Daily Report
(Cir. D. 37,230)
(Cir. S. 38,424)

FEB 27 1986

Allen's P. C. B. Est. 1888

EDITORIALS

The public deserves a tougher law

The Ralph M. Brown Act makes a few local officials in California uncomfortable. Most members of public agencies understand, accept and adhere to the state's open meeting law.

But the few secretive public officials who abhor the light of public scrutiny have made the Brown Act ineffective — full of unenforceable good intentions.

Northern California Assemblyman Lloyd G. Connelly has introduced AB 2674, that proposes two major improvements to the Brown Act.

Mr. Connelly's bill would:

- Require local entities to post specific agendas for their meetings 72 hours in advance of regular meetings and 24 hours prior to special meetings.
- Authorize private citizens and organizations to seek and obtain judicial invalidation of actions taken in violation of the Brown Act.

These two provisions are important for a number of reasons: chief among them is that they allow greater and stronger public participation in the government process.

Mr. Connelly uses the example a pay raise *for* members of the Los Angeles City Council, *approved by* the Los Angeles City Council. The issue was an "add-on" item that no one, save the council, knew was coming. By the time the press and public knew what had happened, the pay raise had been approved.

AB 2674 would halt the practice of "add-on" items by all local entities in the state. Further, it would allow the courts to invalidate such actions should they be found illegal.

A similar case could take place in the West Valley. In fact, it already has.

In January, Ontario-Montclair School District trustees approved a 100 percent raise with a first and final reading in the same evening. With no prior public knowledge, the raise was passed without board or audience dissension.

The OMSD case may be somewhat less clear-cut than the one involving the Los Angeles council. Nonetheless, Mr. Connelly's bill would help prevent any potential abuses and reverse violations.

There is opposition to revisions in the Brown Act. Notably, the California Community College Trustees. But most of the reservations are unfounded.

Currently, the bill has been referred to the Assembly Local Government Committee and is scheduled for hearing on March 11. We encourage the committee — especially local members Bill Lancaster, R-Covina, and Gerald Eaves, D-Rialto — to approve the bill and give California residents even more input into their government process.

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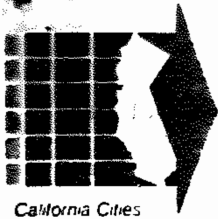

California Cities Work Together

League of California Cities

Bergeson #2082
AB-2674

Sacramento, CA.
May 13, 1986

Assemblyman Lloyd Connelly
Attn: Gene Erbin
State Capitol
Room 2179
Sacramento, CA 95814

Dear Gene:

I am attaching to this letter a mock up which I have prepared to follow-up on the correspondence I have received from various city attorneys and the meeting I had with my City Attorneys Legislative Committee. Where changes have occurred, either pursuant to yours and my discussion, or pursuant to city attorneys' suggestions, I will so note them and explain them.

First, on page 3, line 20, I have inserted the "unanimous vote" language which we discussed. That approach was acceptable to my Board. Next, the item added after line 23, as (3), which was in the previous mock up, still needs to be discussed between us, with the 10 day period being shortened.

Third, I discussed the question of legislative intent in the description of legislative items with my City Attorneys Legislative Committee. They unanimously felt that a letter to the Journal would not be adequate, since Journal letters quickly get lost. What they requested is an uncodified section in the bill which will then get into the footnotes in the West and Deering Codes. I have also redrafted language to refer to the daily file as we discussed.

Section 2 seems to be causing us many problems. Perhaps you and Lloyd should seriously consider removing it from the bill as you previously suggested. This section probably has had more amendments suggested to it than any other section in the bill, because the city attorneys are afraid that their councils could lose control of their meetings. Accordingly, they have suggested the following additional amendments. First, they have changed the phrase in lines 11 and 12, "ensure that the intent . . . etc." to "implement." They have then suggested that language be inserted specifically allowing the council to place time limits on the total public input period, on individual speakers, and on the total time limited to individual issues. They indicated that, although of help to special districts, it would be limiting the public forum to items within the jurisdiction of the legislative body would be of little help to cities, since cities have a perfect right to take positions by way of resolution on international issues, witness Berkeley and Davis. Also, in subparagraph (a), one of my city attorneys suggested we also provide that open mike does not have to apply where an item will be on a future agenda. I am not sure the language for that suggestion is adequate, but it is included at the end of paragraph (a).

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Next, at page 6, some city attorneys were concerned that paragraph 54960.1 was still not tight enough to prevent the danger of an action being void even though the statute of limitations had run. Consequently, the sentence at the beginning of paragraph (a) at line 11 was suggested to be added. Next, the city attorneys were not clear that attempts to cure or correct a violation would in all cases be successful. Consequently, I have changed the phrase "cure or correct" or "curing or correcting" where it appears to refer to the taking of action to correct such violation. Additionally, in the printed bill, the word "action" is used in two different contexts in paragraphs (b) and (d). The contexts are (1) the lawsuit itself, and (2) the action the council takes. Accordingly, I have changed the word "action" when it refers to a lawsuit to "litigation." There probably is a better word, but I couldn't come up with it. That change is simply taken to avoid confusion. Additionally, I have slightly modified my suggested language on the 30 day period to cure at the suggestion of one of my city attorneys, and as we previously discussed in line 37, the word "later" has been changed to "earlier." I believe that change of wording carries out the intent we both agreed to. Finally, in line 25, as per our previous discussion, we have inserted the phrase "or admissible" as suggested by the City of Santa Barbara.

After you have had a chance to look over these suggested changes, please give me a call so that we may sit down, hopefully together with Mark Wasser and John Fraser from ACWA and work out the details on this bill before it is set for hearing in the Senate.

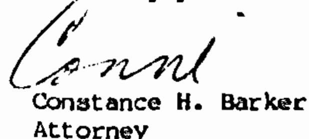
I know this has been tough for both of us, but on my end there are probably about 400 city attorneys looking over this bill with great concern. Additionally, we now feel a certain amount of pressure to get the bill in shape, since we want to constitute an implementing committee in our city attorneys department within the next month, so that city attorneys are prepared for implementation of the bill when it becomes law.

Finally, since it comes up from so many people, I feel duty bound, although this is a substantive and not a technical change, to once again request that the 72-hour period be shortened to 48. The only reason I request this is because every city official I discussed this with, whether city attorney, administrator, or council member, seems to be requesting the same change. It is consistent with the Legislature's 2-day file notice rule, and I think that's probably why our cities are requesting it.

Again, thanks for all your cooperation on this very major bill. As Lloyd indicated at the hearing, it probably is the most major amendment to the Brown Act since it was enacted. It is for that reason that the cities have been so interested in it and I have had to spend so much time on it.

I look forward to discussing this with you soon.

Sincerely yours,



Constance H. Barker
Attorney

cc: Mark Wasser, CSAC
John Fraser, ACWA

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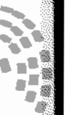

A-W&M

AMENDED IN ASSEMBLY MARCH 18, 1986

AMENDED IN ASSEMBLY MARCH 10, 1986

AMENDED IN ASSEMBLY MARCH 3, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL **No. 2674**

Introduced by Assembly Member Connelly
(Principal coauthor: Assembly Member Johnson)
(Coauthor: Senator Marks)

January 15, 1986

An act to amend Sections 54956, 54956.5, and 54960.5 of, and to add Sections 54954.2, 54954.3, and 54960.1 to, the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2674, as amended, Connelly. Open meetings: local agencies.

(1) Existing law, known as the Ralph M. Brown Act, requires that actions of legislative bodies of local agencies be taken openly and that their deliberations be conducted openly. Under this existing law, the legislative body of a local agency is not required to post a specific agenda ~~of~~ *clearly describing* the items of business to be transacted or discussed at a regular meeting. Additionally, existing law does not prohibit any action to be taken, as defined, on any item not appearing on the posted agenda.

This bill would make this requirement and prohibition, with certain exceptions, as specified. The requirement would impose a state-mandated local program.

(2) The Ralph M. Brown Act does not require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body

96 40

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on items of interest to the public.

This bill would make this requirement and would require the legislative body to adopt reasonable regulations, as specified. These new requirements would impose a state-mandated local program.

(3) The Ralph M. Brown Act requires a specified notice of special meetings. This bill would in addition require a specified posting and make a conforming change.

(4) Existing law defines the term "action taken" and prescribes misdemeanor sanctions for each member of a legislative body who knowingly attends a meeting of the legislative body where action is taken in violation of the Ralph M. Brown Act. Existing law also authorizes any interested person to commence an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of statutory provisions relating to open meetings of local agencies or to determine the application of those provisions.

Under existing law, as construed by the courts, any action taken at a meeting in violation of the Ralph M. Brown Act is nonetheless valid.

This bill would authorize any interested person to commence an action by mandamus, injunction, or declaratory relief to determine if certain actions taken by the local agency are null and void ~~, within 30 days of the action taken by the local agency~~, as specified. *It would require the interested person to make a demand of the legislative body to cure or correct the action, as specified, before commencing the action. It would provide that the fact that a legislative body takes a subsequent action to cure or correct an action pursuant to this section shall not be construed as a violation of the Ralph M. Brown Act.*

(5) Existing law authorizes a court to award reasonable attorneys' fee to a plaintiff where it is found the local agency has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit.

This bill would authorize the award of reasonable attorneys' fees in actions to determine null and void the actions of a local agency as described in (4) above.

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(5) Existing law authorizes a court to award reasonable attorneys' fee to a plaintiff where it is found the local agency has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit.

This bill would authorize the award of reasonable attorneys' fees in actions to determine null and void the actions of a local agency as described in (4) above.

96 60

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(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $500,000 statewide and other procedures for claims whose statewide costs exceed $500,000.

This bill would provide that reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $500,000, shall be payable from the State Mandates Claims Fund.

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

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

1 SECTION 1. Section 54954.2 is added to the
2 Government Code, to read:
3 54954.2. (a) At least 72 hours before a regular
4 meeting, the legislative body of the local agency, or its
5 designee, shall post ~~a specific agenda of clearly describing~~/ —— an agenda containing a brief general description of each item
6 ~~the items~~ of business to be transacted or discussed at the
7 meeting. The agenda shall specify the time and location
8 of the regular meeting and shall be posted in a location
9 that is freely accessible to members of the public. No
10 action shall be taken on any item not appearing on the
11 posted agenda.
12 (b) Notwithstanding subdivision (a), the legislative
13 body may take action on items of business not appearing
14 on the posted agenda under either of the following
15 conditions:
16 (1) Upon a ~~finding~~/by a majority vote of the legislative —— determination
17 body that an emergency situation exists, as defined in
18 Section 54956.5. —— determination
19 (2) Upon a ~~finding~~/by a two-thirds vote of the —— or a unanimous vote of those present if less than two-thirds of the body is present.
20 legislative body/that ~~failure to take action will result in~~
21 ~~serious harm to the public and that~~ the need to take
22 action arose ~~suddenly and unexpectedly and~~ subsequent
23 to the agenda being posted as specified in subdivision (a).

(3) The item was duly posted pursuant to paragraph (a) for a prior meeting of the legislative body occurring not more than 10 days prior to the date action is taken on the item, and at that prior meeting the item was continued to the meeting at which action is being taken.

SECTION _____:

In enacting paragraph (a) of Section 54954.2 at its 1986 session, the Legislature intends to require local public agencies to post agendas with sufficient descriptions/of the items of business to be transacted at a meeting to enable members of the public of ordinary intelligence, to ascertain the nature of the items on the agenda, so that they may seek further information, such as staff reports and other background materials, to determine details of the proposal. In enacting this section, the Legislature does not intend to require local agencies to give the kind of notice required to fulfill constitutional due process requirements, if any exist. For example, describing items on the agenda in a manner similar to that used in the Legislature Daily Files would be an acceptable method of providing adequate notice.

or titles

1 SEC. 2. Section 54954.3 is added to the Government
2 Code, to read:
3 54954.3. (a) Every agenda for regular meetings shall
4 provide an opportunity for members of the public to
5 directly address the legislative body on items of interest
6 ~~to the public~~, provided that no action shall be taken on
7 any item not appearing on the agenda unless the action
8 is otherwise authorized by subdivision (b) of Section
9 54954.2. ,/
10 (b) The legislative body of a local agency may adopt
11 reasonable regulations to/ ~~ensure that the intent of~~
12 subdivision (a) is ~~carried out.~~ /
13 SEC. 2.5. Section 54956 of the Government Code is
14 amended to read:
15 54956. A special meeting may be called at any time by
16 the presiding officer of the legislative body of a local
17 agency, or by a majority of the members of the legislative
18 body, by delivering personally or by mail written notice
19 to each member of the legislative body and to each local
20 newspaper of general circulation, radio or television
21 station requesting notice in writing. The notice shall be
22 delivered personally or by mail and shall be received at
23 least 24 hours before the time of the meeting as specified
24 in the notice. The call and notice shall specify the time
25 and place of the special meeting and the business to be
26 transacted. No other business shall be considered at these
27 meetings by the legislative body. The written notice may
28 be dispensed with as to any member who at or prior to
29 the time the meeting convenes files with the clerk or
30 secretary of the legislative body a written waiver of
31 notice. The waiver may be given by telegram. The
32 written notice may also be dispensed with as to any
33 member who is actually present at the meeting at the
34 time it convenes. Notice shall be required pursuant to this
35 section regardless of whether any action is taken at the
36 special meeting.
37 The call and notice shall be posted at least 24 hours
38 prior to the special meeting and shall specify the time and
39 location of the meeting and be posted in a location that
40 is freely accessible to members of the public.

Left margin insertion (line 6): and within the jurisdiction of the legislative body,

Left margin insertion (line 9): provided, however, the agenda need not provide an opportunity for members of the public to address the legislative body on any such item that (i) already has been considered by a committee of the legislative body at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, or (ii) any matter that will be an agenda item at a future meeting of the legislaive body.

Right margin insertion (line 10): implement

Right margin insertion (line 12): consistent with its intent, including but not limited to, placi[ng] time limits on the public input peri[od] required by subdivision (a) and on individual speakers, and limiting the total time alloted to individual issues.

LEGISLATIVE INTENT SERVICE

SEC. 3. Section 54956.5 of the Government Code is amended to read:

54956.5. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

For purposes of this section, "emergency situation" means any of the following:

(a) Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

However, each local newspaper of general circulation and radio or television station which has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting by telephone and ~~shall exhaust~~ all telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings *shall be exhausted.* In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the special meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

Notwithstanding Section 54957, the legislative body shall not meet in closed session during a meeting called pursuant to this section.

All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour

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1 notice requirement.
2 The minutes of a meeting called pursuant to this
3 section, a list of persons who the presiding officer of the
4 legislative body, or designee of the legislative body,
5 notified or attempted to notify, a copy of the rollcall vote,
6 and any actions taken at the meeting shall be posted for
7 a minimum of 10 days in a public place as soon after the
8 meeting as possible.
9 SEC. 4. Section 54960.1 is added to the Government
10 Code, to read:
11 54960.1. (a) Any interested person may commence
12 an action by mandamus or injunction for the purpose of
13 obtaining a judicial determination that an action taken by
14 a legislative body of a local agency in violation of Section
15 54953, 54954.2, or 54956 is null and void under this section.
16 ~~Any action seeking such a judicial determination shall be~~
17 ~~commenced within 30 days from the date the action was~~
18 ~~taken.~~ Nothing in this chapter shall be construed to
19 prevent a legislative body from ~~curing or correcting~~ an
20 action challenged pursuant to this section.
21 (b) *Prior to any ~~action being~~ commenced pursuant to*
22 *subdivision (a), the interested person shall make a*
23 *demand of the legislative body to cure or correct the*
24 *action alleged to have been taken in violation of Section*
25 *54953, 54954.2, or 54956. The demand shall be in writing*
26 *and clearly describe the challenged action of the*
27 *legislative body and nature of the alleged violation. The*
28 *written demand shall be made within 30 days from the*
29 *date the action was taken. Within 15 days of receipt of the*
30 *demand, the legislative body shall cure or correct the*
31 *challenged action and inform the demanding party in*
32 *writing of its actions to cure or correct or inform the*
33 *demanding party in writing of its decision not to cure or*
34 *correct the challenged action. Within 15 days after*
35 *receipt of the written information of the legislative body*
36 *pursuant to the preceding sentence or 60 days from the*
37 *date the challenged action was taken, whichever is later,*
38 *the demanding party shall be required to commence the*
39 *action pursuant to subdivision (a) or thereafter be barred*
40 *from commencing the action.* A legislative body shall be conclusively presumed to have cured or corrected an alleged violation if it posts the agenda item pursuant to Section 54954.2 or 54956 and after the appropriate posting period it takes action on the item in an open and public meeting.

[Handwritten/typed margin annotations:]

Left margin (line 10–13): Any action taken in violation of Sec. 54953, 54954.2, or 54956 is voidable as hereinafter provided.

Left margin (line 21): litigation

Left margin (line 29): 30 (this is new - my committee felt they needed 30 days to act)

Left margin (lines 33–40): If the legislative body takes no action within the 30-day period, it shall be deemed a decision not to cure or correct the challenged action. Any litigation under this Section shall be commenced within 15 days from the day after the 30-day period to cure or correct the action expires.

Right margin (line 19): taking action to cure or or correct

Right margin (line 29–30): take action to

Right margin (line 33): take action to

Right margin (line 36): 75 (?)

Right margin (line 37): earlier

96 150

LEGISLATIVE INTENT SERVICE (800) 666-1917

1 (c) An action taken shall not be determined to be null
2 and void if any of the following conditions exist:
3 (1) The action taken was in substantial compliance
4 with Sections 54953, 54954.2, and 54956.
5 (2) The action taken was in connection with the sale
6 or issuance of notes, bonds, or other evidences of
7 indebtedness or any contract, instrument, or agreement
8 thereto ———— involved the issuance of a competitively bid contract, and the party to whom the contract was awarded did not participate in the alleged violation, or
9 (3) The action taken / gave rise to a contractual
10 obligation upon which a party has, in good faith,
11 detrimentally relied.
12 (4) The action taken was in connection with the
13 collection of any tax.
14 ~~(c)~~
15 (d) During any ~~action~~ / seeking a judicial ———— litigation
16 determination pursuant to subdivision (a) if the court
17 determines, pursuant to a showing by the legislative body
18 that an ~~action~~ alleged ~~to have been taken in~~ violation of
19 ~~either~~ Section 54953, 54954.2, or 54956 has been cured or
20 corrected by a subsequent action of the legislative body,
21 the action filed pursuant to subdivision (a) shall be
22 dismissed with prejudice.
23 *(e) The fact that a legislative body takes a subsequent*
24 *action to cure or correct an action taken pursuant to this* ———— or admissible
25 *section shall not be construed/ as evidence of a violation*
26 *of this chapter.*
27 SEC. 5. Section 54960.5 of the Government Code is
28 amended to read:
29 54960.5. A court may award court costs and
30 reasonable attorney fees to the plaintiff in an action
31 brought pursuant to Section 54960 or 54960.1 where it is
32 found that a legislative body of the local agency has
33 violated this article. The costs and fees shall be paid by
34 the local agency and shall not become a personal liability
35 of any public officer or employee of the local agency.
36 A court may award court costs and reasonable attorney
37 fees to a defendant in any action brought pursuant to
38 Section 54960 or 54960.1 where the defendant has
39 prevailed in a final determination of such action and the
40 court finds that the action was clearly frivolous and totally

96 180

1 lacking in merit.
2 SEC. 6. Reimbursement to local agencies and school
3 districts for costs mandated by the state pursuant to this
4 act shall be made pursuant to Part 7 (commencing with
5 Section 17500) of Division 4 of Title 2 of the Government
6 Code and, if the statewide cost of the claim for
7 reimbursement does not exceed five hundred thousand
8 dollars ($500,000), shall be made from the State Mandates
9 Claims Fund.

O

96 180

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LOS ANGELES CITY COUNCIL
OFFICE OF THE CHIEF LEGISLATIVE ANALYST

WILLIAM R McCARLEY
CHIEF LEGISLATIVE ANALYST

May 14, 1986

Mr. Peter Detwiler
Consultant
Senate Local Government Committee
Room 2085 State Capitol
Sacramento, CA 95814

Re: AB 2674 (Connelly) - Oppose Unless Amended
As Amended March 18, 1986
Set May 28, 1986
Senate Local Government Committee

Dear Mr. Detwiler:

The City of Los Angeles opposes AB 2674 relative to the Brown Act. This bill would impose severe changes on the functioning of local government. The overly restrictive posting requirement for agendas, and the threat of legal challenges to declare a local body's acts null and void will actually lead to less effective and less accountable local government.

Our City Attorney advises that this bill would severely limit public meetings of the Council in several aspects:

- 72 hour restraint: This poses a conflict between compliance with the bill and compliance with the Charter when the latter's requirement for a second reading of an ordinance must occur in one week but might violate the 72 hour rule if there are two holidays in between (such as a first reading on the Wednesday just prior to Thanksgiving).

- Public Input: This wording emphasizes public input to such an extent that any person, regardless of degree of interest in a given matter, has a right to speak on almost any subject. This is particularly alarming when an individual seeks to talk on a matter not on the agenda, which this bill permits, but then prohibits the legislative body from discussing it. Under existing procedure, various laws require public hearings on certain matters; here a member of the public has a right to speak.

1400 K STREET, ROOM 308 • SACRAMENTO 95814
(916) 441-2533

ROOM 255 • CITY HALL • LOS ANGELES 90012
(213) 485-3327

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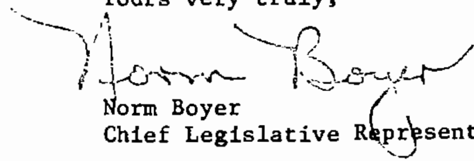
- Null and void provision: By imposing a 30 day period to challenge a public meeting for a violation of AB 2674, the bill effectively puts any acts by the public entity in limbo until 30 days are over. How could the entity function in an emergency? While challenges are possible currently, they do not have a time limitation; by imposing a short time period, the bill effectively clouds all legislative acts.

Therefore, the City of Los Angeles must indicate our opposition to the enactment of AB 2674.

Yours very truly,



Norm Boyer
Chief Legislative Representative

NB/lv
cc: All Members of the Senate Local Government Committee

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SP - 70b

California Grocers Association

1400 K Street
Suite 208
Sacramento
CA 95814

P.O. Box 160907
Sacramento
CA 95816

916 448-3545

Don C. Beaver
President

Doris G. Costa
Vice President

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Manuel Campos
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Don Kaplan
Convenient Food Marts, San Ramon

Jack Kent

Paul Kodimer
ABC Market Corporation, Los Angeles

Ron Koett
El Sobrante

David C. Larson
Oakland

Steve Nettleton
Chico

Jack Panaro

Robert Piccinini

Michael Provenzano

Charles Sprinkle
Pleasanton

Peter Stathos

Lynda Trelut

George Soares

Serving the food industry of California since 1898

May 14, 1986

TO: Assemblyman Lloyd Connelly
Members, Senate Local Government Committee

FROM: Don C. Beaver
Doris G. Costa

RE: AB 2674 (Connelly)
Local Agency Meetings
As Amended 3/18/86

POSITION: Support

The California Grocers Association supports AB 2674 (Connelly) scheduled for hearing in the Senate Local Government Committee on Wednesday, May 28, 1986.

This bill would require all local agencies to post agendas for items to be discussed at their meetings and would prohibit action from being taken on an item not appearing on that agenda.

CGA represents California's grocers at the local as well as the state level. We track and monitor items of interest to California grocers by reviewing the meeting agendas of city councils and county boards of supervisors. When an item of interest appears, we alert grocers in the locale and, if necessary, assist them in their endeavors to support or oppose the ordinance.

Advance notice of items is crucial in order to secure input from all individuals affected.

We urge you to vote YES at the hearing of AB 2674.

LM:kb

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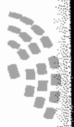


file = AB 2674

Citizens Property Rights Committee

May 20, 1986

Mr. Peter Detwiler, Consultant
Senate Local Government Committee
State Capitol, Room 2080
Sacramento, CA 95814

RE: Senate and Local Government Committee hearing date Wednesday, May 28, 1986, 9:30 am.

Due to the problems of inadequate notice, citizens and interested parties do not, in some cases, have time to study or speak to certain actions that local agencies take. AB 2674 would correct this problem by:

1) Requires posting of an agenda 72 hours prior to a regular meeting of a local agency. It prohibits the legislative body from acting on any item not included in the agenda, unless a majority of the legislative body makes a finding that an "emergency" situation exists, or finds, by a 2/3 vote of the legislative body, that the need to take an action arose subsequent to the agenda being posted.

2) Specifies that a local agency can call a special meeting at any time if a majority of the legislative body's membership and the press is notified at least 24 hours prior to the meeting.

3) Requires local agencies subject to the Brown Act (such as county boards of supervisors, city councils, their standing committees, special district boards and local commissions, such as planning commissions) to establish regulations which provide the public the opportunity to address the legislative body at each regular meeting.

4) Allows any interested person to take action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body or local agency is in violation of the Brown Act and is, therefore, null and void. Such an action would have to be taken within 30 days from the date of the legislative action. If the legislative body cures or corrects its action, the case would be dismissed with prejudice. Exceptions to the null and void provisions include actions which involved the sale or issuance of bonds, a contractual agreement, the collection of taxes, or cases where the action was determined to have been in "substantial" compliance with the act.

P.O. Box 1332 • Temple City, California 91780 • (818) 405-1091 • (818) 447-5500

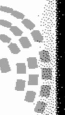
SP - 72b

Therefore, we are asking for your support and an "aye" vote to pass AB 2674 out of your committee.

Sincerely,

Sherry Passmore
Executive Director
Citizens Property Rights Committee

SH/lcr



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bill file

AMERICAN CIVIL LIBERTIES UNION
CALIFORNIA LEGISLATIVE OFFICE
1127 11th Street, Suite 605
Sacramento, California 95814
Telephone (916) 442-1036

May 22, 1986

Members Senate Local Government Committee
State Capitol
Sacramento, California 95814

Re: AB 2674 - Support

Dear Members:

The ACLU is pleased to inform you of our support for AB 2674 relating to open meetings of local agencies.

The ACLU believes that all meetings of any legislative or administrative body of the nation, state, city or any subdivision thereof -- including any board, commission, authority, council, agency, or committee, and also including subcommittees or subordinate groups of the above bodies -- should be open to the public. Meetings shall be defined as those gatherings of the body at which the official business of the body is or may be considered or transacted, including any informal or formal discussion, commitment, promise, consensus, decision or vote on any such business.

Each such body, where appropriate, shall have a regular schedule of meetings which shall be made public, and special meetings shall be held only upon reasonable notice to all members of such body and to the media. Minutes shall be taken of all open meetings, and the same shall be matters of public record. Minutes shall also be taken of all closed session and shall be available to any court reviewing the action of said body.

Closed session may only be held in certain limited circumstances involving litigation, personnel matters or employee contracts. AB 2674 advances this policy.

If we may be of further assistance to you in this matter please do not hesitte to contact our office.

Very truly yours,

MARJORIE C. SWARTZ
Legislative Advocate

DAPHNE L. MACKLIN
Legislative Advocate

MCS/rme
The Hon. Lloyd G. Connelly

SP - 74b

A32674

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

P. O. Box 944255
Sacramento 94244-2550

1515 K STREET, SUITE 511
SACRAMENTO 95814
(916) 445-9555

May 22, 1986

Honorable Marian Bergeson
Chairperson, Senate Local Government
State Capitol, Room 4082
Sacramento, California 95814

Dear Senator Bergeson:

AB 2674 (Connelly) - Open Meetings

The Attorney General's office urges you to support AB 2674, which will be heard by the Local Government Committee on May 28.

Although the Brown Act (Gov. Code, § 54950 et seq.) requires local legislative bodies to provide advance, public agendas for special or emergency meetings (Gov. Code, §§ 54956, 54956.5), there is no similar requirement of agendas for regular meetings. AB 2674 fills this loophole by now requiring binding agendas for regular meetings.

Existing law authorizes any interested party to seek injunctive or declaratory relief to stop or prevent anticipated violations of the open meeting requirements of the Brown Act (Gov. Code, § 54960). There is, however, no remedy available if the local legislative body has already acted in violation of the act. AB 2674 closes this loophole by providing a new remedy permitting any interested party to have actions taken in violation of the Brown Act declared null and void.

Such suits would have to be commenced within 30 days of the challenged action. Acts which are in "substantial compliance" with the open meeting requirement would be exempt from attack, and the board or commission may remedy any flaw by simply curing or correcting the error pursuant to the requirements of the Brown Act.

AB 2674 essentially conforms the Brown Act, regulating local legislative bodies, to the amendments made last year to the Bagley-Keene Open Meeting Act, regulating state agencies, made by AB 214 (Connelly). (Stats. 1985, ch. 936.)

The Attorney General supported last year's legislation to put real teeth in the requirement that the public be given notice of proceedings conducted by state agencies. We support

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AB 2674 again this year since there is no justification in policy or practice why the public should receive less notice and opportunity to be heard before local governmental agencies.

We urge your support for the measure, which passed the Assembly by a vote of 69-4.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

ALLEN SUMNER
Senior Assistant Attorney General
(916) 324-5477

AS:lb

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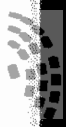

League of California Cities
1400 K STREET • SACRAMENTO, CA 95814 • (916) 444-5790

Sacramento, CA

May 23, 1986

PROPOSED AMENDMENT TO SECTION 54954.3

Insert at p. ~~4~~ 7, line ~~8~~ 13:

However, in the case of a meeting of the city council or board of supervisors in a city or city and county ~~with a population of more than 200,000,~~ the agenda need not provide an opportunity for members of the public to address the council or board on any item that has already been considered by a committee of the council or board at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, unless the item has been substantively changed since the committee heard the item.

CHB/mba

cb523d?/1bj

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SP - 77b

DISTRICT OFFICE
FORT SUTTER BUILDING
2705 K STREET, SUITE 6
SACRAMENTO, CALIFORNIA 95816
443-1183

CAPITOL OFFICE
STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
445-2484

Assembly
California Legislature

COMMITTEES
WAYS AND MEANS
JUDICIARY
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
AGING & LONG TERM CARE

SUBCOMMITTEES
CHAIR, ADMINISTRATION OF JUSTICE
STATE ADMINISTRATION
HEALTH & WELFARE

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

Proposed technical amendments to AB 2674 to be offered at May 28, 1986 hearing of the Senate Local Government Committee:

Amendment #1 - On page 4 at line 21 through line 22 delete "and shall specify the time and location of the meeting and be posted".

Amendment #2 - On page 8 at line 6 through line 7 delete "and shall specify the time and location of the meeting and be posted".

Amendment #3 - On page 6 at line 10 after "time and location of the meeting and" insert "the business to be transacted and shall".

LEGISLATIVE INTENT SERVICE

SENATE LOCAL GOVERNMENT COMMITTEE
Senator Marian Bergeson, Chairman

VERSION:	05/22/86	A
SET:	First	B
HEARING:	05/28/86	
FISCAL:	Approp.	2
CONSULTANT:	Detwiler	6
		7
		4

Assembly Bill 2674 - Connelly

Subject: Brown Act

Existing Law:

The Ralph M. Brown Act requires local agencies' meetings to be open to the public. The Brown Act permits special meetings, emergency meetings, and closed sessions but only in specified circumstances.

I. **Advance Agendas**. State law requires community colleges and school districts' boards to post their agendas 48 hours before a regular meeting and 24 hours before a special meeting. The Bagley-Keene Open Meeting Act requires state bodies to provide notice of their meetings 10 days in advance. The meeting notice of a state body must include a specific agenda; the notice for an advisory body only needs to contain a "brief, general description" of the agenda items. These agencies cannot add items to their agendas after giving notice. Community college and school districts must permit the public to address their meetings.

Assembly Bill 2674 requires local agencies' legislative bodies to post their agendas 72 hours before their regular meetings. The agendas must contain a brief general description of each item and specify the time and location of the meeting. AB 2674 prohibits a local agency from acting on an item unless it appears on its posted agenda, with three exceptions:

1. In an emergency situation, as defined.
2. On a 2/3 vote of the legislative body or a unanimous vote if less than 2/3 of the members are present.
3. The item was properly posted but continued from an earlier meeting held five or fewer days before.

AB 2674 also requires local agencies' agendas to provide an opportunity for the public to directly address the legislative body on "items of interest to the public and within the subject matter jurisdiction of the legislative body." However, the legislative body cannot act on an item unless it was noticed on the agenda. The bill permits the legislative body to adopt reasonable regulations, including time limits, to carry out the intent of this new requirement.

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Further, AB 2674 requires community college and school districts' boards to conform to these agenda requirements, increasing the required time for posting from 48 hours to 72 hours but permitting them to add agenda items, as specified.

II. Enforcement. The Bagley-Keene Act permits an individual to file a lawsuit declaring a state body's decision "null and void" because it did not comply with the Act's open meeting requirements. A suit must be filed within 30 days of the state body's action. But a court cannot invalidate certain types of decisions, even if they were improper. A court can award attorney's fees to successful plaintiffs (AB 214, Connelly, 1985).

Assembly Bill 2674 permits an individual to file a lawsuit declaring a decision of a local legislative body, a school district, or a community college district "null and void" because the agency did not comply with the requirements for open meetings and public notice. Within 30 days of the decision, the individual must demand that the legislative body correct its action. The legislative body has another 30 days to inform the individual how it corrected its action or that it has decided not to correct its action. The individual then has 15 days (or 75 days from the initial complaint) to file the lawsuit.

The bill prohibits the invalidation of a legislative body's action which violated the Brown Act if the action:

1. Was "in substantial compliance" with the Act's open meeting and public notice requirements.
2. Was related to the sale or issuance of bonds or other indebtedness.
3. Created a contractual obligation which was relied on in good faith.
4. Was related to tax collection.

The court must dismiss the suit if the local agency, school district, or community college district later corrects its action. Corrective action is not evidence of Brown Act violation.

III. Special Meetings. Current law permits local agencies, school districts, and community college districts to hold special meetings if they notify the members of the legislative body and the media in writing. The notice must be received 24 hours before the special meeting. The notice must contain the time and place of the meeting and the business to be transacted. **Assembly Bill 2674** requires these agencies to post their notices of special meetings 24 hours in advance.

IV. **Emergency Meetings**. In defined "emergency situations," the Brown Act permits local agencies to hold emergency meetings without giving the 24-hour written notices required for special meetings. **Assembly Bill 2674** also exempts local agencies from having to post notices for emergency meetings.

Comments:

1. The public's right to know. In adopting the Brown Act, the Legislature declared that people have a right to be informed about their local agencies' decisions. Some observers point to the lack of advance agendas as a serious obstacle to the public's ability to follow their local officials' actions. Others believe that the absence of ways to challenge illegal meetings means that local officials cannot be stopped from violating the Brown Act. AB 2674 responds to these two criticisms by requiring agendas in advance and by permitting the courts to declare illegal decisions void.

2. Good for the goose? State agencies have had to provide agendas for their meetings since 1967. School districts and community college districts have faced similar requirements since at least 1976. State law does not require counties, cities, and special districts to provide the public with agendas in advance of their meetings. Last year, the Legislature permitted courts to strike down state agencies' decisions that violated the open meeting and public notice laws. Under current law, a local decision made in violation of the Brown Act is not void. AB 2674 applies the agenda requirement to local agencies for the first time. Further, the bill creates a procedure for the courts to void illegal local decisions.

3. Public comment requirement. AB 2674 requires every county, city, and special district to set aside time on its regular meeting agenda to hear from members of the public. The bill qualifies this requirement in three ways: the topics must be "within the subject matter jurisdiction of the legislative body;" the legislative body cannot act unless the item was already on its agenda or was properly added to the agenda; and the legislative body can adopt regulations governing these public comment periods. The Committee may wish to consider whether the requirement for public comment will unnecessarily slow down local agencies' meetings. The Committee may also wish to consider whether the bill gives local officials sufficient control over public comment periods without stifling their intent.

4. Effect on schools and community colleges. AB 2674 affects school districts and community college districts, not just coun-

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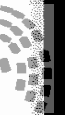

ties, cities, and special districts. The bill lengthens their posting requirements for regular meetings from 48 hours to 72 hours, but it also provides a new procedure for adding items to their agendas. In addition, AB 2674 creates a new statutory procedure for challenging school district and community college districts decisions which are made in violation of open meeting and public notice requirements.

5. New state mandate, Legislature must pay. AB 2674 creates new state mandated local programs by requiring local agencies to post descriptive agendas of their regular meetings, set aside time at their regular meetings to hear public comments, and to post notices of special meetings. The bill also requires school districts to post their agendas a day earlier than required by current law. While these costs may be minor for each affected agency, their cumulative costs may be substantial given that there are 58 counties, 441 cities, 1,034 school districts, and nearly 5,000 special districts and other miscellaneous agencies. AB 2674 directs local and school officials to file claims for any new local costs with the Commission on State Mandates.

6. Technical amendments needed. The Brown Act currently requires local officials to give written notice of their special meetings; specifically, the time, place, and "the business to be transacted." Additionally, AB 2674 requires them to post notice of the time and location, but does not require local officials to post the agenda of items to be discussed. The Committee may wish to consider an amendment which requires local agencies to post for the public all of the information they are already required to provide to the media.

Support and Opposition: (05/22/86)

Support: Attorney General, League of Women Voters, California Taxpayers Association, California State PTA, Common Cause, California Freedom of Information Committee, California Grocers Association, Planning and Conservation League, Sonoma County Taxpayers Association, Peace Officers Research Association of California, American Civil Liberties Union, California District Attorneys Association, School Legal Services, District Attorneys of Alameda, Los Angeles, and San Joaquin counties.

Opposition: Association of California Water Agencies, California Association of Sanitation Agencies, County Clerks Association, Amador County Water Agency, Jackson Valley Irrigation District, Barron Park Association, City of Los Angeles.

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MAY 30 1986

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RECORD # 90 RF: RN 86 016301 PAGE NO. 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2674
AS AMENDED IN SENATE MAY 22, 1986

Amendment 1
Strike out line 3 of the heading, and insert:

(Coauthors: Senators Ayala, Bergeson, Craven, and Marks)

Amendment 2
On page 4, lines 21 and 22, strike out "and shall specify the time and location of the meeting and be posted"

Amendment 3
On page 6, line 10, after the second "and" insert:

the business to be transacted and shall

Amendment 4
On page 7, line 13, after the period insert:

However, in the case of a meeting of a city council in a city or a board of supervisors in a city and county, the agenda need not provide an opportunity for members of the public to address the council or board on any item that has already been considered by a committee, composed exclusively of members of the council or board, at a public meeting wherein all interested members of the public were afforded the oportunity to address the committee on the item, unless the item has been substantially changed since the committee heard the item, as determined by the council or board.

Amendment 5
On page 8, lines 6 and 7, strike out "and shall specify the time and location of the meeting and be posted"

Amendment 6
On page 10, line 9, strike out "information" and insert:

notice

- 0 -

SP - 83b

SENATE LOCAL GOVERNMENT COMMITTEE
Senator Marian Bergeson, Chairman

Assembly Bill 2674 - Connelly

VERSION: 06/04/86
SET: First
HEARING: 05/28/86
FISCAL: Approp.
CONSULTANT: Detwiler

A
B
2
6
7
4

Subject: Brown Act

Existing Law:

The Ralph M. Brown Act requires local agencies' meetings to be open to the public. The Brown Act permits special meetings, emergency meetings, and closed sessions but only in specified circumstances.

I. Advance Agendas. State law requires community colleges and school districts' boards to post their agendas 48 hours before a regular meeting and 24 hours before a special meeting. The Bagley-Keene Open Meeting Act requires state bodies to provide notice of their meetings 10 days in advance. The meeting notice of a state body must include a specific agenda; the notice for an advisory body only needs to contain a "brief, general description" of the agenda items. These agencies cannot add items to their agendas after giving notice. Community college and school districts must permit the public to address their meetings.

Assembly Bill 2674 requires local agencies' legislative bodies to post their agendas 72 hours before their regular meetings. The agendas must contain a brief general description of each item and specify the time and location of the meeting. AB 2674 prohibits a local agency from acting on an item unless it appears on its posted agenda, with three exceptions:

1. In an emergency situation, as defined.
2. On a 2/3 vote of the legislative body or a unanimous vote if less than 2/3 of the members are present.
3. The item was properly posted but continued from an earlier meeting held five or fewer days before.

AB 2674 also requires local agencies' agendas to provide an opportunity for the public to directly address the legislative body on "items of interest to the public and within the subject matter jurisdiction of the legislative body." However, the legislative body cannot act on an item unless it was noticed on the agenda. The bill permits the legislative body to adopt reasonable regulations, including time limits, to carry out the intent of this new requirement. Cities, including San Francisco need not provide for public comment on an item if a city council committee has already considered the item and provided an

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opportunity for public comment. This exception does not apply if the item has "substantially changed" after the committee heard the item.

Further, AB 2674 requires community college and school districts' boards to conform to these agenda requirements, increasing the required time for posting from 48 hours to 72 hours but permitting them to add agenda items, as specified.

II. Enforcement. The Bagley-Keene Act permits an individual to file a lawsuit declaring a state body's decision "null and void" because it did not comply with the Act's open meeting requirements. A suit must be filed within 30 days of the state body's action. But a court cannot invalidate certain types of decisions, even if they were improper. A court can award attorney's fees to successful plaintiffs (AB 214, Connelly, 1985).

Assembly Bill 2674 permits an individual to file a lawsuit declaring a decision of a local legislative body, a school district, or a community college district "null and void" because the agency did not comply with the requirements for open meetings and public notice. Within 30 days of the decision, the individual must demand that the legislative body correct its action. The legislative body has another 30 days to inform the individual how it corrected its action or that it has decided not to correct its action. The individual then has 15 days (or 75 days from the initial complaint) to file the lawsuit.

The bill prohibits the invalidation of a legislative body's action which violated the Brown Act if the action:

1. Was "in substantial compliance" with the Act's open meeting and public notice requirements.
2. Was related to the sale or issuance of bonds or other indebtedness.
3. Created a contractual obligation which was relied on in good faith.
4. Was related to tax collection.

The court must dismiss the suit if the local agency, school district, or community college district later corrects its action. Corrective action is not evidence of Brown Act violation.

III. Special Meetings. Current law permits local agencies, school districts, and community college districts to hold special meetings if they notify the members of the legislative body and the media in writing. The notice must be received 24 hours before the special meeting. The notice must contain the time and place of the meeting and the business to be transacted. **Assembly**

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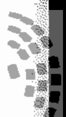

Bill 2674 requires these agencies to post their notices of special meetings 24 hours in advance.

IV. **Emergency Meetings**. In defined "emergency situations," the Brown Act permits local agencies to hold emergency meetings without giving the 24-hour written notices required for special meetings. **Assembly Bill 2674** also exempts local agencies from having to post notices for emergency meetings.

Comments:

1. The public's right to know. In adopting the Brown Act, the Legislature declared that people have a right to be informed about their local agencies' decisions. Some observers point to the lack of advance agendas as a serious obstacle to the public's ability to follow their local officials' actions. Others believe that the absence of ways to challenge illegal meetings means that local officials cannot be stopped from violating the Brown Act. AB 2674 responds to these two criticisms by requiring agendas in advance and by permitting the courts to declare illegal decisions void.

2. Good for the goose? State agencies have had to provide agendas for their meetings since 1967. School districts and community college districts have faced similar requirements since at least 1976. State law does not require counties, cities, and special districts to provide the public with agendas in advance of their meetings. Last year, the Legislature permitted courts to strike down state agencies' decisions that violated the open meeting and public notice laws. Under current law, a local decision made in violation of the Brown Act is not void. AB 2674 applies the agenda requirement to local agencies for the first time. Further, the bill creates a procedure for the courts to void illegal local decisions.

3. Public comment requirement. AB 2674 requires every county, city, and special district to set aside time on its regular meeting agenda to hear from members of the public. The bill qualifies this requirement in three ways: the topics must be "within the subject matter jurisdiction of the legislative body;" the legislative body cannot act unless the item was already on its agenda or was properly added to the agenda; and the legislative body can adopt regulations governing these public comment periods. The Committee may wish to consider whether the requirement for public comment will unnecessarily slow down local agencies' meetings. The Committee may also wish to consider whether the bill gives local officials sufficient control over public comment periods without stifling their intent.

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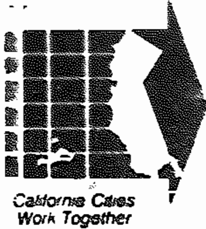
4. Effect on schools and community colleges. AB 2674 affects school districts and community college districts, not just counties, cities, and special districts. The bill lengthens their posting requirements for regular meetings from 48 hours to 72 hours, but it also provides a new procedure for adding items to their agendas. In addition, AB 2674 creates a new statutory procedure for challenging school district and community college districts decisions which are made in violation of open meeting and public notice requirements.

5. New state mandate, Legislature must pay. AB 2674 creates new state mandated local programs by requiring local agencies to post descriptive agendas of their regular meetings, set aside time at their regular meetings to hear public comments, and to post notices of special meetings. The bill also requires school districts to post their agendas a day earlier than required by current law. While these costs may be minor for each affected agency, their cumulative costs may be substantial given that there are 58 counties, 441 cities, 1,034 school districts, and nearly 5,000 special districts and other miscellaneous agencies. AB 2674 directs local and school officials to file claims for any new local costs with the Commission on State Mandates.

6. The June 4 amendments. The June 4 amendments reflect the changes made at the Committee's May 28 hearing. The principal change permits city councils to avoid public comment on items where the public has already had a chance to comment in a council committee. The Committee also accepted amendments which corrected a technical problem regarding the posting of notices and it added co-authors.

file: AB2674 ('86)



League of California Cities
1400 K STREET • SACRAMENTO, CA 95814 • (916) 444-5790

Sacramento, CA.
October 6, 1986

TO: City Attorneys and City Clerks

RE: Changes in Brown Act Open Meeting Requirements

Introduction

AB 2674 (Connelly), Ch. 641 of the 1986 statutes, which dramatically changes the Brown Act open meeting requirements, takes effect January 1, 1987. This new law requires local agencies to post an agenda prior to each meeting of the legislative body, requires local agencies to provide an opportunity for the public to address the legislative body, generally prohibits the legislative body from acting on items not appearing in the agenda, and authorizes bringing suit to void certain actions taken in violation of the Brown Act.

Because the new law raises numerous questions of interpretation, Robert Flandrick, City Attorney of Baldwin Park, Bell and Whittier and President of the City Attorneys Department, appointed a committee to recommend a uniform approach to implementing AB 2674. The members of this committee are: Steve Amerikaner (Chair), City Attorney of Santa Barbara; Bill Adams, City Attorney of Palm Springs; George Buchanan, Senior Assistant City Attorney of Los Angeles; Frank Gillio, City Attorney of Los Altos Hills, Millbrae and Monte Sereno; Alice Graff, City Attorney of Hayward; Ron Johnson, Senior Chief Deputy City Attorney of San Diego; and Ron Stein, City Attorney of Lodi.

This report is intended to help city attorneys resolve some of the interpretive questions raised and ensure compliance with the spirit of the Brown Act. A summary of the bill is followed by specific, practical recommendations. The text of the bill should be carefully reviewed for detailed provisions not covered in the summary. The recommendations at times will propose alternative courses of action or merely identify issues which could arise. While the bill applies to every local "legislative body," including certain advisory bodies such as planning commissions, references will generally be made only to cities and city councils. All code section references are to the Government Code. Because the bill requires considerable attention to detail to ensure compliance, the Committee recommends that prior to January 1, 1987, each city adopt written internal procedures to provide the council and staff with guidance.

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Summary of AB 2674

Posting Agendas. AB 2674 requires a city to post an agenda in a location which is freely accessible to the public at least 72 hours before each regular meeting of the city council. The agenda must include a brief description of each item of business to be transacted or discussed at the meeting together with the time and location of the meeting. The council is prohibited from taking action on any item not appearing on the posted agenda unless: (1) a council majority determines that an "emergency situation," as defined, exists; (2) the council determines by a two-thirds vote, or by a unanimous vote if less than two-thirds of the council members are present, that the "need to take action" on the item arose subsequent to the posting of the agenda; or (3) the item was included in a properly posted agenda for a prior meeting occurring not more than five days prior to the meeting at which the action is taken and was continued to the meeting at which the action is taken. (Section 54954.2).

Notice of each special meeting must be posted at least 24 hours prior to the special meeting. (Section 54956).

Public Discussion. AB 2674 requires that every agenda for a regular meeting provide an opportunity for members of the public to address the legislative body on items of interest to the public within the body's subject matter jurisdiction. If an item discussed by a member of the public did not appear in the agenda, the same restrictions on council action discussed above will apply. The council does not have to allow the public time to speak on an item which was previously considered by a council committee if an opportunity for public input was afforded at the committee meeting. (Section 54954.3).

Violations. AB 2674 authorizes any interested person to seek a judicial determination that an action taken by the council in violation of the public meeting or agenda posting requirements of the Brown Act is null and void. Prior to filing a lawsuit and within 30 days of the action, the interested person must make a demand of the council that it cure the challenged action. If the council takes no curative action within 30 days of the demand, the interested person must file suit within the earlier of: (1) 15 days after the expiration of the 30-day period; (2) 15 days after receipt of written notice from the city council of its decision to cure, or not to cure, the challenged action; or (3) 75 days from the date the challenged action was taken. Notwithstanding the foregoing, an action of the council cannot be determined to be null and void if: (1) the action was taken in substantial compliance with the Brown Act; (2) the action was taken in connection with the issuance of an evidence of indebtedness; (3) the action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied; or (4) the action was taken in connection with the collection of any tax. (Section 54960.1).

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Recommendations and Discussion

1. **New Section 54954.2 (a) provides that an agenda shall be posted in a location that is freely accessible to the public. What is meant by "freely accessible"?**

   Since the statute does not specify locations where the agenda must be posted, cities should take a common sense approach to what is reasonable. If a meeting is, to be held early in the week, the agenda should not be posted only in a building which is closed on weekends. Possible alternative locations might include a library, a supermarket, a newspaper building or a bulletin board located outside of city hall. The agenda should regularly be posted in the same location (or locations) rather than rotating locations. The agenda should be posted in a location where the agenda will remain undisturbed. While the statute does not require the city to maintain the agenda after it is posted, it may not be reasonable to post the agenda in a location where the agenda is regularly torn down before the meeting.

2. **Should a record be kept of the time and location of posting of the agenda?**

   The Committee recommends that each city adopt, by resolution or otherwise, a procedure to be followed in posting agendas. The Committee recommends that the procedure include one of two alternative methods of keeping a record of posting. Under the first alternative, the clerk would routinely sign a declaration of the time and place where the agenda was posted and keep those in his or her office for public reference. Under the second alternative, each meeting's agenda would include a clerk's report on the posting of the agenda, which would be reflected in the minutes of the meeting.

3. **New Section 54954.2 (a) requires that the agenda contain a brief general description of each item of business to be transacted or discussed at the meeting. How much detail must be included in this description?**

   For the purpose of clarifying this point, the following letter was placed in the July 3, 1986 Senate Journal at page 6703 at the time of the Senate floor vote on AB 2674: "The intent of subsection (a) of Section 54954.2 [Section 5 of AB 2674] is to require local public agencies to post agendas that contain sufficient descriptions of the items of business to be transacted at a meeting of a council, board of supervisors, commission, etc., to enable members of the general public to determine the general nature or subject matter of each agenda item, so that they may seek further information on items of interest. It is not the purpose of this bill to require agendas to contain the degree of information required to satisfy constitutional due process requirements."

   The Committee recommends that the description be reasonably calculated to adequately inform the public. For example if the item involves a land use decision, the agenda should include a description of the

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action proposed and the location or street address of the property in plain English, and if the item involves a contract, the agenda should describe the nature of the contract. Emphasis should be placed on informing the public of the substance of the matter rather than precisely describing the contemplated council action.

4. **New Section 54954.2 (a) provides that "no action shall be taken" on any item not appearing on the posted agenda. What is meant by the phrase "no action shall be taken"?**

The Committee believes that the existing definition of "action taken" should be referred to for guidance. Government Code Section 54952.6 defines "action taken" as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

5. **May the council simply discuss an item which was not included in the posted agenda if no formal "action" is taken?**

The language of the statute is inconsistent on this point. New Section 54954.2 (a) provides that the agenda must include a description of each item of business "to be transacted or discussed." This section then states that "[n]o action" shall be taken on any item not appearing on the agenda, but does not explicitly extend this prohibition to the discussion of such items. Clearly if the council or staff intends to bring up an item for discussion at a meeting, the item should be included in the agenda unless it falls within one of the exceptions under Section 54954.2 (b). If council members give reports, the nature of the reports should be described in the agenda. However, it is unclear whether the council may discuss an item which is brought up by a member of the public and neither was described in the agenda nor falls within one of the exceptions under Section 54954.2 (b). Under a strict interpretation of the statute, such an item should not be discussed. However, as a practical matter, it will be difficult to restrain council members from responding to the public, and such discussion is not explicitly prohibited.

6. **As stated in question 5, supra, it is unclear whether the council can even discuss an item which is not included in the agenda but which is raised by a member of the public. At the same time, clearly the council cannot take "action" on such a matter. Assuming discussion is permitted, how can the council respond to the public's concern without running afoul of the prohibition against taking "action"?**

Four alternatives are available to the council. First, the council can simply do nothing to resolve the concern of the public. However, council members may believe that this would make them appear to be unresponsive to their constituents. Second, the council can adopt, in advance, a rule whereby any matter raised by the public is automatically referred to staff or placed on the next meeting's agenda. Third, the prohibition on taking "action" can be construed to refer only to substantive actions taken by the council. Under such a construction, the council would be free to take procedural actions

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such as referring matters to staff or placing matters on the next agenda. (Any risk that such a procedural action would be deemed a prohibited "action" could be minimized by authorizing the presiding officer, in advance, to take such procedural action by edict.) Fourth, the council can make a determination pursuant to Section 54954.2 (b) that the need to take action arose after the agenda was posted (see question 7) or that an emergency situation exists. Upon making such a determination, the council is free to take any appropriate action.

7. **New Section 54954.2 (b) (2) provides that the council may take action on an item not appearing on the agenda upon a "determination" by a two-thirds vote (or a unanimous vote if less than two-thirds of the council are present) that "the need to take action arose" after the agenda was posted. What does the phrase "the need to take action arose" mean?**

Clearly if the need for action on an item was known by the council or staff prior to posting the agenda but was not included for reasons of scheduling convenience or oversight, the need to take action did not arise after the agenda was posted. A more difficult question is presented where, for example, a developer faces a conditional use permit approval deadline but does not seek council approval until after the agenda for a meeting is posted. In this situation, it could be argued that the "need" for action did not arise until after the agenda was posted because it was not until this time that the matter was presented to the council for action. On the other hand, it could be argued that the underlying need to act before the deadline existed prior to posting the agenda regardless of whether the developer had requested council action at that time. The Committee recommends that cities adopt the latter view, as that approach is more in harmony with the Act's apparent intent of ensuring prior public notice of matters to be considered at a meeting. If this latter approach is adopted, existing ordinances which include time deadlines should be reviewed to eliminate the hardship placed on parties who seek council action within the deadline but whose requests were filed after the agenda was posted. Ordinances should be revised so that the filing of an application or request tolls any applicable deadline for a specified period of time to enable the council to act.

To protect subdividers who request subdivision map extensions after the agenda is posted, Government Code Sections 66452.6 (e) and 66463.5 (c) (the Subdivision Map Act) were amended by AB 2740 (Cortese) Ch. 787 of the 1986 statutes, to extend a tentative map for the time required to process a developer's application to extend a tentative subdivision map or tentative parcel map.

8. **New Section 54954.2 (b) (1) and (2) provides that action may be taken on items not appearing on the posted agenda upon a "determination" that the item arose after the time of posting or that an emergency situation exists. To what extent must facts be presented to support these determinations?**

The "determination" requirement does not mean that formal findings must be made, although a separate vote should be taken in making the determination. Nevertheless, the Committee recommends that the minutes reflect what the need for action was and why the need arose

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after the posting of the agenda, or why an emergency situation exists. Cities which keep action minutes may wish to establish a policy whereby the need for any late additions are substantiated in writing and kept in the council file.

9. **New Section 54954.3 (a) provides that the public shall be given an opportunity to speak on "items of interest to the public." Does this include agenda items? At what point during the meeting must this opportunity to speak be provided?**

   The Committee recommends that cities interpret this provision broadly to provide an opportunity to speak on all items within the subject matter jurisdiction of the council, including agenda items. The provision does not specify whether the opportunity to speak must be provided prior to council action on an item. However, the intent of the legislation is probably most fully carried out by providing the opportunity to speak prior to council action. This provision does not require the council to allow public input on each item as it comes up during the course of a meeting. Thus the Committee believes that a city may set aside a fixed period of time early in the meeting to receive public comment, both on agenda items and other matters, and decline to permit public comment at other times during the meeting (except as required for public hearings as discussed below).

   The Committee believes that the determination of whether an item is within the subject matter jurisdiction of the council is a discretionary decision to be made by the council.

   This provision for public input is completely independent from statutory-requirements for public hearings on particular matters (e.g. hearings on subdivision approvals and assessment proceedings) and in no way affects these requirements. Public comment which is a part of required public hearings should continue to be heard at the time the item is before the council.

10. **New Section 54954.3 (b) provides that a city may adopt regulations governing public discussion "to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker." If a city adopts such regulations, what may they include?**

    The Committee believes that these regulations may include provisions specifying the total amount of time devoted to public input, how such time should be allocated among speakers, at what point during the meeting the public will be allowed to speak, time limits on individuals, time limits on particular items and limits on the subject matter of discussion. The Committee suggests that each city adopt such regulations prior to January 1, 1987, the effective date of the statute.

11. **New Section 54960.1 provides a procedure by which actions taken in violation of the Brown Act may be determined to be void. What types of Brown Act violations are susceptible to a judicial determination that the underlying action is void?**

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New Section 54960.1 creates a cause of action to judicially declare void only those council actions taken in violation of Sections 54953, 54954.2 or 54956. Thus actions taken in violation of the open meeting requirements, such as during seriatim meetings, can be set aside by a court. Similarly, actions improperly taken on items which should have been, but were not, described in an agenda posted at the prescribed time may also be set aside. However, violations of Brown Act provisions other than those contained in the aforementioned sections, e.g. where the council prohibits a member of the public from tape recording a meeting (Section 54953.5), do not render the underlying council actions subject to invalidation. Of course, these latter violations may still be enjoined (Section 54960) or subject council members to criminal liability (Section 54959).

12. **New Section 54960.1 authorizes any interested person to bring an action "for the purpose of obtaining a judicial determination" that an action taken in violation of the Brown Act "is null and void." Does this provision make such a council action void _ab initio_?**

This provision does not clearly specify whether an action taken by the council in violation of the Brown Act is void _ab initio_ or whether it is voidable upon a finding by the court that a violation occurred. This distinction may be quite significant in certain situations. For example, suppose a city council approves a general plan amendment in violation of the Brown Act, but the action is not directly challenged within the period prescribed by Section 54960.1. The council then approves a development project on the property subject to the general plan amendment. An opponent of the project then challenges the development project approval on the grounds that it is inconsistent with the general plan prior to the amendment, and that the amendment is void because it was adopted in violation of the Brown Act. If the amendment is deemed to be void _ab initio_, the development project is inconsistent with the general plan and cannot proceed. However, if the amendment could only be set aside if a lawsuit had been filed within the prescribed period (which has now expired), the amendment is valid and the development project is consistent with the general plan.

Based on the language of the statute and the legislative history, the Committee believes that an improper council action is not void _ab initio_. Section 54960.1 (a) authorizes bringing an action to obtain a "judicial determination" that an improper action is void. The use of the word "determination" implies that the action is not void until the time of the determination. Further, Section 54960.1 (b) provides that an improper council action "shall not be determined to be null and void" if certain conditions exist. Significantly, this section does _not_ say "an action _shall_ be void _unless_" certain conditions exist.

The legislative history of _AB 2674_ also supports the position that an improper action is not void _ab initio_. When introduced on January 15, 1986, Section 54960.1 (a) stated, "Any action taken by a legislative body of a local agency in violation of Section 54953 or 54954.2 is null and void." On March 3, 1986, the bill was amended, at the League's request, to delete the foregoing provision.

Note that Section 54960.1 (a) authorizes an action by mandamus or injunction. The Committee believes that the most appropriate means to

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declare a legislative decision void is declaratory relief. When introduced, AB 2674 also authorized an action for declaratory relief. This authority was inexplicably dropped when the bill was amended on March 10, 1986.The Legislative Counsel's Digest of AB 2674 at the time the bill was adopted continued to state that the bill authorizes actions by mandamus, injunction or declaratory relief.

13. **New section 54960.1 provides that, prior to seeking a judicial determination that an improper council action is void, the complainant must make a demand of the council to cure or correct the allegedly improper action. The council may then cure or correct the challenged action or decide not to do so. Procedurally, how should the council respond to such a demand?**

The Committee recommends that upon receipt of a demand, an item with two sub-items should be added to the next meeting's agenda. The first sub-item should be consideration of the demand, i.e. whether the challenged action can reasonably be said to have violated the Brown Act. The second sub-item should be consideration of the underlying subject matter of the challenged action if the council decided, in considering the demand, that the challenged action may have violated the Brown Act. (Alternatively, the council may want to consider the demand at one meeting and, if it finds the demand to be valid, consider the subject matter of the challenged action at a subsequent meeting. However, since an action to cure or correct must be taken within 30 days of receipt of the demand, the council may need to take prompt action.)

1) The first sub-item to be considered is the demand that the council cure or correct the allegedly improper action. The rationale for considering the demand as a separate sub-item, as opposed to discussing the subject matter of the challenged action at the same time, is two-fold. First, it ensures that the council, rather than staff, makes the determination of whether a violation may have occurred. Second, it avoids any implication that the council, by considering the underlying matter, is admitting that a violation took place or is waiving a possible defense of substantial compliance. Since filing a demand is a preliminary step to bringing a suit, the Committee believes that the council generally will be able to consider the demand in closed session pursuant to Section 54956.9 on the basis that a significant exposure to litigation exists.

   In considering the demand, the council may want to take one of two approaches. It could ask: Was there an actual violation of the Brown Act? Alternatively: Is there a colorable claim that the Brown Act was violated?

2) If the council decides to act upon the demand, it should then consider the second sub-item, i.e. whether action should be taken on the matter considered in the allegedly improper action. The Committee recommends that this sub-item on the agenda should not be termed on the agenda a ratification or confirmation of the allegedly improper action, because such terminology implies that the action was invalid when taken and presupposes that the council will not be influenced by public input to take a

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different action. The Committee therefore suggests it be termed a "consideration."

In considering the underlying matter, should the council set aside the original action prior to taking corrective action? As discussed in question 9 supra, the Committee believes that an action taken in violation of the Brown Act is not void ab initio, so such an action remains in effect at the time curative action is being considered. However, the Committee recommends that the council should not declare the original action to be void, because then any action taken, e.g. the imposition of a fee, would not be effective until the corrective action was taken. At the same time, the council should not just ignore the fact that the original action was taken, because this could create confusion if the corrective action differed in substance from the original action. Thus the Committee recommends that the corrective ordinance or resolution state that the original action is superseded or rescinded as of the effective date of the corrective action. To establish a record the corrective ordinance or resolutipn should also describe the original action and why the corrective action is being taken.

The foregoing procedure may also help cities in demonstrating compliance with the Permit Streamlining Act (PSA) which, among other things, requires a city to approve or disapprove a development project within one year of accepting the application. Has a city complied with the PSA if an allegedly improper approval or disapproval occurs before the one year deadline and the corrective action occurs after the deadline? The Committee believes that the city has complied with the PSA in this situation, because it took an action, albeit defective, which was not void ab initio and which was taken prior to the deadline.

In considering the underlying matter, should the council build a new record from scratch, or can it rely on the record developed when taking the allegedly improper action? Certainly the council must permit new public testimony on the underlying matter. At the same time, the Committee believes that the council can incorporate the record of the prior meeting in support of any findings, provided that no member of the public shows that he or she has suffered prejudice (e.g. by not being present at the earlier meeting and not being able to review the testimony offered at the earlier meeting.) In allowing additional testimony at the subsequent meeting, the council probably can limit members of the public from repeating testimony given at the previous meeting. However, it would be more prudent simply to state that all previous testimony will be considered part of the record and that such testimony need not be repeated.

14. New Section 54960.1 (c) provides that an action taken "in connection with the collection of any tax" shall not be determined to be null and void. How broad is the phrase "in connection with the collection of any tax?"

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Although the statute is not clear, the author of AB 2674 has indicated that he did not intend for this phrase to include the collection of any fee or assessment or to include the imposition of any tax.

15. **Amended Section 54960.5 provides that a court may award court costs and attorneys fees to the plaintiff in an action brought pursuant to the Brown Act where the court finds a violation. If the council purportedly takes corrective action after the statutory deadline and after the suit has been filed, is a court nevertheless authorized to award attorneys fees?**

    If the council takes corrective action, any previously filed suit must be dismissed with prejudice pursuant to Section 54960.1 (d). Accordingly, the Committee believes that a court has no authority to award attorneys fees under this provision because no Brown Act violation has been found. At the same time, a council's decision to take corrective action has no effect on the authority of a court to award attorneys fees in an action brought pursuant to Section 54960.

AB2674.legal

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file = AB 2674 ('86)

LAW OFFICES OF
BEST, BEST & KRIEGER

November 20, 1986

MEMORANDUM

TO: PUBLIC AGENCY CLIENTS

FROM: BEST, BEST & KRIEGER

RE: AMENDMENTS TO THE BROWN ACT

The State Legislature passed several amendments to the Ralph M. Brown Act (California Government Code §§ 54950-54961) this year. A discussion of those amendments follows. They go into effect January 1, 1987.

Agendas

The new law adds Section 54954.2 to the Government Code. That Section requires that public agencies post in an area "freely accessible to the public" an agenda for public meetings at least 72 hours before each regular meeting. The notice must specify the time and location of the meeting and contain a "brief general description of each item of business to be transacted or discussed at the meeting." The public agency may not take action on any item not appearing on the posted agenda.

Section 54954.2 contains three exceptions to this general prohibition. The legislative body may consider items not appearing on the posted agenda if:

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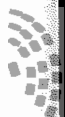

LAW OFFICES OF
BEST, BEST & KRIEGER

(1) a majority of the legislative body determines that an "emergency situation" exists,[1]

(2) two-thirds of the legislative body finds that the need to take action arose after the agenda was posted, or

(3) the item was posted for a prior meeting occurring not more than five days prior to the current meeting and was continued to the current meeting.

The new law does not tell us how much detail must be included in the description of agenda items. However, the following language from the Senate Journal on the day of the Senate floor vote is helpful in discerning the degree of detail necessary to carry out the intent of the amendment:

> "The intent of subsection (a) of Section 54954.2 . . . is to require local public agencies to post agendas that contain sufficient descriptions of the items of business to be transacted at a meeting . . . to enable members of the general public to determine the general nature or subject matter of each agenda item, so that they may seek further information on items of interest."

It is unlikely that catch-all agenda items like "City Attorney Items" or "General Manager Report" will satisfy these new requirements. Rather, counsel and

---

[1] The Act already defines "emergency situation" narrowly as a "work stoppage" or "crippling disaster" disrupting public facilities which "severely impairs public health, safety, or both." (Government Code Section 54956.5.)

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management should provide a more detailed list of items for discussion.

By contrast, "Closed Session" is probably a sufficient description of items for discussion in closed session. The new legislation contains no override of Government Code Section 54957.7 which requires a legislative body to state the reasons for the closed session prior to <u>or after</u> holding the closed session. Therefore, a public agency would appear to still have the Section 54957.7 prerogative of giving the reason for the closed session in the agenda, at the meeting prior to holding the closed session, or after holding the closed session.[2/]

The notice and agenda requirements applicable to special meetings are still in effect, and continue to require individual notice to members of the legislative body, as well as notice to newspapers, radio stations, and television stations requesting such notice. The new law contains the additional requirement that the call and notice of special meetings be posted in a location freely accessible to the general public.

2/ Government Code Section 54956.9 continues to require that where a legislative body holds a closed session pursuant to the pending litigation exception, it must "state publicly" <u>prior</u> to the closed session the portion of the exception under which the closed session is held.

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Public Participation

The 1986 amendments require that every agenda for regular meetings provide an opportunity for members of the public to address the legislative body on "items of interest to the public that are within the subject matter jurisdiction of the legislative body." You may adopt reasonable regulations limiting the time allocated for public testimony on particular issues and the time allocated to each speaker. We can assist you in preparing such regulations, although a simple minute order consistently applied should suffice.

No action may be taken on items of business presented by the public and not appearing on the agenda unless those items fall within one of the Section 54954.2 exceptions for non-agenda items.

This provision gives rise to the question of whether a long-existing problem first brought to the attention of the legislative body during the public participation portion of a meeting can give rise to a "need to take action [arising] subsequent to the agenda being posted" under Section 54954.2(b)(2). It is unlikely that many problems the public brings to the attention of the legislative body will have existed for less than 72 hours. Section 54954.2 may preclude the legislative body's taking action on this sort of item. On the other hand, it can be argued that the need to take action on existing problems

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really arises when the legislative body becomes aware of the need for action, even though the problem may have existed for some time. Therefore, we feel that a legislative body's taking action on an urgent, existing matter first brought to its attention by a member of the public at a public meeting would probably be in harmony with the spirit of the new law. However, where a matter can await action until the legislative body can include the item in the next agenda and allow for input by interested members of the public, the Board or Council should try to put the matter over until its next meeting.

New Remedies For Brown Act Violations

The new law adds Section 54960.1 to the Government Code. This section provides that, as with existing 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 the legislative body violates the Brown Act. This section adds the requirement that an interested person demand that the legislative body cure or correct the action alleged to have been taken in violation of the Brown Act. The demand must be written and clearly describe the alleged violation and must be made within 30 days from the date the action was taken. Within 30 days after receipt of the demand, the legislative body may cure or correct the challenged action, and inform the

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demanding party of its actions to cure or correct, or in the alternative, inform the demanding party of the legislative body's decision not to cure or correct the challenged action. The legislative body may take no action, but inaction is deemed to be a decision not to cure or correct the challenged action. Within 15 days of receipt of the legislative body's cure notice, within 15 days of the expiration of the 30 day period to cure or correct, or within 75 days from the date of the challenged action, whichever is earlier, the demanding party is required to commence an action or is thereafter barred from commencing such an action.

This section provides that the interested person may seek a judicial determination that the legislative body's actions are null and void. However, such a determination shall not be made where the court finds that (1) the action taken was in substantial compliance with the Brown Act, (2) the action concerns the sale or issuance of notes, bonds or other indebtedness or a contract, instrument or agreement thereto, (3) the action gave rise to a contractual obligation upon which a third party has relied in good faith, or (4) the action was taken in connection with the collection of any tax. During the pendency of the action, the legislative body may cure or correct the alleged violation and the action shall be dismissed with prejudice. The section provides that the action by a

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legislative body to cure or correct shall not be construed, or be admissible, as evidence of a violation of the Brown Act.

If you have questions, please let us know. Enclosed is your copy of the Brown Act as it will be in effect January 1, 1987.

DALLAS HOLMES
DOUGLAS S. PHILLIPS
SCOTT C. SMITH

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BROWN ACT

ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

I. REGULAR MEETINGS

(A) Post agenda 72 hours before meeting in place accessible to public

(1) No action on any item not described

(a) Emergency exception for work stoppage or crippling disaster (majority vote)

(b) Exception for matters arising subsequent to posting (two-thirds vote)

(c) Exception for item posted for meeting no more than 5 days previously

(B) Mail notice of meeting, at least one week in advance, to property owners requesting notice in writing

(C) Public opportunity to address Board

(1) No action unless exception applies

(2) Reasonable regulations (time)

II. SPECIAL MEETINGS

(A) 24-hour written notice (hand-delivery or received in mail) stating time, place and business

(1) Board members, unless waived in writing or by appearance

(2) Newspapers, radio and TV stations requesting notice in writing

(3) Posting in place accessible to public

(B) Emergency exception - written notice not required

(1) Work stoppage or crippling disaster which severely impairs public health or safety (majority vote)

(2) One hour telephone notice to newspapers, radio and TV stations requesting notice in writing

(3) Closed session not permitted

(4) Subsequent notice as soon as possible if phones do not work

(5) 10-day posting of minutes, list of persons notified or attempts, roll call votes and any actions taken

III. ADJOURNMENT OF MEETINGS

(A) Notice of adjournment must be posted near door within 24 hours after adjournment (any meeting)

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LEGISLATURE CHANGES BROWN ACT: A.B. 2674 (Connelly)

I. LEGISLATIVE POLICY.

A. The people have a right to know and in advance.
B. This policy already applies to state agencies.
C. Signed into law as Chapter 641, effective 1-1-87.

II. ALL LOCAL AGENCIES.

A. General purpose governments: cities and counties.
B. Special districts.
C. School districts and community college districts.
D. Other local agencies: LAFCOs, JPAs, etc.

III. WHAT DO YOU HAVE TO DO?

A. Post agenda 72 hours in advance.
   1. Brief general description of items.
   2. Time and location.
   3. Probably not much of an administrative burden.
B. Can't add items (3 exceptions)
   1. "Emergency," as defined.
   2. With 2/3 vote (unanimous if less than 2/3 present).
   3. Previously noticed but carried over for 5 days.
C. "Open mike" time must be provided.
   1. Subject matter jurisdiction.
   2. Reasonable regulations: time on issue & speaker.

IV. ILLEGALLY MADE DECISIONS CAN BE VOIDED BY COURT.

A. Certain decisions can't be voided, even if illegal.
   1. Substantial compliance by local agency.
   2. Actions on bonds and indebtedness.
   3. Actions on contracts, in good faith reliance.
   4. Actions on tax collection.
B. Challengers must first try administrative remedies.
C. Court can award attorneys' fees, either way.

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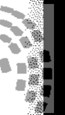


February 5, 1987

Mr. Joe A. Gonsalves
Mr. Anthony D. Gonsalves
Park Executive Building, Suite 203
925 L Street
Sacramento, CA 95814

Dear Joe and Anthony:

Re: Brown Act Modifications

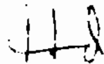
Previously, we indicated that one of our legislative goals in 1987 is to clarify changes made in the Ralph M. Brown Act in the 1986 session. The changes are in Chapter 641 of the Statutes of 1986.

We find it difficult to believe that the Legislature intended to prohibit procedural action by the City Council on comments made by residents during the public participation (i.e, oral communications) portion of the Council agenda. Typically, these comments address items not listed on the Council agenda but within the jurisdiction of the City Council. Prior to Chapter 641, these were routinely referred to staff for a report back to the Council.

Under Chapter 641, the Council is now unable to take such routine procedural action on public comments on items not listed on the agenda. We believe that Chapter 641 discourages public participation during the oral communications portion of the agenda and places the City Council in an untenable position of inviting comments and then--seemingly--ignoring them.

Please meet with legislative consultants on clarifying this unfortunate consequence of the Chapter 641 addition.

Sincerely,



Howard L. Chambers
City Administrator

HLC:am

cc: Intergovernmental Relations Committee

Lakewood

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ANN MACKEY
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EDWARD K. PURCELL
JOHN T. STUDEBAKER

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JOHN A. CORZINE
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THOMAS D. WHELAN
JANA T. WHITEGROVE
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California

April 13, 1987

Honorable Gary A. Condit
2141 State Capitol

Open Meetings - #8930

Dear Mr. Condit:

QUESTION

May the legislative body of a local agency at a regular meeting discuss an item of business which does not appear on the agenda for that meeting if no action is taken on the item at that meeting?

OPINION

The legislative body of a local agency may not generally discuss an item of business at a regular meeting which does not appear on the agenda for that meeting. However, if the legislative body is authorized to take action on the item by subdivision (b) of Section 54954.2 of the Government Code or the item is an item of interest to the public within the subject matter jurisdiction of the legislative body as to which a member of the public addresses the legislative body, as authorized by Section 54954.3 of the Government Code, the item may be discussed by the legislative body.

ANALYSIS

The Ralph M. Brown Act (Ch. 9 (commencing with Sec. 54950) Pt. 1, Div. 2, Title 5, Gov. C.)* generally requires that the meetings of legislative bodies of local agencies, as defined, be open and public.

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* All references are to the Government Code.

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Subdivision (a) of Section 54954.2 reads as follows:

> "54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. No action shall be taken on any item not appearing on the posted agenda." (Emphasis added.)

This section requires the agenda to be posted at least 72 hours before a regular meeting and to contain a brief general description of each item of business to be transacted or discussed. It also prohibits action being taken on an item not appearing on the posted agenda. The term "action taken" is defined, for the purposes of the Ralph M. Brown Act, to mean a collective decision made by a majority of the members of a legislative body to make a positive or negative decision or an actual vote by a majority of the members of the legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance (Sec. 54952.6).

However, subdivision (b) of Section 54954.2 permits the legislative body to take action on items of business not appearing on the posted agenda for a regular meeting if any of specified conditions exist. These conditions include: the determination by a majority vote of the legislative body that an emergency situation exists; a determination by a two-thirds vote or, if less than two-thirds of the members are present, a unanimous vote that the need to take action arose subsequent to the posting of the agenda; or the item was posted for a prior meeting occurring not more than five calendar days prior to the date action is taken and at the prior meeting the item was continued to the meeting at which action is being taken.

Further, subdivision (a) of Section 54954.3 requires that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body, but prohibits any action from being taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2.

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The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purposes of the law (Select Base Materials v. Board of Equal., 57 Cal. 2d 640, 645). Statutes must be given a reasonable and commonsense construction in accordance with the apparent intention and purposes of the lawmakers-one that is practical rather than technical and that will lead to a wise policy rather than mischief or absurdity (Anaheim Union Water Co. v. Franchise Tax Bd., 26 Cal. App. 3d 95, 105). Furthermore, it cannot be assumed that the Legislature indulges in idle acts; rather, every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect (Stafford v. Realty Bond Service Corp., 39 Cal. 2d 797, 805).

We think that the most reasonable and commonsense construction of the provisions in question, and the construction which best harmonizes them, is that the posted agenda for a regular meeting is required to contain a brief general description of each item of business which the legislative body of the local agency proposes to transact or discuss at the meeting. The agenda must also provide an opportunity for members of the general public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body. What these items of interest to the public would be would generally not be a matter as to which the legislative body would have any information before the meeting. Thus, we do not think that subdivision (a) of Section 54954.2 requires that the posted agenda contain any reference to the particular items as to which members of the public may address the legislative body at a regular meeting.

Furthermore, if a member of the public directly addresses the legislative body on an item of interest to the public which is within the subject matter of the legislative body, there is no provision of the Ralph M. Brown Act or other law which would either expressly or impliedly prohibit the members of the legislative body from discussing the item. They may have questions regarding the item, or it may be impossible or inconvenient for the member of the public to attend another meeting. However, we do not think that the members of the legislative body are free to discuss items which are not on the agenda or which are not presented by members of the public. To permit them to do so would render meaningless the requirement that the posted agenda contain a reference to the items of business to be transacted or discussed at the meeting and the provisions of subdivision (b) of Section 54954.2 which permit the legislative body to take action on items not appearing on the posted agenda for a regular meeting if any of the specified conditions exist.

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Finally, subdivision (b) of Section 54954.2 permits the legislative body to take action on items of business not appearing on the posted agenda for a regular meeting if any of the specified conditions exist. There is, again, no provision of the Ralph M. Brown Act or other law which would either expressly or impliedly prohibit members of the legislative body from discussing items of business not appearing on the posted agenda for a regular meeting as to which the legislative body is authorized to take action by subdivision (b) of Section 54954.2.

There is no other provision of law that would authorize the legislative body of a local agency at a regular meeting to discuss an item of business which does not appear on the agenda for that meeting.

It is, therefore, our opinion that the legislative body of a local agency may not generally discuss an item of business at a regular meeting which does not appear on the agenda for that meeting. However, if the legislative body is authorized to take action on the item by subdivision (b) of Section 54954.2 of the Government Code or if the item is an item of interest to the public within the subject matter jurisdiction of the legislative body as to which a member of the public addresses the legislative body, as authorized by Section 54954.3 of the Government Code, the item may be discussed by the legislative body.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By, Paul Antilla
Paul Antilla
Deputy Legislative Counsel

PA:kg

…chers OK …k Action

…ce with board members …ict officials.

…ntative agreement, which …embers are expected to …onday, would cost $55 …nd raise beginning pay to … and maximum pay to … The average teacher sala… be $35,000. The increase … retroactive to July 1.

…member Alan Gershman …% raise "compares very …y" with increases ap… other school districts in …les County this year. An …pay hike of 4.8% was won …ers in 21 of 43 county … that have concluded con…, he said.

…se see TEACHERS, Page 4

Board Gets Even

Supervisors Vote Restrictions on Gadfly Harangues

By TED VOLLMER, *Times Staff Writer*

A handful of gadflies, capitalizing on a change in state law that took effect this year, has waited countless hours each week to lecture the Los Angeles County Board of Supervisors on topics ranging from the dangers of hypoglycemia to the perils of homosexuality and the pitfalls of public works projects.

One of these longtime board critics repeatedly has called for ailing Supervisor Kenneth Hahn's resignation, or at the very least, a county grand jury inquiry into Hahn's fitness to continue in office. This same gadfly has over the years continually blasted the credibility of county grand jury investigations.

All of these pearls of wisdom, delivered week in and week out at the end of sometimes lengthy board meetings, have tested the patience of the supervisors. Supervisor Pete Schabarum blew up at one gadfly, calling him a "peanut brain."

Other board critics from time to time have been physically ejected from meetings or barely escaped arrest.

On Tuesday, the board got even.

Interpreting a 9-month-old amendment to the Ralph M. Brown Act, the state's open meeting law, the board voted 3 to 1—ailing Supervisor Hahn was absent—to limit the number of times an individual may address the supervisors on any topic the individual chooses. Instead of once a week, a person will now be able to testify before the board only once every 90 days on any topic. And, the supervisors decided, no more than five people may address them on non-agenda items in any single meeting.

Individuals, including gadflies, may still address the board on individual agenda items, but only on one item per meeting.

The gadflies were not thrilled.

"What I am asking you is to kill this thing before it becomes pregnant," said Howard Watts, a perennial candidate for elected office who has appeared numerous times before the Los Angeles City Council, Board of Education, the Board of Supervisors and other agencies. "We don't want to have to go to a court of law to get a corrective action. . . ."

The new state law, requiring all local government agencies to set aside time for "public comment" on any topic, went into effect Jan. 1. An angry Schabarum reportedly has said that if the new law is such a great idea, state legislators ought to subject themselves to its provisions.

Supervisor Mike Antonovich, who pushed for setting the limit at 30 days, voted against the 90 day limit, saying, "part of this

Please see GADFLIES, Page 4

LA Times 10/7/87

"Looking back on it, I wonder if they sensed it was coming. But I can't prove it," he said.

Even More Later

After the earthquake, even more animals were brought in with similar symptoms, Cuellar said. He took lab tests and concluded that it was their nerves.

"It's a cycle," he said. "First they are upset about the earthquake. Then that fear sometimes makes them sick. Then they get even more fearful because they are sick."

The veterinarian noted that since the earthquake, one of his cats has been vomiting and hiding. The other two have been following his wife around the house constantly.

"The best thing to do is give them plenty of reassurance. Keep them inside, and feed them multiple small meals or bland diets, or even withhold food for a short period, until they calm down," he said.

Animal experts also emphasized that all pets who can wear them should have collars and identification tags. When preparing earthquake emergency kits, owners

[illegible] wanted to be back where that awful noise and shaking had been. He was very jumpy and didn't want me to leave his side."

When the aftershock came early Sunday morning, Meid was prepared. The windows were shut so Romeo had no escape route. And she had a cat carrier at her bedside in case she had to leave the house with her pet.

Those who have found others' pets this last week have had problems of a different sort.

Shirley Kessler, a secretary at USC, notes that Prof. Mary Ann von Glinow found a black and tan Doberman pinscher, a young fe-

All I saw was her tail go ov[er] the wall. I found a woman [on] Montrose [Avenue] who said [s]he had hit her with her car, but [s]he disappeared. Then I found someo[ne] down on Verdugo [Boulevard] w[ho] said she was hit again and just ke[pt] going. It was awful."

Tibbetts keeps checking ar[ea] animal shelters and veterinar[y] hospitals. Dolly had on a choke chain with a bright red identifica[tion] tag.

"If she was dead, someone surel[y] would have called," Tibbetts sai[d]. "My friends think maybe someon[e] just decided to keep her. It's horri[ble] to think I might never kno[w] what happened to her."

CAL STATE: Campus to Reopen

Continued from Page 1

resilient," said chemistry professor Harold Goldwhite.

The damage could have been worse. There was relatively little chemical spillage in the building because restraining wires had been put on all shelves as a precaution well before last Thursday's quake.

University spokeswoman Ruth Goldway said one problem with the repair effort is that of finding skilled workmen and engineers to work on short notice. Many were tied up with quake damage elsewhere, she said, but finally arrived over the weekend.

More than 25 structural engineers then went through each building. Goldway said that besides damage to the business education building, Salazar Hall, the adminis[tration] building and a bridge be[tween] the two library wings, littl[e] structural damage was found.

Still lying where it fell Thursday was the concrete slab that kille[d] Miss Elias-Exposito. Yellow restraining tape surrounded it, and Goldway said other slabs are being inspected for possible loose connections. In the meantime, part of the parking structure will remain closed.

School officials have announced plans to establish a scholarship in memory of the dead student and are soliciting student and public contributions.

To compensate for the week of classes lost, the campus will extend its fall semester from Dec. 14 to Dec. 21.

GADFLIES

Continued from Page 1

[listening to the gadflies] is the price to pay for democracy."

County Counsel DeWitt W. Clinton defended the new rule's legality, saying the 90-day limit will give more people a chance to comment.

"It's my opinion that the intent of the Brown Act . . . was to provide the opportunity to a reasonable section of the public to . . . give their opinion and testimony," Clinton said. "When you have a county of this size, . . . [there] has to be a fairly tight restriction on the amount of time available for this type of public comment."

Supervisor Deane Dana put it a little more bluntly.

"These people come and talk about anything," Dana said. "There really are no new subjects and no substance."

The gadflies voiced astonishment at the board's audacity, declaring the new rule illegal.

"A democracy means that you got to listen to people that you object to," said Leonard Shapiro. "Maybe everybody here doesn't like to hear me talk, but according to a democratic attitude, you've got to listen."

TEACHERS: 5% Pay Increase

Continued from Page 1

District and union officials disagreed on the reasons behind the swift settlement of this year's salary negotiations.

Gershman attributed it mainly to the availability of extra state funds. "The funds were available early and we set it aside," he said. "I wish we could have had the money at this time last year."

Gershman said actions taken by the governor and the Legislature in the 12 months prior to the 10% wage settlement last May contributed to financial uncertainty in the district.

Johnson, however, said the ease of this year's negotiations was due to a "completely different attitude" toward teacher issues on the board and in the district's upper management.

On July 1, three new member[s] took office; two members—Juli[e] Korenstein and Warren Furutani—won with the union's help. On[e] veteran board member who wa[s] opposed by the union, John [illegible] Greenwood, was defeated.

Also new to the district this ye[ar] is Supt. Leonard Britton, formerl[y] the top administrator in the Mi[ami] school district who is known as [a] strong supporter of improvi[ng] teachers' salaries and working con[ditions].

"Dr. Britton is deserving of sub[stantial] credit" in achieving th[e] rapid settlement, Johnson said.

Union and district negotia[tors] will begin to discuss a new cont[ract] Nov. 15. This is the third year of [a] three-year contract which allo[ws] renegotiation each year on sal[ary] and certain other issues.

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Thursday, July 16, 1987

Los Angeles Times

Brown Act Keeps Sun Shining on Government

By MYRNA OLIVER, Times Legal Affairs Writer

In the summer of [illegible], the Los Angeles City Council quietly approved "Item [illegible]" without public hearing, discussion or prior reading. An irate citizen filed a civil suit, claiming that council members had surreptitiously given themselves a 10% pay raise in violation of the Brown Act and the City Charter. A judge nullified the raise as beyond the Charter limit of 5%.

A year later, the San Diego City Council was accused of meeting secretly to discuss its $644-million budget. The district attorney was asked to investigate any criminal violation of the Brown Act, and the San Diego Tribune filed a civil suit. No criminal charges were filed, but the council settled the civil case by promising to abide by the Brown Act in the future.

Those were unusual invocations of the Ralph M. Brown Act, 34-year-old granddaddy of state "sunshine" laws designed to open public meetings to that very same public. The act, patched and refined significantly by state appellate court opinions and legislative amendments, remains effective only if volunteer watchdogs remain vigilant.

Commissioner Stalks Out

Civil libertarians and the lawyers who prosecute and defend government bodies agree that the Brown Act gets its biggest workout in smaller cities, commissions and school districts.

An example is Crescent City, where a harbor commissioner stalked out of a meeting when told that the job description for a new harbor master would not qualify as a "personnel" matter that could legally be discussed in secret. Another is the Marin County [illegible] where a City Council met [illegible] sitting around in a [illegible] with no room for observers.

"In small cities they are not as much attuned to the Brown Act as the larger metropolitan areas are," said Chief Assistant Atty. Gen. Richard D. Martland, chief of the attorney general's civil division whose office offers legal advice on the Brown Act to 15 or 20 callers every month. "We get an inordinate amount of requests dealing with very small cities or small districts."

Convenience, observers say, is probably a greater motivation for closed-door meetings than conspiracy.

Avoid Interruptions

"Everybody knows everybody. They kind of think, 'Well those rules are for places where there are a lot of people. We don't have to do that. We are a family,'" said Steve Barrow, lobbyist for California Common Cause, the 60,000-member citizens group that frequently goes to court under the Brown Act. "It is just easier to do business at a local cafe where they all have breakfast every day, or at a local bar."

Councils, boards and commissions in small areas also may prefer members-only meetings to avoid loud interruptions by disruptive groups, critics say, or to cover their own ignorance and rubber-stamping of staff-prepared items.

The volunteer watchdogs—individuals, citizens groups, and newspaper reporters—diligently use the Brown Act as their key to open closed-door meetings.

"A very major issue within civil liberties is assuring that the sun shines on government, and that is

Please see BROWN, Page [illegible]

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BROWN: Keeping Government Open

Continued from Page 1

what the statute is all about," said Mark D. Rosenbaum, attorney for the American Civil Liberties Union. "Secret government by definition is elitist government which excludes the public. When the Brown Act is abused, the most obvious suggestion is that government has something to hide."

Walter Zelman, executive director of California Common Cause and a member of the Los Angeles Water and Power Commission, said public meetings also produce better decisions because officials hear from citizens.

"Elected officials have an obligation to see that their business is open to the public, and we have an obligation to hold them accountable," said Margaret Herman, legislative advocate for the 12,000-member California League of Women Voters, which assigns members to monitor local government meetings and urge officials to correct any Brown Act violations.

Guidance Available

The busiest monitors of Brown Act violations are newspaper reporters, said Martland and his assistant, Ted Pirm, who has sent out about 6,000 attorney general reference pamphlets titled "Open Meeting Laws."

"We act as a surrogate for the public," said Michael B. Dorais, general counsel and lobbyist for the California Newspaper Publishers Assn., with 257 member newspapers. "The public depends on us because they are not able to attend school board meetings, city council meetings, supervisors meetings, planning commission meetings. We are there to keep them informed. We are their monitoring agency."

For the first half of its utilitarian life, the Brown Act allowed government groups to meet secretly only for discussion of personnel matters, an exception made to ensure employees' right of privacy. In 1968 and 1972, a state appellate court said that litigation could also be discussed behind closed doors, and the Legislature later formally added that exception.

Major amendments were triggered by the Los Angeles City Council's surreptitious vote on "Item 53" to raise its pay, even though the court found no Brown Act violation.

Effective last Jan. 1, the latest amendments require a public posting of descriptive agendas (the mere "Item 53" would not qualify) 72 hours before a meeting except in an emergency, and provide that any individual can [illegible] overturn a decision wrongly [illegible] in secret. Previous civil [illegible] junctions [illegible] ing secret meetings [illegible]

Another amendment [illegible] to pass this year [illegible] litigation exception, [illegible] [illegible] file, "significant exposure" to litigation, plans to file a suit, or to determine if one of these three applies.

Los Angeles Senior Assistant City Atty. George Buchanan, who advises the City Council, considers the pending amendment "ridiculous," claiming that it would prevent a governmental body's attorney from steering his clients away from Brown Act violations.

"Most lawyers will keep their clients out of trouble if they see it coming," Buchanan said. "But they need to talk to their clients in private."

Buchanan said passage of the amendments last year prompted a rewriting of the Los Angeles council's rules incorporating the changes and that they have "worked like a charm ever since," Buchanan said.

Considering himself a "strict constructionist" on the Brown Act, Buchanan stymies any council discussion of a non-agenda item, even if is brought up by the public. [illegible] city attorneys and county counsel [illegible] sanction discussion, but do not allow legislative action.

But the bulk of the work of enforcing the Brown Act falls to the voluntary watchdogs—individuals, citizen groups or [illegible] who can seek either criminal or civil action, or simply use their votes to oust a frequent abuser.

Since the Brown Act's inception, violation has been a criminal misdemeanor punishable by six months in jail or a $500 fine. But no criminal conviction has ever been won, and charges are rarely filed.

"Practically speaking, it is very hard to prove a criminal violation under the Brown Act," said Los Angeles County Deputy Dist. Atty. Steven Sowders, whose special investigations unit handles about one Brown Act request a month, but has filed no charges in recent history. "You have to prove the action was taken in secret, and taken with the knowledge that the meeting was a violation of the Brown Act."

Perhaps five times in the last 2½ years, Sowders said, he has called a government attorney to ask him to advise a group to open its meetings, solving the problem without charges. [illegible], he simply [illegible] there is no case because there is no proof of criminal intent [illegible] of a violation [illegible] as an [illegible] can be discussed [illegible] doors—personnel, [illegible] public security, or [illegible] negotiator of real estate agent.

The law has no real criminal teeth, the prosecutor said, but he believes that is as it should be.

"These people are not criminals every time they meet in secret," Sowders said. "You don't want to make it so difficult for them to run their local government or you won't have anybody running for [illegible]"

Other Methods

"The things that really bother [illegible] can be prosecuted [illegible]—conflict of interest, bribery, kickbacks, extortion, [illegible] felonies," Sowders said. [illegible] conviction [illegible] Act is not [illegible] [illegible] conviction [illegible]

[illegible] the civil [illegible] in which an individual [illegible] a citizens [illegible] Common Cause [illegible] [illegible] action [illegible] to [illegible] in [illegible] also [illegible]

Although judges ruled that the Brown Act had not been violated, it [illegible] the Los Angeles council's pay raise. A [illegible] also resulted in the San Diego City Council volunteering to open its budget hearings, with no admission of wrongdoing, although the criminal investigation fizzled for lack of criminal intent.

Advocates and critics say the [illegible] has worked well in [illegible] government meetings over the last three decades. But the advocates stressed that it will continue to work only if citizens make it work.

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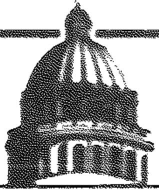

Legislative Trends

Update on Brown Act Legislation

California's public meeting law for cities, best known as the Brown Act, generally requires cities to hold their meetings in public, with a few exceptions, such as attorney-client conferences and discussions relating to labor negotiations. A bill making major amendments to this law, AB 2674 (Connelly) was introduced this legislative session and has received a large amount of attention from city officials and the press.

In its current form, AB 2674 makes two important changes to the Brown Act. First, it requires agendas to be posted 72 hours prior to a council or commission meeting. Second, it allows council and commission actions taken in violation of the Brown Act to be voided by a court. However, bond issues and certain contracts could not be voided.

As introduced, the bill made many more changes, which were either deleted or modified. It originally required agendas to be posted 72 hours in advance, and prohibited additions to those posted agendas, although it allowed citizens to place items directly on the agenda. The bill rendered null and void all decisions of a council taken in violation of the agenda requirements of the bill and of the open meeting provisions of the Brown Act.

Members of the Assembly Local Government Committee, to which the bill was assigned for hearings, indicated to League lobbyists that, although the bill had many shortcomings, they would amend the bill to address its problems, but they would not vote against the bill they fixed. The major reasons for this were: (a) members had seen practices when they were local officials they believed should be changed; and (b) editorial pressure to pass the bill was very strong.

Because of this, the bill went through many amendments. The first was removing the right of members of the public to place items on the agenda, even though the League did not oppose the bill's provision requiring posting of agendas, as few cities objected to this requirement.

The League did oppose the provision precluding councils from acting on agenda add-ons. The Local Government Committee agreed that emergency and administrative matters occasionally come up for every council after the agenda is prepared. In the first amendments, Lloyd Connelly agreed to allow additions to the agenda, with a two-thirds vote, of items involving emergencies, if the council found:

(a) serious harm to the public could result if the item weren't added; and

(b) the matter came up suddenly and unexpectedly after the agenda was posted.

The League supplied examples of situations where such a provision would not be adequate, and the author finally agreed during the Committee hearing to allow agenda add-ons, with a two-thirds vote, for items on which the need to take action arises after the agenda is posted. The bill now specifies a process for handling additions to city council agendas that is similar to that used in the Legislature's own committees.

The League also opposed the provision that would void actions taken in violation of the agenda posting requirements of the bill and the general open meeting requirements of the Brown Act, and questioned the need for such a provision. The bill's proponents justified it by claiming they wanted to put some "teeth" into the Brown Act. The League argued existing remedies in the Brown

(continued on page 30)

League Positions on June Ballot Propositions

Propositions	League Position Yes	League Position No
#43 — Community Parklands Act of 1986	☑	☐
#44 — Water Conservation and Water Quality Bond Law of 1986	☑	☐
#46 — Property Taxation	☑	☐
#47 — Allocation of Vehicle License Fees to Counties and Cities	☑	☐
#48 — Legislators' and Judges' Retirement Systems	☑	☐
#49 — Nonpartisan Offices	☑	☐
#50 — Property Taxation: Disasters	☑	☐
#51 — Multiple Defendants Tort Damage Liability Initiative	☑	☐
#52 — County Correctional Facility Capital Expenditures Bond Act of 1986	☑	☐

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(continued from page 2[illegible])

Act (injunction and misdemeanor), coupled with the press' monitoring of cities, are adequate. District attorneys responded that they are unable to prove misdemeanor cases, and the author argued that the press doesn't monitor school districts and special districts. The League's suggestion to consider a civil fine as an alternative was rejected.

Cities' best arguments against this provision were:

(1) bond issues could be held up; and

(2) contractors could suffer because contracts they had been given could be voided, with no payment to the contractors for their services.

The author responded by exempting bond issues and certain contracts from this provision. The League also attempted to have land use approvals exempted. The author refused, and builders and realtors, who would benefit from the exemption, have not pushed for it.

The League also argued that the "null and void" provision would invite Brown

(continued on page 40)

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Calendar

Announcements of League meetings and training programs are sent two to three months before meeting dates to the attention of appropriate officials in all California cities. The fees, which include the costs of materials and programmed meals, are approximately $75 for one-day meetings and $100 for meetings of more than one day. In addition to the events listed below, a series of middle management training programs is being planned. Additional information and registration information for these conferences can be obtained from the Sacramento Office of the League, 1400 K Street, Sacramento, CA 95814; telephone (916) 444-5790.

1986

May

7-9 — City Attorneys Department Spring Meeting, Marquis, Palm Springs

8-10 — City Council-Manager Leadership Team Workshop, Stanford Sierra Lodge, Fallen Leaf Lake

14-16 — New Mayors and Council Members Conference, Marriott Hotel, San Francisco International Airport

21 — Disciplinary Action and Discrimination Charges Workshop, Hyatt Hotel, Oakland International Airport

22 — Disciplinary Action and Discrimination Charges Workshop, Viscount Hotel, Los Angeles International Airport

29-31 — City Council-Manager Leadership Team Workshop, Stanford Sierra Lodge, Fallen Leaf Lake

June

8 — Public Safety Policy Committee Meeting, South Lake Tahoe

9-10 — Mayors and Council Members Legislative Conference, Sacramento Community Center

12 — Administrative Services, Environmental Quality Policy Committee Meetings, Viscount Hotel, Los Angeles International Airport

13 — Housing, Community and Economic Development, Transportation and Public Works Policy Committee Meetings, Viscount Hotel, Los Angeles International Airport

20 — Community Services, Revenue and Taxation Policy Committee Meetings, Viscount Hotel, Los Angeles International Airport

26 — Employee Relations Policy Committee Meeting, Viscount Hotel, Los Angeles International Airport

July

23-25 — Mayors and Council Members Executive Forum, Hyatt Regency, Monterey

October

19-22 — Annual Conference, Los Angeles

November

19-21 — City Council-Manager Leadership Team Workshop, University of California Conference Center, Lake Arrowhead

December

3-5 — Financial Management Seminar, Westin South Coast Plaza, Costa Mesa

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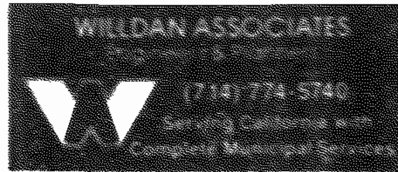

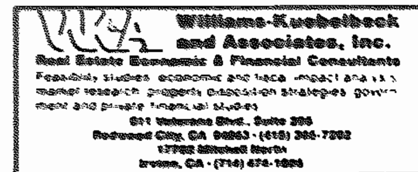

Firms serving the municipal market in California are invited to submit their business cards for publication in **Western City's** Professional Card Directory, where they can be referred to by the elected and professional city officials responsible for running the state's 441 cities. Listings are $500 per year, $1,000 for double-sized cards, nonrefundable, payable in advance.

Political Courage
(continued from page 18)

the only way we can live.

It is not fate, not chance, not some random toss of the dice, not some history that has already been written that determines the future of our communities. It is not national economic circumstances of great movements of people that somehow just toss us in their wake.

Rather, it is our capacity for imagination and ingenuity and managing our cities. It is principle, what we believe in our hearts, our strength of character, the guidance of our creator. In the final analysis, it is the work of our own hands, our perspiration, our brains, our persistence, our determination that decide our cities' futures.

I have every confidence that, just as every generation of Americans that has gone before, and every generation of persons who have served in local government, this generation of leaders in California will understand these changing times and will have the courage, the personal courage, to lead your cities, not in the way of political popularity, not in the way of the momentary expediency, but on a course that shapes the future of California cities to continue their legacy of leadership. ■

Legislative Trends
(continued from page 30)

Act attacks from people who really were alleging the violations in order to attack a substantive decision (most likely development approvals), much as attacks under the Environmental Quality Act and the general plan law sometimes are now misused. Connelly's staff discussed this with us, and agreed to amend the bill to create an administrative remedy. As the bill now reads, a person asserting a Brown Act violation must notify the council before suing, explain the alleged violation, and give the council the chance to correct the violation, or to reject the claim, before suit may be filed. Additionally, an alleged Brown Act violation may be corrected at any time after a suit is filed, and the related action then becomes valid.

The bill has numerous technical problems remaining, but it has addressed cities' major substantive problems. The bill passed the Assembly in mid-April substantially in this form, after the author agreed to the League's suggested technical amendments, although they are not yet in the bill. At its April 19 meeting, the League's Board of Directors agreed to withdraw its opposition to the bill in its current form. ■

Award for Excellence
(continued from page 24)

bane, Santa Ana and Hanford have been recognized for their achievements in finding innovative ways to provide better services to their communities or to maintain service levels for less money.

The City of Hanford — last year's award winner — was chosen on the basis of a community-private partnership to implement a downtown improvement and revitalization program which has prevented economic decline in downtown Hanford, increased sales tax revenues and instilled community pride in the downtown area.

Santa Ana's winning project promoted the use of non-sworn personnel for all police department job categories, except those specifically restricted to sworn officers. The project saved the city approximately 22 percent in salary and fringe benefits and increased enforcement efforts by releasing officers from non-crime related assignments.

Brisbane was recognized for a series of public and private partnerships, which culminated in the construction of the Brisbane marina and improved the cultural, economic and recreational opportunities in the area.

Davis was selected for its energy conservation and load management program, which cut summer peak load electricity consumption by 22 percent and 12 percent respectively during its two years of operation.

The new format has been designed to recognize more cities which have achieved excellence in public service. All cities are encouraged to share their successful projects with other city officials by submitting a nomination for this year's Helen Putnam Award for Excellence. ■

Coming Next Month in *Western City*

— Preparing for Earthquakes: What California Can Learn from the Mexico City Disaster

— How Gramm-Rudman Will Impact Cities

— Maintaining California's Streets and Roads

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EXHIBIT M

Legislative Analyst
April 8, 1986

ANALYSIS OF ASSEMBLY BILL NO. 2674 (Connelly)
As Amended in Assembly March 18, 1986
1985-86 Session

Fiscal Effect:

Cost: Mandated Local Program. Unknown costs, probably less than $25,000, for local legislative bodies to comply with notification and public testimony requirements; potentially state-reimbursable.

Revenue: None.

Analysis:

This bill revises provisions of the Ralph M. Brown Act, relating to deliberations and actions of local legislative bodies. Specifically, the bill:

- Requires local legislative bodies to post an agenda clearly describing all items of business to be taken up or discussed at least 72 hours prior to each regular meeting, and at least 24 hours prior to any special meeting.

- Prohibits local legislative bodies from taking action on any item not included in the posted agenda, unless the legislative body finds (a) by majority vote that an emergency exists, or (b) by a two-thirds vote that the need to take action on an item arose after the posting of the agenda.

- Requires local legislative bodies to provide an opportunity for members of the public to directly address the legislative body on items of public interest at all regularly scheduled meetings, and requires the

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legislative body to adopt regulations to ensure that this requirement is met.

Under existing provisions of the Brown Act, local legislative bodies are generally required to conduct their deliberations and public business in open meetings. Current law also allows interested parties to commence legal action to stop or prevent violations or threatened violations of the Brown Act. As construed by the courts, however, any action already taken at a meeting in violation of the Brown Act is nonetheless valid. This bill authorizes persons to commence legal actions which seek to have such actions determined to be null and void.

Fiscal Effect

The bill would have no effect on state costs or revenues.

Mandated Local Program. The bill would create a state-mandated local program by requiring local legislative bodies to post notification of the time, location and items to be considered at all regular and special meetings, and to adopt regulations ensuring that opportunity is provided to members of the public to address the legislative body on matters of public concern at each regular meeting. These requirements could result in unknown costs, probably less than $25,000, to local agencies. Any increased costs resulting from these requirements would be potentially state-reimbursable.

11/sl

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Legislative Analyst
June 16, 1986

ANALYSIS OF ASSEMBLY BILL NO. 2674 (Connelly)
As Amended in Senate June 4, 1986
1985-86 Session

AB 2674 (Am. 6/4/86)
LEGISLATIVE INTENT SERVICE (800) 666-1917

Fiscal Effect:

Cost: Mandated Local Program. Unknown costs, probably less than $25,000, for affected governing bodies to comply with notification, public testimony and legal requirements; potentially state-reimbursable.

Revenue: None.

Analysis:

This bill revises provisions of the Ralph M. Brown Act and the Education Code, relating to open deliberations and actions of local legislative bodies and governing boards of school and community college districts. Specifically, the bill:

- Requires affected governing bodies to post an agenda which briefly describes each item of business to be taken up or discussed at least 72 hours prior to each regular meeting, and to post notices at least 24 hours prior to any special meeting.

- Prohibits affected governing bodies from taking action on any item not included in the posted agenda for a regular meeting, unless the legislative body finds (a) by majority vote that an emergency exists, (b) by a two-thirds vote that the need to take action on an item arose after the posting of the agenda, or (c) the item was continued from a prior meeting which occurred not more than five days earlier.

- Requires affected governing bodies to provide an opportunity for members of the public to directly address the legislative body on items of public interest at all regularly scheduled meetings, and permits the legislative body to adopt regulations to ensure that this requirement is met.

- Authorizes interested persons to go to court to determine if any action taken by a governing body in alleged violation of the Brown Act is null and void. Legal action may, however, not be taken unless the interested person has, within 30 days, requested the governing body to correct the alleged violation. Current law allows interested parties to commence legal action to stop or prevent violations or threatened violations of the Brown Act. As construed by the courts, however, any action already taken at a meeting in violation of the Brown Act is nonetheless valid.

- Expands the court's authority to award attorneys' fees in cases that determine if the actions of governing bodies are null and void.

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Fiscal Effect

The bill would have no effect on state costs or revenues.

Mandated Local Program. The bill would create a state-mandated local program by requiring local

legislative bodies to post notification of the time, location, and items to be considered at all regular and special meetings, and to adopt regulations ensuring that opportunity is provided to members of the public to address the legislative body on matters of public concern at each regular meeting. These requirements could result in unknown costs, probably less than $25,000, to local agencies. Any increased costs resulting from these requirements would be potentially state-reimbursable.

11/s20

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EXHIBIT N

Honorable Lloyd Connelly
Member of the Assembly
State Capitol, Room 2179
Sacramento, CA 95814

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Connelly	AB 2674
SPONSORED BY	RELATED BILLS	AMENDMENT DATE
		June 4, 1986

BILL SUMMARY

This bill revises local agency open meeting requirements.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC	1985-86	FC	1986-87	FC	1987-88	Code Fund
8885--Commission on State Mandates	LA		--	S	$1		$2	360

FISCAL SUMMARY--LOCAL LEVEL

	1985-86	1986-87	1987-88
Reimbursable Expenditures	--	$1	$2
Non-Reimbursable Expenditures	--	--	--
Revenues	--	--	--

ANALYSIS

A. Specific Findings

Under existing provisions of the Ralph M. Brown Act and the Education Code, the actions of legislative bodies of local agencies and governing boards of school and community college districts are required to be taken openly and their deliberations are required to be conducted openly. Under these existing laws, the legislative body of a local agency and the governing boards of school and community college districts are not required to post an agenda containing a brief general description of each item of business to be transacted of discussed at a regular meeting. Additionally, existing law does not prohibit any action to be taken, as defined, on any item not appearing on the posted agenda. This bill would make this requirement and prohibition, with certain exceptions, as specified.

(Continued)

POSITION: Department Director

Neutral, recommend technical amendment.

Date

Principal Analyst (621)	Date	Program Budget Manager	Date	Governor's Office
[signature]	6/13/86	[signature]	6/13/86	Position noted Position approved Position disapproved by: date:

LR:0413A-1

BILL ANALYSIS/ENROLLED BILL REPORT Form DF-43 (Rev 03/86 500 Bu)

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BILL ANALYSIS--(continued) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Connelly	June 4, 1986	AB 2674

ANALYSIS

A. Specific Findings (Continued)

The Ralph M. Brown Act does not require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body. This bill would, except as specified, make this requirement and would require the legislative body to adopt reasonable regulations, as specified.

The Ralph M. Brown Act requires the legislative body of a local agency to give a specified notice of special meetings. This bill would, in addition, require a specified posting and make a conforming change.

Existing law requires that an agenda of special meetings of the governing boards of school or community college districts be posted at least 24 hours prior to special meetings. This bill would additionally require that the posted notice specify the time and location of the meeting. This requirement would impose a state-mandated local program.

Existing law defines the term "actions taken" and prescribes misdemeanor sanctions for each member of a legislative body who knowingly attends a meeting of the legislative body where action is taken in violation of the Ralph M. Brown Act. Existing law also authorizes any interested person to commence an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of statutory provisions relating to open meetings of local agencies or to determine the application of those provisions.

Under existing law, as construed by the courts, any action taken at a meeting in violation of the Ralph M. Brown Act is nonetheless valid. This bill would authorize any interested person to commence an action by mandamus or injunction to determine if certain actions taken by the legislative body of a local agency and the governing boards of school or community college districts are null and void, as specified. It would require the interested person to make a demand of the legislative or governing body to cure or correct the action, as specified, before commencing the action. It would provide that the fact that a legislative or governing body takes a subsequent action to cure or correct an action pursuant to this section shall not be construed, or be admissible, as evidence of a violation of the Ralph M. Brown Act.

Existing law authorizes a court award reasonable attorneys' fee to a plaintiff where it is found the local agency has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit. This bill would authorize the award of reasonable attorneys' fees in actions to determine null and void the actions of a local agency as described above.

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SF-2

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Connelly	June 4, 1986	AB 2674

ANALYSIS (continued)

A. Specific Findings (continued)

The bill would also declare the Legislature's intent with regard to the application of the Ralph M. Brown Act to the governing boards of school and community districts.

B. Fiscal Analysis

There are no State costs in this bill. The attached "Local Cost Estimate" finds a technical amendment appropriate for local costs. Suggested amendments are attached.

LR:0413A-3

LEGISLATIVE INTENT SERVICE (800) 666-1917

SF-3

Proposed amendment

AB 2674

As amended June 4, 1986

On page 11, strike line 17 through 24, inclusive, and insert:

Sec. 12. The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the State pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

LR:0413A-4

(800) 666-1917 LEGISLATIVE INTENT SERVICE

SF-4

Form DF-44R (Rev. 1/86 W 500)

Local Cost ESTIMATE Department of Finance	NO. 2	ISSUE DATE JUN 1 6 1986	BILL NUMBER AB 2674
	AUTHOR Connelly		DATE LAST AMENDED June 4, 1986

I. SUMMARY OF LOCAL IMPACT:

Revises local agency open meeting requirements.

II. FISCAL SUMMARY--LOCAL LEVEL

	1985-86	1986-87	1987-88
		(Dollars in Thousands)	
Reimbursable Expenditures:	--	$1	$2
Non-Reimbursable Expenditures:	--	--	--
Revenues:	--	--	--

III. ANALYSIS:

Under existing provisions of the Ralph M. Brown Act and the Education Code, the actions of legislative bodies of local agencies and governing boards of school and community college districts are required to be taken openly and their deliberations are required to be conducted openly. Under these existing laws, the legislative body of a local agency and the governing boards of school and community college districts are not required to post an agenda containing a brief general description of each item of business to be transacted of discussed at a regular meeting. Additionally, existing law does not prohibit any action to be taken, as defined, on any item not appearing on the posted agenda. This bill would make this requirement and prohibition, with certain exceptions, as specified.

The Ralph M. Brown Act does not require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body. This bill would, except as specified, make this requirement and would require the legislative body to adopt reasonable regulations, as specified.

The Ralph M. Brown Act requires the legislative body of a local agency to give a specified notice of special meetings. This bill would, in addition, require a specified posting and make a conforming change.

Existing law requires that an agenda of special meetings of the governing boards of school or community college districts be posted at least 24 hours prior to special meetings. This bill would additionally require that the posted notice specify the time and location of the meeting. This requirement would impose a state-mandated local program.

(continued)

PREPARED Date * REVIEWED Date * APPROVED Date
LR:042FA-1 * 6/13/86 * 6/13/86

LEGISLATIVE INTENT SERVICE (800) 666-1917

SF-5

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Connelly	June 4, 1986	AB 2674

III. ANALYSIS (continued)

Existing law defines the term "actions taken" and prescribes misdemeanor sanctions for each member of a legislative body who knowingly attends a meeting of the legislative body where action is taken in violation of the Ralph M. Brown Act. Existing law also authorizes any interested person to commence an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of statutory provisions relating to open meetings of local agencies or to determine the application of those provisions.

Under existing law, as construed by the courts, any action taken at a meeting in violation of the Ralph M. Brown Act is nonetheless valid. This bill would authorize any interested person to commence an action by mandamus or injunction to determine if certain actions taken by the legislative body of a local agency and the governing boards of school or community college districts are null and void, as specified. It would require the interested person to make a demand of the legislative or governing body to cure or correct the action, as specified, before commencing the action. It would provide that the fact that a legislative or governing body takes a subsequent action to cure or correct an action pursuant to this section shall not be construed, or be admissible, as evidence of a violation of the Ralph M. Brown Act.

Existing law authorizes a court award reasonable attorneys' fee to a plaintiff where it is found the local agency has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit. This bill would authorize the award of reasonable attorneys' fees in actions to determine null and void the actions of a local agency as described above.

This bill would also declare the Legislature's intent with regard to the application of the Ralph M. Brown Act to the governing boards of school and community districts.

Sections 17579 and 17610 of the Government Code allow the Controller to reimburse local entities from the State Mandates Claims Fund for the state-mandated local costs imposed on them by a statute if:

a. the statute contains a statement that it mandates a new program or higher level of service and specifies that reimbursement shall be made from the State Mandates Claims Fund if the statewide cost of the statute in the first year of its operation is less than $500,000; and

b. the Commission on State Mandates develops parameters and guidelines for reimbursement of costs and certifies to the Controller that the costs are estimated to be less than $500,000.

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LR:0421A-2

SF-6

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Connelly	June 4, 1986	AB 2674

III. ANALYSIS (continued)

If enacted, this bill would result in minor additional costs. Since these estimated costs are well within the $500,000 ceiling on reimbursements from the State Mandates Claims Fund, the payment of those costs from that Fund would be appropriate. Although the language in Section 6 of the bill indicates a willingness to make those payments in that fashion, we believe that it is technically deficient because it does not contain a specific acknowledgement that the bill is a state mandate. The following language would be technically more appropriate:

> The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the State pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

LR:0421A-3

LEGISLATIVE INTENT SERVICE (800) 666-1917

SF-7

SENATE LOCAL GOVERNMENT COMMITTEE
Senator Marian Bergeson, Chairman

Assembly Bill 2674 - Connelly

VERSION: 05/??/86
SET: First
HEARING: 05/28/86
FISCAL: Approp.
CONSULTANT: Detwiler

AB 2674

Subject: Brown Act

Existing Law:

The Ralph M. Brown Act requires local agencies' meetings to be open to the public. The Brown Act permits special meetings, emergency meetings, and closed sessions but only in specified circumstances.

I. **Advance Agendas.** State law requires community colleges and school districts' boards to post their agendas 48 hours before a regular meeting and 24 hours before a special meeting. The Bagley-Keene Open Meeting Act requires state bodies to provide notice of their meetings 10 days in advance. The meeting notice of a state body must include a specific agenda; the notice for an advisory body only needs to contain a "brief, general description" of the agenda items. These agencies cannot add items to their agendas after giving notice. Community college and school districts must permit the public to address their meetings.

Assembly Bill 2674 requires local agencies' legislative bodies to post their agendas 72 hours before their regular meetings. The agendas must contain a brief general description of each item and specify the time and location of the meeting. AB 2674 prohibits a local agency from acting on an item unless it appears on its posted agenda, with three exceptions:

1. In an emergency situation, as defined.
2. On a 2/3 vote of the legislative body or a unanimous vote if less than 2/3 of the members are present.
3. The item was properly posted but continued from an earlier meeting held five or fewer days before.

AB 2674 also requires local agencies' agendas to provide an opportunity for the public to directly address the legislative body on "items of interest to the public and within the subject matter jurisdiction of the legislative body." However, the legislative body cannot act on an item unless it was noticed on the agenda. The bill permits the legislative body to adopt reasonable regulations, including time limits, to carry out the intent of this new requirement.

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Further, AB 2674 requires community college and school districts' boards to conform to these agenda requirements, increasing the required time for posting from 48 hours to 72 hours but permitting them to add agenda items, as specified.

II. **Enforcement.** The Bagley-Keene Act permits an individual to file a lawsuit declaring a state body's decision "null and void" because it did not comply with the Act's open meeting requirements. A suit must be filed within 30 days of the state body's action. But a court cannot invalidate certain types of decisions, even if they were improper. A court can award attorney's fees to successful plaintiffs (AB 214, Connelly, 1985).

Assembly Bill 2674 permits an individual to file a lawsuit declaring a decision of a local legislative body, a school district, or a community college district "null and void" because agency did not comply with the requirements for open meetings and public notice. Within 30 days of the decision, the individual must demand that the legislative body correct its action. The legislative body has another 30 days to inform the individual how it corrected its action or that it has decided not to correct its action. The individual then has 15 days (or 75 days from the initial complaint) to file the lawsuit.

The bill prohibits the invalidation of a legislative body's action which violated the Brown Act if the action:

1. Was "in substantial compliance" with the Act's open meeting and public notice requirements.
2. Was related to the sale or issuance of bonds or other indebtedness.
3. Created a contractual obligation which was relied on in good faith.
4. Was related to tax collection.

The court must dismiss the suit if the local agency, school district, or community college district later corrects its action. Corrective action is not evidence of Brown Act violation.

III. **Special Meetings.** Current law permits local agencies, school districts, and community college districts to hold special meetings if they notify the members of the legislative body and the media in writing. The notice must be received 24 hours before the special meeting. The notice must contain the time and place of the meeting and the business to be transacted. **Assembly Bill 2674** requires these agencies to post their notices of special meetings 24 hours in advance.

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IV. **Emergency Meetings**. In defined "emergency situations," the Brown Act permits local agencies to hold emergency meetings without giving the 24-hour written notices required for special meetings. **Assembly Bill 2674** also exempts local agencies from having to post notices for emergency meetings.

Comments:

1. The public's right to know. In adopting the Brown Act, the Legislature declared that people have a right to be informed about their local agencies' decisions. Some observers point to the lack of advance agendas as a serious obstacle to the public's ability to follow their local officials' actions. Others believe that the absence of ways to challenge illegal meetings means that local officials cannot be stopped from violating the Brown Act. AB 2674 responds to these two criticisms by requiring agendas in advance and by permitting the courts to declare illegal decisions void.

2. Good for the goose? State agencies have had to provide agendas for their meetings since 1967. School districts and community college districts have faced similar requirement since at least 1976. State law does not require counties, cities, and special districts to provide the public with agendas in advance of their meetings. Last year, the Legislature permitted courts to strike down state agencies' decisions that violated the open meeting and public notice laws. Under current law, a local decision made in violation of the Brown Act is not void. AB 2674 applies the agenda requirement to local agencies for the first time. Further, the bill creates a procedure for the courts to void illegal local decisions.

3. Public comment requirement. AB 2674 requires every county, city, and special district to set aside time on its regular meeting agenda to hear from members of the the public. The bill qualifies this requirement in three ways: the topics must be "within the subject matter jurisdiction of the legislative body;" the legislative body cannot act unless the item was already on its agenda or was properly added to the agenda; and the legislative body can adopt regulations governing these public comment periods. The Committee may wish to consider whether the requirement for public comment will unnecessarily slow down local agencies' meetings. The Committee may also wish to consider whether the bill gives local officials sufficient control over public comment periods without stifling their intent.

4. Effect on schools and community colleges. AB 2674 affects school districts and community college districts, not just coun-

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ties, cities, and special districts. The bill lengthens their posting requirements for regular meetings from 48 hours to 72 hours, but it also provides a new procedure for adding items to their agendas. In addition, AB 2674 creates a new statutory procedure for challenging school district and community college districts decisions which are made in violation of open meeting and public notice requirements.

5. New state mandate, Legislature must pay. AB 2674 creates new state mandated local programs by requiring local agencies to post descriptive agendas of their regular meetings, set aside time at their regular meetings to hear public comments, and to post notices of special meetings. The bill also requires school districts to post their agendas a day earlier than required by current law. While these costs may be minor for each affected agency, their cumulative costs may be substantial given that there are 58 counties, 441 cities, 1,034 school districts, and nearly 5,000 special districts and other miscellaneous agencies. AB 2674 directs local and school officials to file claims for any new local costs with the Commission on State Mandates.

6. Technical amendments needed. The Brown Act currently requires local officials to give written notice of their special meetings; specifically, the time, place, and "the business to be transacted." Additionally, AB 2674 requires them to post notice of the time and location, but does not require local officials to post the agenda of items to be discussed. The Committee may wish to consider an amendment which requires local agencies to post for the public all of the information they are already required to provide to the media.

Support and Opposition: (05/22/86)

Support: Attorney General, League of Women Voters, California Taxpayers Association, California State PTA, Common Cause, California Freedom of Information Committee, California Grocers Association, Planning and Conservation League, Sonoma County Taxpayers Association, Peace Officers Research Association of California, American Civil Liberties Union, California District Attorneys Association, School Legal Services, District Attorneys of Alameda, Los Angeles, and San Joaquin counties.

Opposition: Association of California Water Agencies, California Association of Sanitation Agencies, County Clerks Association, Amador County Water Agency, Jackson Valley Irrigation District, Barron Park Association, City of Los Angeles.

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Honorable Lloyd Connelly
Member of the Assembly
State Capitol, Room 2179
Sacramento, CA 95814

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Connelly	AB 2674
SPONSORED BY	**RELATED BILLS**	**AMENDMENT DATE**
		June 4, 1986

BILL SUMMARY

This bill revises local agency open meeting requirements.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC	1985-86	FC	1986-87	FC	1987-88	Code Fund
8885--Commission on State Mandates	LA		--	S	$1		$2	360

FISCAL SUMMARY--LOCAL LEVEL

	1985-86	1986-87	1987-88
Reimbursable Expenditures	--	$1	$2
Non-Reimbursable Expenditures	--	--	--
Revenues	--	--	--

ANALYSIS

A. Specific Findings

Under existing provisions of the Ralph M. Brown Act and the Education Code, the actions of legislative bodies of local agencies and governing boards of school and community college districts are required to be taken openly and their deliberations are required to be conducted openly. Under these existing laws, the legislative body of a local agency and the governing boards of school and community college districts are not required to post an agenda containing a brief general description of each item of business to be transacted of discussed at a regular meeting. Additionally, existing law does not prohibit any action to be taken, as defined, on any item not appearing on the posted agenda. This bill would make this requirement and prohibition, with certain exceptions, as specified.

(Continued)

POSITION: Department Director

Neutral, recommend technical amendment.

Date

Principal Analyst (621)	Date	Program Budget Manager	Date	Governor's Office
[signature]	6/13/86	[signature]	6/13/86	Position noted Position approved Position disapproved by: date:

LR:0413A-1

BILL ANALYSIS/ENROLLED BILL REPORT Form DF-43 (Rev 03/86)

SF - 5b

LEGISLATIVE INTENT SERVICE (800) 666-1917

BILL ANALYSIS--(continued) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Connelly	June 4, 1986	AB 2674

ANALYSIS

A. Specific Findings (Continued)

The Ralph M. Brown Act does not require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body. This bill would, except as specified, make this requirement and would require the legislative body to adopt reasonable regulations, as specified.

The Ralph M. Brown Act requires the legislative body of a local agency to give a specified notice of special meetings. This bill would, in addition, require a specified posting and make a conforming change.

Existing law requires that an agenda of special meetings of the governing boards of school or community college districts be posted at least 24 hours prior to special meetings. This bill would additionally require that the posted notice specify the time and location of the meeting. This requirement would impose a state-mandated local program.

Existing law defines the term "actions taken" and prescribes misdemeanor sanctions for each member of a legislative body who knowingly attends a meeting of the legislative body where action is taken in violation of the Ralph M. Brown Act. Existing law also authorizes any interested person to commence an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of statutory provisions relating to open meetings of local agencies or to determine the application of those provisions.

Under existing law, as construed by the courts, any action taken at a meeting in violation of the Ralph M. Brown Act is nonetheless valid. This bill would authorize any interested person to commence an action by mandamus or injunction to determine if certain actions taken by the legislative body of a local agency and the governing boards of school or community college districts are null and void, as specified. It would require the interested person to make a demand of the legislative or governing body to cure or correct the action, as specified, before commencing the action. It would provide that the fact that a legislative or governing body takes a subsequent action to cure or correct an action pursuant to this section shall not be construed, or be admissible, as evidence of a violation of the Ralph M. Brown Act.

Existing law authorizes a court award reasonable attorneys' fee to a plaintiff where it is found the local agency has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit. This bill would authorize the award of reasonable attorneys' fees in actions to determine null and void the actions of a local agency as described above.

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BILL ANALYSIS/ENROLLED BILL REPORT--(Continued) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Connelly	June 4, 1986	AB 2674

ANALYSIS (continued)

A. Specific Findings (continued)

The bill would also declare the Legislature's intent with regard to the application of the Ralph M. Brown Act to the governing boards of school and community districts.

B. Fiscal Analysis

There are no State costs in this bill. The attached "Local Cost Estimate" finds a technical amendment appropriate for local costs. Suggested amendments are attached.

LR:0413A-3

LEGISLATIVE INTENT SERVICE (800) 666-1917

Proposed amendment

AB 2674

As amended June 4, 1986

On page 11, strike line 17 through 24, inclusive, and insert:

Sec. 12. The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the State pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

LR:0413A-4

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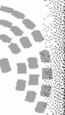

Form DF-44R (Rev. 1/86 W 500)

Local Cost ESTIMATE Department of Finance	NO. 2	ISSUE DATE JUN 1 [illegible]	BILL NUMBER AB 2674
	AUTHOR Connelly		DATE LAST AMENDED June 4, 1986

I. SUMMARY OF LOCAL IMPACT:

Revises local agency open meeting requirements.

II. FISCAL SUMMARY--LOCAL LEVEL

	1985-86	1986-87	1987-88
		(Dollars in Thousands)	
Reimbursable Expenditures:	--	$1	$2
Non-Reimbursable Expenditures:	--	--	--
Revenues:	--	--	--

III. ANALYSIS:

Under existing provisions of the Ralph M. Brown Act and the Education Code, the actions of legislative bodies of local agencies and governing boards of school and community college districts are required to be taken openly and their deliberations are required to be conducted openly. Under these existing laws, the legislative body of a local agency and the governing boards of school and community college districts are not required to post an agenda containing a brief general description of each item of business to be transacted of discussed at a regular meeting. Additionally, existing law does not prohibit any action to be taken, as defined, on any item not appearing on the posted agenda. This bill would make this requirement and prohibition, with certain exceptions, as specified.

The Ralph M. Brown Act does not require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body. This bill would, except as specified, make this requirement and would require the legislative body to adopt reasonable regulations, as specified.

The Ralph M. Brown Act requires the legislative body of a local agency to give a specified notice of special meetings. This bill would, in addition, require a specified posting and make a conforming change.

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(continued)

PREPARED	Date	REVIEWED	Date	APPROVED	Date
LR:0421A-1			6/13/86		6/[illegible]/86

LEGISLATIVE INTENT SERVICE (800) 666-1917

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Connelly	June 4, 1986	AB 2674

III. ANALYSIS (continued)

Existing law defines the term "actions taken" and prescribes misdemeanor sanctions for each member of a legislative body who knowingly attends a meeting of the legislative body where action is taken in violation of the Ralph M. Brown Act. Existing law also authorizes any interested person to commence an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of statutory provisions relating to open meetings of local agencies or to determine the application of those provisions.

Under existing law, as construed by the courts, any action taken at a meeting in violation of the Ralph M. Brown Act is nonetheless valid. This bill would authorize any interested person to commence an action by mandamus or injunction to determine if certain actions taken by the legislative body of a local agency and the governing boards of school or community college districts are null and void, as specified. It would require the interested person to make a demand of the legislative or governing body to cure or correct the action, as specified, before commencing the action. It would provide that the fact that a legislative or governing body takes a subsequent action to cure or correct an action pursuant to this section shall not be construed, or be admissible, as evidence of a violation of the Ralph M. Brown Act.

Existing law authorizes a court award reasonable attorneys' fee to a plaintiff where it is found the local agency has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit. This bill would authorize the award of reasonable attorneys' fees in actions to determine null and void the actions of a local agency as described above.

This bill would also declare the Legislature's intent with regard to the application of the Ralph M. Brown Act to the governing boards of school and community districts.

Sections 17579 and 17610 of the Government Code allow the Controller to reimburse local entities from the State Mandates Claims Fund for the state-mandated local costs imposed on them by a statute if:

a. the statute contains a statement that it mandates a new program or higher level of service and specifies that reimbursement shall be made from the State Mandates Claims Fund if the statewide cost of the statute in the first year of its operation is less than $500,000; and

b. the Commission on State Mandates develops parameters and guidelines for reimbursement of costs and certifies to the Controller that the costs are estimated to be less than $500,000.

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Connelly	June 4, 1986	AB 2674

III. ANALYSIS (continued)

If enacted, this bill would result in minor additional costs. Since these estimated costs are well within the $500,000 ceiling on reimbursements from the State Mandates Claims Fund, the payment of those costs from that Fund would be appropriate. Although the language in Section 6 of the bill indicates a willingness to make those payments in that fashion, we believe that it is technically deficient because it does not contain a specific acknowledgement that the bill is a state mandate. The following language would be technically more appropriate:

> The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the State pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

LR:0421A-3

LEGISLATIVE INTENT SERVICE (800) 666-1917

ANALYSIS OF ASSEMBLY BILL NO. 2674 (Connelly)
As Amended in Senate June 4, 1986
1985-86 Session

Fiscal Effect:

Cost: Mandated Local Program. Unknown costs, probably less than $25,000, for affected governing bodies to comply with notification, public testimony and legal requirements; potentially state-reimbursable.

Revenue: None.

Analysis:

This bill revises provisions of the Ralph M. Brown Act and the Education Code, relating to open deliberations and actions of local legislative bodies and governing boards of school and community college districts. Specifically, the bill:

- Requires affected governing bodies to post an agenda which briefly describes each item of business to be taken up or discussed at least 72 hours prior to each regular meeting, and to post notices at least 24 hours prior to any special meeting.

- Prohibits affected governing bodies from taking action on any item not included in the posted agenda for a regular meeting, unless the legislative body finds (a) by majority vote that an emergency exists, (b) by a two-thirds vote that the need to take action on an item arose after the posting of the agenda, or (c) the item was continued from a prior meeting which occurred not more than five days earlier.

- Requires affected governing bodies to provide an opportunity for members of the public to directly address the legislative body on items of public interest at all regularly scheduled meetings, and permits the legislative body to adopt regulations to ensure that this requirement is met.

- Authorizes interested persons to go to court to determine if any action taken by a governing body in alleged violation of the Brown Act is null and void. Legal action may, however, not be taken unless the interested person has, within 30 days, requested the governing body to correct the alleged violation. Current law allows interested parties to commence legal action to stop or prevent violations or threatened violations of the Brown Act. As construed by the courts, however, any action already taken at a meeting in violation of the Brown Act is nonetheless valid.

- Expands the court's authority to award attorneys' fees in cases that determine if the actions of governing bodies are null and void.

Fiscal Effect

The bill would have no effect on state costs or revenues.

Mandated Local Program. The bill would create a state-mandated local program by requiring local

legislative bodies to post notification of the time, location, and items to be considered at all regular and special meetings, and to adopt regulations ensuring that opportunity is provided to members of the public to address the legislative body on matters of public concern at each regular meeting. These requirements could result in unknown costs, probably less than $25,000, to local agencies. Any increased costs resulting from these requirements would be potentially state-reimbursable.

11/s20

EXHIBIT O

THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 305 445-6614	Bill No. AB 2674 Author: Connelly (D), et al Amended: 6/4/86 in Senate Vote Required: Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: LOCAL GOVERNMENT
BILL NO.: AB 2674
DATE OF HEARING: 5-28-86

SENATORS:	AYE	NO
Ayala	✓	
Campbell		
Craven	✓	
Marks	✓	
Russell	✓	
Vuich (VC)		
Bergeson (Ch)	✓	
TOTAL:	5	0

COMMITTEE: APPROPRIATIONS
BILL NO.: AB 2674
DATE OF HEARING: 6-23-86

SENATORS:	AYE	NO
Alquist	✓	
Ayala	✓	
Campbell		
Deddeh		
Dills	✓	
Foran		
Maddy	✓	
Beverly (VC)	✓	
Boatwright (Ch)	✓	
TOTAL:	6	0

Assembly Floor Vote: 69-4, P. 6484, 4/18/86

SUBJECT: Open meetings: local agencies

SOURCE: Author

DIGEST: This bill revises provisions of the Ralph M. Brown Act, relating to deliberations and actions of local legislative bodies.

ANALYSIS: Existing law:

The Ralph M. Brown Act requires local agencies' meetings to be open to the public. The Brown Act permits special meetings, emergency meetings, and closed sessions but only in specified circumstances.

I. Advance Agendas. State law requires community colleges and school districts' boards to post their agendas 48 hours before a regular meeting and 24 hours before a special meeting. The Bagley-Keene Open Meeting Act requires state bodies to provide notice of their meetings 10 days in advance. The meeting notice of a state body must include a specific agenda; the notice for an advisory body only needs to contain a "brief, general description" of the agenda items. These agencies cannot add items to their agendas after giving notice. Community college and school districts must permit the public to address their meetings.

AB 2674 requires local agencies' legislative bodies to post their agendas 72 hours before their regular meetings. The agendas must contain a brief general description of each item and specify the time and location of the meeting. AB 2674 prohibits a local agency from acting on an item unless it appears on its posted agenda, with three exceptions:

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CONTINUED

1. In an emergency situation, as defined.

2. On a 2/3 vote of the legislative body <u>or</u> a unanimous vote if less than 2/3 of the members are present.

3. The item was properly posted but continued from an earlier meeting held five or fewer days before.

AB 2674 also requires local agencies' agendas to provide an opportunity for the public to directly address the legislative body on "items of interest to the public and within the subject matter jurisdiction of the legislative body." However, the legislative body cannot act on an item unless it was noticed on the agenda. The bill permits the legislative body to adopt reasonable regulations, including time limits, to carry out the intent of this new requirement.

Provides that in the case of a meeting of a city council in a city or a board of supervisors in a city and county, the agenda need not provide an opportunity for members of the public to address the council or board on any item that has already been considered by a committee, composed exclusively of members of the council or board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, unless the item has been substantially changed since the committee heard the item, as determined by the council or board.

Further, AB 2674 requires community college and school districts' boards to conform to these agenda requirements, increasing the required time for posting from 48 hours to 72 hours but permitting them to add agenda items, as specified.

II. <u>Enforcement</u>. The Bagley-Keene Act permits an individual to file a lawsuit declaring a state body's decision "null and void" because it did not comply with the Act's open meeting requirements. A suit must be filed within 30 days of the state body's action. But a court cannot invalidate certain types of decisions, even if they were improper. A court can award attorney's fees to successful plaintiffs (AB 214, Connelly, 1985).

Assembly Bill 2674 permits an individual to file a lawsuit declaring a decision of a local legislative body, a school district, or a community college district "null and void" because the agency did not comply with the requirements for open meetings and public notice. Within 30 days of the decision, the individual must demand that the legislative body correct its action. The legislative body has another 30 days to inform the individual how it corrected its action or that it has decided not to correct its action. The individual then has 15 days (or 75 days from the initial complaint) to file the lawsuit.

The bill prohibits the invalidation of a legislative body's action which violated the Brown Act if the action:

1. Was "in substantial compliance" with the Act's open meeting and public notice requirements.

2. Was related to the sale or issuance of bonds or

CONTINUED

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other indebtedness.

3. Created a contractual obligation which was relied on in good faith.

4. Was related to tax collection.

The court must dismiss the suit if the local agency, school district, or community college district later corrects its action. Corrective action is not evidence of Brown Act violation.

III. Special Meetings. Current law permits local agencies, school districts, and community college districts to hold special meetings if they notify the members of the legislative body and the media in writing. The notice must be received 24 hours before the special meeting. The notice must contain the time and place of the meeting and the business to be transacted. Assembly Bill 2674 requires these agencies to post their notices of special meetings 24 hours in advance.

IV. Emergency Meetings. In defined "emergency situations," the Brown Act permits local agencies to hold emergency meetings without giving the 24-hour written notices required for special meetings. Assembly Bill 2674 also exempts local agencies from having to post notices for emergency meetings.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: Yes

Mandated Local Program. Unknown costs, probably less than $25,000, for affected governing bodies to comply with notification, public testimony and legal requirements; potentially state-reimbursable.

SUPPORT: (Verified 6/25/86)

Attorney General
League of Women Voters
California Taxpayers Association
California State PTA
Common Cause
California Freedom of Information Committee
California Grocers Association
Planning and Conservation League
Sonoma County Taxpayers Association
Peace Officers Research Association of California
American Civil Liberties Union
California District Attorneys Association
School Legal Services
District Attorneys of Alameda, Los Angeles, and San Joaquin counties
County of Los Angeles
Sierra Club
California Society of Newspaper Publishers and Editors
Faculty Association of the California Community Colleges

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CONTINUED

OPPOSITION: (Verified 6/25/86)

Association of California Water Agencies
California Association of Sanitation Agencies

ARGUMENTS IN SUPPORT: Supporters of AB 2674 argue that the Brown Act needs "teeth" because local agencies are currently able to skirt the spirit and letter of the law, and thus conduct public business without public participation. AB 2674 would, by requiring the posting of a specific agenda, give the public more advance notice time and afford the public greater opportunities for participation in government decisionmaking.

In addition, it has been argued that even when there has been a noted violation of the Brown Act, the action that was the subject of the violation stands. AB 2674 would render these actions null and void, thus putting "teeth" into the Brown Act.

The Attorney General indiates AB 2674 essentially conforms the Brown Act, regulating legislative bodies, to the amendments made last year to the Bagley-Keene Open Meeting Act, regulating state agencies, made by AB 214 (Connelly). He believes that there is no justification in policy or practice why the public should receive less notice and opportunity to be heard before local governmental agencies.

ARGUMENTS IN OPPOSITION: The California Association of Sanitation Agencies states "member agencies try to adhere to agenda rules and only make changes to the agenda when very necessary. Many of our agencies are involved in the construction grant program and it often becomes necessary for the agency to make a determination on a spontaneous basis. An example would be a construction change order exceeding the manager's authority. It would be a costly disservice to both the agency and the taxpayers to have to continually put over for several weeks actions on items that are usually 'routine' and need prompt attention."

ASSEMBLY FLOOR VOTE:

Bill read third time, and passed by the following vote:

AYES—69

Agnos	Duffy	Johnson	Peace
Allen	Eaves	Jones	Robinson
Areias	Elder	Katz	Rogers
Baker	Farr	Kelley	Roos
Bane	Felando	Killea	Seastrand
Bates	Ferguson	Klehs	Sebastiani
Bradley	Filante	Konnyu	Statham
Bronzan	Floyd	La Follette	Stirling
Brown, Dennis	Frazee	Leonard	Tanner
Calderon	Frizzelle	Lewis	Tucker
Campbell	Grisham	Margolin	Vicencia
Chacon	Hannigan	McAlister	Waters, Maxine
Clute	Harris	McClintock	Waters, Norman
Condit	Hauser	Molina	Wyman
Connelly	Hayden	Moore	Mr. Speaker
Cortese	Herger	Nolan	
Costa	Hill	O'Connell	
Davis	Hughes	Papan	

NOES—4

Isenberg	Lancaster	Sher	Wright

Vote Changes

By unanimous consent, the following vote change was permitted on Assembly Bill No. 2674: Assembly Member Sher, from "Aye" to "No".

Bill ordered transmitted to the Senate.

DW/tb 6/25/86 Senate Floor Analyses

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EXHIBIT P

CALIFORNIA
TAXPAYERS'
ASSOCIATION
SUITE 800 · 921 11th ST.
SACRAMENTO, CA 95814
(916) 441-0490

June 20, 1986

The Honorable Daniel Boatwright
Chairman, Senate Appropriations
Committee
State Capitol, Room 5100
Sacramento, California 95814

Subject: AB 2674 (Connelly) Set for hearing June 23, 1986.

Dear Senator Boatwright:

I am writing to inform you of Cal-Tax's support of AB 2674 (Connelly), a proposal to strengthen the state's open meeting law by requiring local government meetings to be run according to an adhered-to agenda, allowing the public to present matters to local legislative bodies, and reducing the abuse of closed sessions.

A more economic and efficient government operation is one of the important purposes served by open meetings and full citizen participation in them.

Sincerely,

Larry McCarthy
Vice President

LM:km
cc: Assemblyman Lloyd G. Connelly
Members, Senate Appropriations Cmte.
Steve Larson, Majority Staff Director

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SFA-1

Analyst: Daniel Buntjer
Bus. Ph: 445-4216
Home Ph:

NO ANALYSIS REQUIRED

Department: CONSUMER AFFAIRS	Bill Number/Author: AB 2674/Connelly
Agency: STATE AND CONSUMER SERVICES	Date Last Amended: 6-4-86

1. [ ] - Analysis not required of this bill. Not within the scope of responsibility of this department.
2. [ ] - Bill of minor significance. No analysis required at this time. See comments below.
3. [ ] - Technical bill -- no program or fiscal changes to existing program.
4. [ ] - Bill as amended no longer within scope of responsibility or program of this department and should be reviewed for reassignment to another department.
5. [X] - Minor or technical amendment. Previously submitted analysis still valid. Previously [ ] recommended [X] approved position is SUPPORT. See comments below.
6. [ ] - WATCH -- Analysis not required at this time, but bill's progress will be monitored. See comments below.

COMMENTS:

L. Gov

The amendments to the Education and Government Codes, made on June 4, 1986, are technical in nature as they concern agenda requirements for local legislative bodies in specified situations.

OK 7/28

Support SFA-2

Department Director	Date	Agency Secretary	Date
Marie Shibuya Snell	6/24/86	Original signed by [illegible] N L. MOR. Legislative Coordinator	JUN 25 198[illegible]

990.8 (Rev. 1/84)

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State of California—Health and Welfare Agency

Department of Mental Health

NO ANALYSIS REQUIRED

MH 39 (7/81)

Department	Bill Number
Mental Health	AB 2674
Agency	**Date Last Amended**
Health and Welfare	6/4/86

☐ Analysis is not required of this bill — Not within scope of responsibility of this department.

☐ Technical Bill — No program or fiscal changes to existing program.

☐ Bill as amended no longer within scope of responsibility or program of the department and should be reviewed for reassignment to another department.

☐ Technical Amendment — No change in previously submitted analysis required. Approved position of prior analysis is ______

☐ Minor Amendment — Previously submitted analysis still valid. Previously approved position is ______

☒ Minor Amendment — No change in approved position of Neutral
See comments below.

Comments:

This bill, as amended, would relieve a city council or board of supervisors of their obligation to provide members of the public an opportunity to address the council or board on a particular agenda item provided:

1) It has already been considered by a committee, composed exclusively of members of the council or board at a public meeting,
2) The public was afforded the opportunity to address the committee on the item,
3) The item has not been substantially changed since the committee heard it, as determined by the council or board.

OKpd 7/28

ORIGINAL SIGNED ON SPA-3
JUN 26 1986

Department Director	Date	Agency Secretary	Date
[signature]	6/25	Sandra L. Shewry	

LEGISLATIVE INTENT SERVICE (800) 666-1917

California
Grocers
Association

1400 K Street
Suite 208
Sacramento
CA 95814

P.O. Box 160907
Sacramento
CA 95816

916 448-3545

Don C. Beaver
President
Doris G. Costa
Vice President
Board of Directors
Officers
Chairman of the Board
Manuel Campos
Campos Food Fair, Fairfield
First Vice Chairman
Robert Hearn
Vons Grocery Co., Los Angeles
Second Vice Chairman
Charles Collings
Raley's, Sacramento
Treasurer
Roger K. Hughes
Hughes Markets, Los Angeles
Past Chairman
Leonard Leum
Pioneer Foods, Inc., Los Angeles
Board Members
Steve Angelo
Angelo's Markets, Modesto
Bill Ayoob
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James W. Brown
Ralphs Grocery Company Los Angeles
Paul Gerrard
Gerrard's Cypress Center, Redlands
Jack Kent
Lucky Market, National City
Paul Kodimer
ABC Market Corporation Los Angeles
Ron Koett
Fry's Food Stores Inc. El Sobrante
David C. Larson
Piedmont Grocery Company Oakland
John Meany
John's Town & Country Market Palo Alto
Steve Nettleton
Shop 'N Save Markets Chico
William O'Connell
Kelley-Clarke, Inc. Hayward
Jack Panaro
Jack's Warehouse Market Azusa
Robert Piccinini
Save Mart, Modesto
Michael Provenzano
Southland Market, Ontario
Charles Sprinkle
Fleming Companies Pleasanton
Peter Stathos
Van's Markets, Sacramento
Lynda Trelut
Nob Hill General Store Gilroy
George Soares
General Counsel

Serving the food industry of California since 1898

June 4, 1986

TO: Assemblyman Lloyd Connelly
Members, Senate
Committee on Appropriations

FROM: Don C. Beaver
Doris G. Costa

RE: AB 2674 (Connelly)
Local Agency Meetings
As Amended 5/22/86

POSITION: Support

The California Grocers Association supports AB 2674 (Connelly) to be scheduled for hearing in the Senate Appropriations Committee soon.

This bill would require all local agencies to post agendas for items to be discussed at their meetings and would prohibit action from being taken on an item not appearing on that agenda.

CGA represents California's grocers at the local as well as the state level. We track and monitor items of interest to California grocers by reviewing the meeting agendas of city councils and county boards of supervisors. When an item of interest appears, we alert grocers in the locale and, if necessary, assist them in their endeavors to support or oppose the ordinance.

Advance notice of items is crucial in order to secure input from all individuals affected.

We urge you to vote YES at the hearing of AB 2674.

LM:kb

SPA-4

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Legislative Analyst
June 16, 1986

ANALYSIS OF ASSEMBLY BILL NO. 2674 (Connelly)
As Amended in Senate June 4, 1986
1985-86 Session

AB 2674 (Am. 6/4/86)

L Gov

Fiscal Effect:

Cost: Mandated Local Program. Unknown costs, probably less than $25,000, for affected governing bodies to comply with notification, public testimony and legal requirements; potentially state-reimbursable.

Revenue: None.

Analysis:

This bill revises provisions of the Ralph M. Brown Act and the Education Code, relating to open deliberations and actions of local legislative bodies and governing boards of school and community college districts. Specifically, the bill:

- Requires affected governing bodies to post an agenda which briefly describes each item of business to be taken up or discussed at least 72 hours prior to each regular meeting, and to post notices at least 24 hours prior to any special meeting.

- Prohibits affected governing bodies from taking action on any item not included in the posted agenda for a regular meeting, unless the legislative body finds (a) by majority vote that an emergency exists, (b) by a two-thirds vote that the need to take action on an item arose after the posting of the agenda, or (c) the item was continued from a prior meeting which occurred not more than five days earlier.

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SFA-5

AB 2674--contd

- Requires affected governing bodies to provide an opportunity for members of the public to directly address the legislative body on items of public interest at all regularly scheduled meetings, and permits the legislative body to adopt regulations to ensure that this requirement is met.

- Authorizes interested persons to go to court to determine if any action taken by a governing body in alleged violation of the Brown Act is null and void. Legal action may, however, not be taken unless the interested person has, within 30 days, requested the governing body to correct the alleged violation. Current law allows interested parties to commence legal action to stop or prevent violations or threatened violations of the Brown Act. As construed by the courts, however, any action already taken at a meeting in violation of the Brown Act is nonetheless valid.

- Expands the court's authority to award attorneys' fees in cases that determine if the actions of governing bodies are null and void.

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Fiscal Effect

8FA-6

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 K STREET, SUITE 511
SACRAMENTO 95814
(916) 445-9555

Toll Free – California Only:
800-952-5225

March 7, 1986

Honorable Dominic L. Cortese
Chairman, Assembly Local Government
State Capitol, Room 6031
Sacramento, California 95814

Dear Assemblyman Cortese:

AB 2674 (CONNELLY) - OPEN MEETINGS

The Attorney General's office urges you to support AB 2674, which will be heard by the Local Government Committee on March 11.

Although the Brown Act (Gov. Code, § 54950 et seq.) requires local legislative bodies to provide advance, public agendas for special or emergency meetings (Gov. Code, §§ 54956, 54956.5), there is no similar requirement of agendas for regular meetings. AB 2674 fills this loophole by now requiring binding agendas for regular meetings.

Existing law authorizes any interested party to seek injunctive or declaratory relief to stop or prevent anticipated violations of the open meeting requirements of the Brown Act (Gov. Code, § 54960). There is, however, no remedy available if the local legislative body has already acted in violation of the act. AB 2674 closes this loophole by providing a new remedy permitting any interested party to have actions taken in violation of the Brown Act declared null and void.

Such suits would have to be commenced within 30 days of the challenged action. Acts which are in "substantial compliance" with the open meeting requirement would be exempt from attack, and the board or commission may remedy any flaw by simply curing or correcting the error pursuant to the requirements of the Brown Act.

AB 2674 essentially conforms the Brown Act, regulating local legislative bodies, to the amendments made last year to the Bagley-Keene Open Meeting Act, regulating state agencies, made by AB 214 (Connelly). (Stats. 1985, ch. 936.)

The Attorney General supported last year's legislation to put real teeth in the requirement that the public be given notice of proceedings conducted by state agencies. We support

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SFA-7

AB 2674 again this year since there is no justification in policy or practice why the public should receive less notice and opportunity to be heard before local governmental agencies.

We urge your support for the measure.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

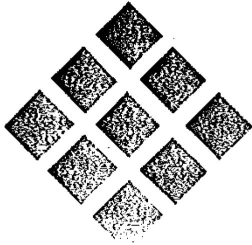
ALLEN SUMNER
Senior Assistant Attorney General
(916) 324-5477

AS:lb

LEGISLATIVE INTENT SERVICE (800) 666-1917

SFA 8

February 13, 1986



The Honorable Lloyd Connelly
California State Assembly
State Capitol
Sacramento, California 95814

Re: Assembly Bill 2674

ASSOCIATION OF CALIFORNIA WATER AGENCIES

a non-profit corporation since 1910

Dear Assemblyman Connelly:

This is to express our opposition to your Assembly Bill 2674, which makes several changes in the Ralph M. Brown Act. Several of these changes could greatly interfere with the orderly conduct of the public's business and impede the provision of necessary services.

We generally concur with the comments forwarded to you by the League of California Cities and would appreciate the opportunity to discuss our problems with you at your convenience.

Sincerely,

Louis B. Allen
Assistant Executive Director

LBA:DH

cc: Assembly Committee on Local Government
County Supervisors Association of California
California Special Districts Association
California Association of Sanitation Agencies
California Municipal Utilities Association
League of California Cities

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910 K STREET, SUITE 250
SACRAMENTO, CA 95814
(916) 441-4545

75th ANNIVERSARY

SF-A9

Conforms state law to relate to board & commission

SENATE LOCAL GOVERNMENT COMMITTEE
Senator Marian Bergeson, Chairman

Assembly Bill 2674 - Connelly

VERSION:	05/22/86	A
SET:	First	B
HEARING:	05/28/86	
FISCAL:	Approp.	2
CONSULTANT:	Detwiler	6
		7

Subject: Brown Act

Support: Attorney General, League of Women Voters, California Taxpayers Association, California State PTA, Common Cause, California Freedom of Information Committee, California Grocers Association, Planning and Conservation League, Sonoma County Taxpayers Association, Peace Officers Research Association of California, American Civil Liberties Union, California District Attorneys Association, School Legal Services, District Attorneys of Alameda, Los Angeles, and San Joaquin counties.

Opposition: Association of California Water Agencies, California Association of Sanitation Agencies, ~~County Clerks Association,~~ Amador County Water Agency, Jackson Valley Irrigation District, Barron Park Association, ~~City of Los Angeles~~.

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SFA-10

LOS ANGELES CITY COUNCIL
OFFICE OF THE CHIEF LEGISLATIVE ANALYST

WILLIAM R. McCARLEY
CHIEF LEGISLATIVE ANALYST

February 25, 1986

Assembly Member Dominic Cortese
Chairperson
Assembly Local Government Committee
Room 6031 State Capitol
Sacramento, CA 95814

Re: AB 2674 (Connelly) - Oppose Unless Amended
Set March 11, 1986
Assembly Local Government Committee

(800) 666-1917 LEGISLATIVE INTENT SERVICE

Dear Assembly Member Cortese:

The City of Los Angeles opposes AB 2674 relative to the Brown Act. This bill would impose severe changes on the functioning of local government. The overly restrictive posting requirement for agendas (both the 72 hour advance notice and the elimination of any specials), the virtual surrender of local control over meetings to any individual who wants to speak on anything for any length of time, and the threat of legal challenges to declare a local body's acts null and void will actually lead to less effective and less accountable local government.

Our City Attorney advises that this bill would severely limit public meetings of the Council in several aspects:

- <u>72 hour restraint</u>: This provision would eliminate the use of specials in response to urgent situations, from local matters to unexpected developments in Sacramento and Washington. This poses a conflict between compliance with the bill and compliance with the Charter when the latter's requirement for a second reading of an ordinance must occur in one week but might violate the 72 hour rule if there are two holidays in between (such as a first reading on the Wednesday just prior to Thanksgiving).

- <u>Employees of the legislative body</u>: This is confusing because in this City, it is the City which employs people, not the legislative body.

- <u>Public Input</u>: This wording emphasizes public input to such an extent that any person, regardless of degree of interest in a given matter, has a right to speak on almost any subject for an <u>unlimited</u> period of time. This is particularly alarming when an individual seeks to talk on a matter not on the agenda, which this bill permits, but then prohibits the legislative body from discussing it. Under existing procedure, various laws require public hearings on certain matters; here a member of the public has a right to speak.

SPA-11

1400 K STREET, ROOM 308 • SACRAMENTO 95814
(916) 441-2533

ROOM 255 • CITY HALL • LOS ANGELES 90012
(213) 485-3327

- Notification of news media: By deleting "such" and substituting "the" before "newspapers, radio stations or television stations" concerning notice of an emergency meeting, the bill intends that notification be inconclusive of all such entities, a considerable task in the Los Angeles area.

- Null and void provision: By imposing a 30 day period to challenge a public meeting for a violation of AB 2674, the bill effectively puts any acts by the public entity in limbo until 30 days are over. How could the entity function in an emergency? While challenges are possible currently, they do not have a time limitation; by imposing a short time period, the bill effectively clouds all legislative acts.

Therefore, the City of Los Angeles must indicate our opposition to the enactment of AB 2674.

Yours very truly,

Norm Boyer
Chief Legislative Representative

NB/lv
cc: All Members of the Assembly Local Government Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917

SPA 12

BILL ANALYSIS

YOUTH AND ADULT CORRECTIONAL AGENCY

DEPARTMENT	AUTHOR	BILL NO.
Youthful Offender Parole Board	Lloyd Connelly	AB 2674
SPONSORED BY	**RELATED BILLS**	**DATE LAST AMENDED**
Author	None	Original

BILL SUMMARY

This bill is directed toward actions of legislative bodies of local agencies. It requires the posting of agenda, notice to the public, and if a meeting is closed to the public, a statement citing the legal authority for such a closed session.

BACKGROUND

These admendments relate to existing legislation known as the Ralph M. Brown Act. This Act covers meetings open to the public conducted by local agencies.

Local agencies is defined under Section 54951 of the Government Code and reads as follows: "As used in this chapter, 'local agency' means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision or any board, commission or agency thereof, or other local public agency.

The Bagley-Keene Open Meeting Act governs state bodies. It is defined under Section 11211 of the Government Code as follows: "As used in this article 'state body' means every state board or commission or similar multi-member body of the state which is required by law to conduct official meetings and every commission created by executive order, but does not include:

(a) State agencies provided for in Article VI of the California Constitution.
(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of this code.
(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Greensky-Burton Open Meeting Act., Section 9027 et seq., of this code.
(d) State agencies when they are conducting proceedings pursuant to Section 3596 of this code.
(e) State agencies provided for in Section 1702 of the Health and Safety Code, except as provided in Section 1720 of the Health and Safety Code.
(f) State agencies provided for in Section 11770.5 of the Insurance Code.

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POSITION				Governor's Office Use
Neutral				Position noted
				Position approved ✓
Welby A. Cramer, Chairman Youthful Offender Parole Board *[signature]*	DATE 3/20/86	AGENCY SECRETARY MAR 0 [illegible]	DATE	Position disapproved SPB 13 / W 4/14

BY STEPHEN BLANKENSHIP

IMPACT OF BILL

Assemblyman Lloyd Connelly's Bill AB 2674 has no impact on the Youthful Offender Parole Board. This Board is covered by the Bagley-Keene Open Meeting Act.

RECOMMENDED POSITION

Neutral

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Honorable Lloyd Connelly
Member of the Assembly
State Capitol, Room 2179
Sacramento, CA 95814

DEPARTMENT	AUTHOR	BILL NUMBER
Finance	Connelly	AB 2674
SPONSORED BY	RELATED BILLS	AMENDMENT DATE
		March 18, 1986

BILL SUMMARY

This bill revises local agency open meeting requirements.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	FC	1985-86	FC	1986-87	FC	1987-88	Code Fund
		(Fiscal Impact by Fiscal Year) (Dollars in Thousands)						
8885--Commission on State Mandates	LA		--	S	$1		$2	360 State Mandates Claims

FISCAL SUMMARY--LOCAL LEVEL

	1985-86	1986-87	1987-88
Reimbursable Expenditures	--	$1	$2
Non-Reimbursable Expenditures	--	--	--
Revenues	--	--	--

ANALYSIS

A. Specific Findings

Existing law, known as the Ralph M. Brown Act, requires that actions of legislative bodies of local agencies be taken openly and that their deliberations be conducted openly. Under the existing law, the legislative body of a local agency is not required to post a specific agenda clearly describing the items of business to be transacted or discussed at a regular meeting. Additionally, existing law does not prohibit any action to be taken, as defined, on any item not appearing on the posted agenda. This bill would make this requirement and prohibition, as specified.

The Ralph M. Brown Act does not require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public. This bill would make this requirement and would require the legislative body to adopt reasonable regulations, as specified.

(Continued)

POSITION: Department Director

Neutral, recommend technical amendment.

Date

Principal Analyst (621)	Date	Program Budget Manager	Date	Governor's Office
[signature]	4/7/86	[signature]	4-7-86	Position noted Position approved Position disapproved by: date:

LR:0413A-1
BILL ANALYSIS/ENROLLED BILL REPORT Form DF-43 (Rev 03/86 500 Bu)

LEGISLATIVE INTENT SERVICE (800) 666-1917

BILL ANALYSIS--(continued) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Connelly	March 18, 1986	AB 2674

ANALYSIS

A. Specific Findings (Continued)

The Ralph M. Brown Act requires a specified notice of special meetings. This bill would in addition require a specified posting and make a conforming change.

Existing law defines the term "actions taken" and prescribes misdemeanor sanctions for each member of a legislative body who knowingly attends a meeting of the legislative body where action is taken in violation of the Ralph M. Brown Act. Existing law also authorizes any interested person to commence an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of statutory provisions relating to open meetings of local agencies or to determine the application of those provisions.

Under existing law, as construed by the courts, any action taken at a meeting in violation of the Ralph M. Brown Act is nonetheless valid. This bill would authorize any interested person to commence an action by mandamus or injunction to determine if certain actions taken by the local agency are null and void. It would require the interested person to make a demand of the legislative body to cure or correct the action, as specified, before commencing the action. It would provide that the fact that a legislative body takes a subsequent action to cure or correct an action pursuant to this section shall not be construed as a violation of the Ralph M. Brown Act.

Existing law authorizes a court award reasonable attorneys' fee to a plaintiff where it is found the local agency has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit. This bill would authorize the award of reasonable attorneys' fees in actions to determine null and void the actions of a local agency as described above.

B. Fiscal Analysis

There are no direct State costs to any State agency in this bill. The attached "Local Cost Estimate" finds that there would be minor reimbursable state-mandated local costs which can be paid from the State Mandates Claims Fund. Although the language in Section 6 directs that reimbursement be made from that Fund, we believe that it is technically deficient and recommend that a technical amendment be made. Suggested amendments are attached.

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LR:0413A-2

SFA-10

Proposed amendment

AB 2674

As amended March 18, 1986

On page 8, strike line 2 through 9, inclusive, and insert:

Sec. 6. The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the State pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

LR:0413A-3

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SF-A-171

Form DF-44R (Rev. 1/86 W 500)

	NO. ISSUE DATE	BILL NUMBER
Local Cost	1 APR 07 1986	AB 2674
ESTIMATE	AUTHOR	DATE LAST AMENDED
Department of Finance	Connelly	March 18, 1986

I. SUMMARY OF LOCAL IMPACT:

Revises open meeting requirements.

II. FISCAL SUMMARY--LOCAL LEVEL

	1985-86	1986-87 (Dollars in Thousands)	1987-88
Reimbursable Expenditures:	--	$1	$2
Non-Reimbursable Expenditures:	--	--	--
Revenues:	--	--	--

III. ANALYSIS:

Existing law, known as the Ralph M. Brown Act, requires that actions of legislative bodies of local agencies be taken openly and that their deliberations be conducted openly. Under the existing law, the legislative body of a local agency is not required to post a specific agenda clearly describing the items of business to be transacted or discussed at a regular meeting. Additionally, existing law does not prohibit any action to be taken, as defined, on any item not appearing on the posted agenda. This bill would make this requirement and prohibition, as specified.

The Ralph M. Brown Act does not require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public. This bill would make this requirement and would permit the legislative body to adopt reasonable regulations as specified.

The Ralph M. Brown Act requires a specified notice of special meetings. This bill would in addition require a specified posting and make a conforming change.

Existing law defines the term "actions taken" and prescribes misdemeanor sanctions for each member of a legislative body who knowingly attends a meeting of the legislative body where action is taken in violation of the Ralph M. Brown Act. Existing law also authorizes any interested person to commence an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of statutory provisions relating to open meetings of local agencies or to determine the application of those provisions.

Under existing law, as construed by the courts, any action taken at a meeting in violation of the Ralph M. Brown Act is nonetheless valid. This bill would authorize any interested person to commence an action by mandamus, or injunction, to determine if certain actions taken by the local agency are null and void.

It would require the interested person to make a demand of the legislative body to cure or correct the action, as specified, before commencing the action. It would provide that the fact that a legislative body takes a subsequent action to cure or correct an action pursuant to this section shall not be construed as a violation of the Ralph M. Brown Act.

(continued)

SEA 18

PREPARED	Date	REVIEWED	Date	APPROVED	Date
LR:0421A-1			4/7/86		4-7-86

LEGISLATIVE INTENT SERVICE (800) 666-1917

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Connelly	March 18, 1986	AB 2674

III. ANALYSIS (continued)

Existing law authorizes a court award reasonable attorneys' fee to a plaintiff where it is found the local agency has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit. This bill would authorize the award of reasonable attorneys' fees in actions to determine null and void the actions of a local agency as described above.

Sections 17579 and 17610 of the Government Code allow the Controller to reimburse local entities from the State Mandates Claims Fund for the state-mandated local costs imposed on them by a statute if:

a. the statute contains a statement that it mandates a new program or higher level of service and specifies that reimbursement shall be made from the State Mandates Claims Fund if the statewide cost of the statute in the first year of its operation is less than $500,000; and

b. the Commission on State Mandates develops parameters and guidelines for reimbursement of costs and certifies to the Controller that the costs are estimated to be less than $500,000.

If enacted, this bill would result in minor additional costs. Since these estimated costs are well within the $500,000 ceiling on reimbursements from the State Mandates Claims Fund, the payment of those costs from that Fund would be appropriate. Although the language in Section 6 of the bill indicates a willingness to make those payments in that fashion, we believe that it is technically deficient because it does not contain a specific acknowledgement that the bill is a state mandate. The following language would be technically more appropriate:

> The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the State pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

(800) 666-1917 LEGISLATIVE INTENT SERVICE

LR:0421A-2

SFA-9

SCS Agency

BILL ANALYSIS

Analyst: Thomas M. Cecil
Bus. Ph: 322-5252
Home Ph: 484-6670

Department	Author	Bill Number
CONSUMER AFFAIRS	Connelly	AB 2674
Sponsored by	**Related Bills**	**Date Last Amended**
Author	AB 214, Ch. 936 Stats of 1985	March 18, 1986

SUMMARY
1 __ Description

BACKGROUND
2 __ History
3 __ Purpose
4 __ Sponsor
5 __ Current Practice
6 __ Implementation
7 __ Justification
8 __ Alternatives
9 __ Responsibility
10 __ Other Agencies
11 __ Future Impact
12 __ Termination

FISCAL IMPACT ON STATE BUDGET
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14 __ Future Budget
15 __ Other Agencies
16 __ Federal
17 __ Tax Impact
18 __ Governor's Budget
19 __ Continuous Appropriation
20 __ Assumptions
21 __ Deficiency Measure
22 __ Deficiency Resolution
23 __ Absorption of Costs
24 __ Personnel Changes
25 __ Organizational Changes
26 __ Funds Transfer
27 __ Tax Revenue
28 __ State Mandated

SOCIO-ECONOMIC IMPACT
29 __ Rights Effect
30 __ Monetary
31 __ Consumer Choice
32 __ Competition
33 __ Employment
34 __ Economic Development

INTERESTED PARTIES
35 __ Proponents
36 __ Opponents
37 __ Pro/Con Arguments

RECOMMENDATION JUSTIFICATION
38 __ Support
39 __ Oppose
40 __ Neutral
41 __ No Position
42 __ If Amended
43 __ Amended Language Attached

BILL SUMMARY

Current law provides for mandatory open and public meetings of state agencies and establishes specific notice and agenda requirements to ensure that the public is amply informed of all items of business under consideration. Legislation enacted in 1985 provides that the failure to comply with the notice or specific agenda requirements of the law could result in a judicial invalidation of any state agency action taken at a subsequent meeting.

While current law establishes general requirements that all actions of local legislative bodies be taken in open public session and that all deliberations be open and public (Ralph M. Brown Act), current law fails to conform local open meeting requirements with those that apply to state agencies as follows:

1. Current law does not uniformly require the posting of a specific agenda listing all items of business to be addressed by a local legislative body prior to a public meeting. This bill would require the posting of such an agenda at least 72 hours in advance of the meeting and would permit items to be added after that time only in the event of an "emergency situation" as defined in current law, or upon a finding by 2/3's of local legislative body that the need to take action on the items arose after the posting of the agenda.

2. Current law provides no remedy other than criminal misdemeanor penalties for a violation of the open meeting requirements of the Brown Act. This bill wou[ld] permit an interested party to demand that any violation of the Brown Act be cured by proper

AMENDMENT SUMMARY:

SFA-20

Dept. Director Position	Agency Sectry. Position	Governor's Office Use
[X] S [ ] O [ ] SIA [ ] OUA	[✓] S [ ] O [ ] SIA [ ] OUA	__ Position Noted ✓ Position Approved __ Position Disapproved
[ ] N [ ] Defer ________	[ ] N [ ] Defer ________	By: [signature] Date: 4/1[illegible]

Department Director	Date	Agency Secretary	Date
[signature] Marie Shibuya-Snell	4/8/86	Original signed by KAREN L. MORGAN Legislative Coordinator	APR 9

99D-7 (Rev. 1/84)

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notice and subsequent meeting. Failure to correct the deficiency would permit the aggrieved party to seek judicial action to invalidate the local legislative actions taken in violation of the open meeting provisions of law.

3. Current law does not require the agenda of a local legislative body to include provisions for members of the public to directly address the public body on items of interest. This bill would require with some exceptions, that the agenda provide for direct public comment at local legislative meetings.

4. Current law provides that a court may award reasonable court costs and attorney's fees to a plaintiff seeking civil relief for violations of the Brown Act and permits the defending public agency to recover costs and attorney's fees where that action is frivolous or totally lacking in merit.

   This bill would authorize the award of attorney's fees and costs where the plaintiff seeks to nullify or invalidate actions of local legislative bodies for violation of the Brown Act.

ANALYSIS

Background

In 1985, the Legislature enacted and the Governor signed legislation authorizing the courts to nullify the official action of "state agencies" where that action was taken in violation of the State Open Meeting Act, specifically where the agency failed to provide sufficient public notice or a specific agenda regarding the action taken. (AB 214 - Connelly, Chapter 936 Stats of 1985). Prior to that legislation, the only remedy for violation of the State Open Meetings Act were the criminal misdemeanor sanctions of law which proponents of this bill (AB 214) claim were rarily if ever applied.

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The Connelly bill of 1985 did not address violations of the open meeting provisions of the Ralph M. Brown Act as that law affected meetings of local legislative bodies (e.g. city councils, boards of supervisors, school district boards, local planning commissions and other bodies.)

This legislation (AB 2674) is an effort to conform the Brown Act to the recently enacted provisions of the State Open Meetings Law, specifically to provide authority to nullify or void local action taken in violation of the open meeting requirements of the Brown Act.

SFA-21

Proponents of this legislation cite the recent actions of the Los Angeles City Council and the Mayor of Los Angeles in enacting a local ordinance providing for a ten percent salary increase for themselves and other local officials as an incident demonstrating the need for this bill.

On June 5, 1985 without prior notice to the public or the press and without any substantive debate or disclosure as to the notice of the ordinance, the twelve members of the Los Angeles City Council then in attendance voted unanimously on an item of business simply referred to as "Item 53." Contrary to prior practice, the clerk of the Council was not directed to identify the subject of the item nor to read the ordinance or summarize it. The item was approved by the Council without comment and forwarded to the Mayor.

On June 6, 1985, the Mayor signed the ordinance thereby increasing salaries.

Upon review following suit in the Los Angeles Superior Court to nullify the actions of the Council, the Court concluded that "the City Council's consideration of the motion and the salary ordinance in a public place, during its regular session and its members having cast their votes in public met the minimum requirements of the Brown Act." (Statement of Intended Decision filed November 5, 1985.)

The court went on to conclude that while the actions of these city officials met the minimum requirements of the law, it "failed to comply with the spirit of the law" and further violated provisions of the City Charter. The court found the salary increase ordinance to be void and enjoined the city from disbursing the salaries as provided in the ordinance. However, their injunction was not grounded or any violations of the Brown Act.

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Specific Findings

It should be noted that while this department had previously opposed specified provisions of AB 214 during the 1985 legislative term, the current bill (AB 2674) contains provisions addressing the principal concerns stated by this agency in last year's bill.

Principal among these is the provision calling for a "written demand" to cure any notice or agenda defects as a condition precedent to any suit. This provision of the bill will permit local agencies to cure any real deficiency rather than engaging in needless and costly litigation.

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AB 2674
Page 4

Further, in light of the passage of AB 214 in 1985, there is a need to conform local open meeting laws with those that apply to state agencies. It makes little sense to require state agencies to adhere to specific agenda and notice requirements and at the same time to allow agencies of local government to act in the absence of notice to the public. Such an incongruous system does little to engender public confidence which must be viewed as the ultimate objective of both the State Open Meetings Act as well as the Ralph M. Brown Act. Inconsistency in the law of public meetings can only lead to confusion and ultimate public frustration and contempt.

Under terms of the bill any interested party who believes a violation of the agenda or notice provisions of the bill has occurred may issue a written demand to the local legislative body to cure the deficiency (e.g. renotice and convene a subsequent meeting to reconsider the action.) The demand must be made within 30 days of the action taken and the legislative body has 15 days within which to act to cure the deficiency. Legal action to invalidate the official action may only be commenced after a written demand for corrective action is made, and in all cases must be commenced within 60 days of the alleged defective official action.

Proponents of the bill concede that present provisions in the bill may allow too much latitude to municipalities to avoid the notice and agenda requirements in cases where 2/3's of the public body vote to affirm that the need to take action arose after the posting of the agenda. According to the author's staff, there is concern that this provision might be abused, but it was included in the bill to meet arguments that the measure unreasonably restricted the activities of local legislative bodies.

Fiscal Impact

Fiscal analysis forthcoming from departmental budget office.

Socio-economic Impact

See Specific Findings Above.

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5 A 23

Interested Parties:

Proponents:
- League of Women Voters
- Attorney General
- California District Attorney's Association
- District Attorneys of Alameda, San Joaquin and Los Angeles Counties
- Sierra Club
- ACLU
- State P.T.A.
- PORAC
- California Taxpayers Association
- California Freedom of Information Committee

Opponents:
- League of California Cities
- Association of California Water Agencies
- Sanitation Districts of California
- Numerous California Cities

Note: According to the author's office both the County Supervisor's Association of California and the California Newspaper Publishers Association are neutral on the bill as amended.

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Arguments:

Proponents of the bill argue that the measure is needed to avoid situations similar to that which occurred in the City of Los Angeles in 1985 to remove the incentives for unlawful or questionable conduct on the part of municipal officials. The bill, they argue, would stem this type of conduct by mandating specific agenda and notice requirements and by providing avenues to nullify action taken in contravention of these requirements.

These proponents also meet the objection that the bill will disturb the finality of local government decisions pointing out that suits to invalidate official action under the bill must be commenced within strict time limitations and only after the municipality has received a written demand to cure the deficiency.

Opponents of the bill argue that the measure does not provide sufficient flexibility for local government to address legitimate municipal concerns. They also argue that the bill will disturb the finality of local government decisions and actions thereby calling into question those decisions and destroying public reliance on actions which would otherwise be final.

Recommendation

The Department of Consumer Affairs recommends a position of SUPPORT on this bill.

SF A-24

California
Grocers
Association

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CA 95814

P.O. Box 160907
Sacramento
CA 95816

916 448-3545

Don C. Beaver
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Doris G. Costa
Vice President
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Michael Provenzano
Southland Market, Ontario
Charles Sprinkle
Fleming Companies Pleasanton
Peter Stathos
Van's Markets, Sacramento
Lynda Trelut
Nob Hill General Store Gilroy
George Soares
General Counsel

Serving the food industry of California since 1898

May 14, 1986

TO: Assemblyman Lloyd Connelly
Members, Senate Local
Government Committee

FROM: Don C. Beaver
Doris G. Costa

RE: AB 2674 (Connelly)
Local Agency Meetings
As Amended 3/18/86

POSITION: Support

The California Grocers Association supports AB 2674 (Connelly) scheduled for hearing in the Senate Local Government Committee on Wednesday, May 28, 1986.

This bill would require all local agencies to post agendas for items to be discussed at their meetings and would prohibit action from being taken on an item not appearing on that agenda.

CGA represents California's grocers at the local as well as the state level. We track and monitor items of interest to California grocers by reviewing the meeting agendas of city councils and county boards of supervisors. When an item of interest appears, we alert grocers in the locale and, if necessary, assist them in their endeavors to support or oppose the ordinance.

Advance notice of items is crucial in order to secure input from all individuals affected.

We urge you to vote YES at the hearing of AB 2674.

LM:kb

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SFA-25

State of California—Health and Welfare Agency

Department of Mental Health

BILL ANALYSIS

MH 35 (7/81)

Department	Author	Bill Number
Mental Health	Connelly	AB 2674
Sponsored By: Common Cause/League of Women Voters	Related Bills	Date Last Amended: March 18, 1986

Summary

SUMMARY

AB 2674 relates to the Ralph M. Brown Act governing meetings of local agencies. The bill would strengthen the provisions of these statutes by making changes to the type of information given to the public in advance, by mandating time for the public to address the bodies in question, and by adding sanctions for violation of the statutes.

LEGISLATIVE BACKGROUND

AB 2674 is co-sponsored by Common Cause and the League of Women Voters. A bill dealing with the "null and void" provisions of the law was passed in 1961 and vetoed by then Governor Pat Brown, however this bill is substantially different.

PROGRAM BACKGROUND

Although this bill does not affect any portion of the Department directly, the local mental health advisory boards which advise each county mental health department are affected. Additionally, it is likely that changes to the Ralph M. Brown Act may be duplicated in the Bagley-Keene Open Meeting Act which would affect DMH organizations such as the State Hospital Advisory Boards, the California Council on Mental Health, and the California Conference of Local Mental Health Directors.

SPECIFIC FINDINGS

Several changes in the Ralph M. Brown Act would be made by AB 2674. These are:

1. Requiring that affected agencies post an agenda clearly describing topics to be covered in a publicly accessible place, at least 72 hours prior to the meeting. No action may be taken on any item not on this agenda. This section attempts to address the fact that an agency will often be very vague in detailing what topics will be covered (i.e. "old business", "new business", "miscellaneous business", without specifying what will be discussed under those items) when the initial meeting agenda is distributed to the public. This modification is in keeping with the legislative intent of the act to insure the public's right to know what is being done on their behalf.

SFH 260

Position			Governor's Office Use	
Neutral		ORIGINAL SIGNED ON APR 22 1986	Position Noted	
			Position Approved	✓
Department Director [signature]	Date 4/15	Agency Secretary Sandra L. Shewry / Date	Position Disapproved	
			By: [initials]	Date 4/25

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2. Adds the requirement that all meetings of affected agencies include time for the public to address the agencies, providing no action is taken in violation of other provisions of the act.

3. Details provisions for notifying the public of emergency meetings. It is unlikely that local mental health advisory boards would find it necessary to call an emergency meeting under the provisions listed.

4. Adds a section allowing that action taken in violation of the provisions of this act may be deemed null and void, providing the individual initiating the action first approaches the agency to correct the action.

FISCAL IMPACT

None. The local mental health advisory boards appear to be complying with the requirements of this legislation. Therefore, the passage of this legislation will result in no fiscal impact to the Department of Mental Health.

RECOMMENDATION

Neutral. The department does not need to become directly involved in the issue at this time, however the bill should continue to be monitored due to its potential affect on the Bagley-Keene Open Meeting Act.

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SFA27

EXHIBIT Q

UNFINISHED BUSINESS—Continued

CONCURRENCE IN SENATE AMENDMENTS—Continued

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A.B. No. 2674—Connelly et al.

An act relating to local agencies.

1986

July 3—Read third time, passed, and to Assembly. (Ayes 37. Noes 0.)

July 3—In Assembly. Concurrence in Senate amendments pending.

July 8—Retains place by unanimous consent.

Legislative Counsel's Digest

AB 2674 as amended in Senate June 4, 1986
(Pursuant to Joint Rule 26.5)

AB 2674, as it passed the Assembly, made various changes to the Ralph M. Brown Act, including the requirement that the legislative body of a local agency post a specific agenda clearly describing the items of business to be transacted or discussed at a regular meeting and prohibiting any action to be taken on any item not appearing on the posted agenda, except as specified. It required a specified posting for special meetings of a legislative body of a local agency. It also required every agenda for regular meetings to provide an opportunity for members of the public to directly address the legislative body on items of interest to the public. It provided a procedure for an interested person to commence an action to determine if certain actions taken by the local agency are null and void.

The Senate amendments make conforming changes to provisions governing meetings of boards of school and community college districts. They revise the requirements for agendas for regular meetings, special meeting notices, and for the requirement that the public be provided an opportunity to address the legislative body at regular meetings.

Vote: majority. Substantial substantive change: yes.

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EXHIBIT R

CONCURRENCE IN SENATE AMENDMENTS

AB 2674 (Connelly) - As Amended: June 4, 1986

ASSEMBLY VOTE 69-4 (April 14, 1986) SENATE VOTE 37-0 (July 3, 1986)

Original Committee Reference: L. GOV.

DIGEST

Current law, the Ralph M. Brown Act, requires all meetings of a legislative body of a local agency to be conducted openly and publicly. The law generally requires prior written notification of all regular meetings of a local agency. The Brown Act requires 24-hour notice of meetings and allows for "emergency" meetings without prior notice in certain situations. In addition, current law authorizes all local agencies to establish rules and regulations which allow for greater public access.

As passed by the Assembly, this bill:

1) Required posting of an agenda 72 hours prior to a regular meeting of a local agency. It prohibited the legislative body from acting on any item not included in the agenda, unless a majority of the legislative body made a finding that an "emergency" situation exists, or finds, by a 2/3 vote of the legislative body, that the need to take an action arose subsequent to the agenda being posted.

2) Specified that a local agency can call a special meeting at any time if a majority of the legislative body's membership and the press is notified at least 24 hours prior to the meeting.

3) Required local agencies subject to the Brown Act (such as county boards of supervisors, city councils, their standing committees, special district boards and local commissions, such as planning commissions) to establish regulations which provide the public the opportunity to address the legislative body at each regular meeting.

4) Allowed any interested person to take action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body or local agency is in violation of the Brown Act and is, therefore, null and void. Such an action would have to be taken within 30 days from the date of the legislative action. If the legislative body cures or corrects its action, the case would be dismissed with prejudice. Exceptions to the null and void provisions include actions which involved the sale or issuance of bonds, a contractual agreement, the collection of taxes, or cases where the action was determined to have been in "substantial" compliance with the act.

LEGISLATIVE INTENT SERVICE (800) 666-1917

- continued -

The Senate amendments generally apply the above provisions to school and community college district boards, as well as local legislative bodies.

FISCAL EFFECT

The bill creates a state-mandated local program by requiring local agencies and school and community college districts to comply with stricter notification and public testimony requirements. The costs of this mandate probably would be minor.

(800) 666-1917 LEGISLATIVE INTENT SERVICE

Lyle Defenbaugh
445-6034
7/7/86:algov

AB 2674
Page 2

CONCURRENCE IN SENATE AMENDMENTS

AB 2674 (Connelly) - As Amended: June 4, 1986

ASSEMBLY VOTE 69-4 (April 14, 1986) SENATE VOTE 37-0 (July 3, 1986)

Original Committee Reference: L. GOV.

DIGEST

Current law, the Ralph M. Brown Act, requires all meetings of a legislative body of a local agency to be conducted openly and publicly. The law generally requires prior written notification of all regular meetings of a local agency. The Brown Act requires 24-hour notice of meetings and allows for "emergency" meetings without prior notice in certain situations. In addition, current law authorizes all local agencies to establish rules and regulations which allow for greater public access.

As passed by the Assembly, this bill:

1) Required posting of an agenda 72 hours prior to a regular meeting of a local agency. It prohibited the legislative body from acting on any item not included in the agenda, unless a majority of the legislative body made a finding that an "emergency" situation exists, or finds, by a 2/3 vote of the legislative body, that the need to take an action arose subsequent to the agenda being posted.

2) Specified that a local agency can call a special meeting at any time if a majority of the legislative body's membership and the press is notified at least 24 hours prior to the meeting.

3) Required local agencies subject to the Brown Act (such as county boards of supervisors, city councils, their standing committees, special district boards and local commissions, such as planning commissions) to establish regulations which provide the public the opportunity to address the legislative body at each regular meeting.

4) Allowed any interested person to take action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body or local agency is in violation of the Brown Act and is, therefore, null and void. Such an action would have to be taken within 30 days from the date of the legislative action. If the legislative body cures or corrects its action, the case would be dismissed with prejudice. Exceptions to the null and void provisions include actions which involved the sale or issuance of bonds, a contractual agreement, the collection of taxes, or cases where the action was determined to have been in "substantial" compliance with the act.

LEGISLATIVE INTENT SERVICE (800) 666-1917

- continued -

The Senate amendments generally apply the above provisions to school and community college district boards, as well as local legislative bodies.

FISCAL EFFECT

The bill creates a state-mandated local program by requiring local agencies and school and community college districts to comply with stricter notification and public testimony requirements. The costs of this mandate probably would be minor.

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Lyle Defenbaugh
445-6034
8/14/86:algov

EXHIBIT S

FACT SHEET: AB 2674 (Connelly)
June 23, 1986

This bill proposes major amendments to the Ralph M. Brown Act (Government Code Section 54950 et. seq.; all citations are to the Government Code unless otherwise noted).

The Brown Act requires, with certain exceptions, that all meetings of legislative bodies of local agencies be open and public (Section 54953). A few examples of local legislative bodies subject to the open meeting requirements of the Brown Act are: city councils, county boards of supervisors, school districts and planning commissions. The meetings of many other local government entities are also covered by the Brown Act.

The Brown Act recognizes five kinds of meetings: regular meetings (Section 54954), special meetings (Section 54956), emergency meetings (Section 54956.5), adjourned meetings (Section 54955) and continued hearings (Section 54955.1). This bill pertains only to regular and special meetings.

The bill addresses the following two deficiencies in the Brown Act:

(1) The Brown Act contains no meaningful notice or agenda requirements.

(2) The Brown Act contains no meaningful remedy for violations. There is no mechanism by which actions taken in violation of the Brown Act can be declared "null and void."

In light of these shortcomings, this bill proposes adding the following two new sections to the Brown Act:

* Section 54954.2 - will require local legislative bodies to post a specific agenda of all items of business to be transacted or discussed at regular meetings no later than 72 hours prior to the meetings. Items may be added to agendas subsequent to being posted in three circumstances: (1) in cases of emergency as defined by the Brown Act, (2) upon a finding by a 2/3 vote of the local body that the need to take action arose subsequent to the agenda being posted, and (3) if the item properly appeared on a previous agenda within 5 days and the item was continued to the meeting at which action is taken.

Some entities covered by the Brown Act are already subject to this "posted agenda" requirement. Specifically, school districts (Education Code Section 35145) and community college districts (Education Code Section 72121) are required to post agendas 48 hours in advance of regular meetings and 24 hours in advance of special meetings. (The Bagley-Keene Open Meeting Act, which regulates the meetings of state agencies, requires state bodies to mail a notice and specific agenda of all meetings to interested individuals 10 days in advance of meetings (Section 11125).)

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* Section 54960.1 - will authorize private citizens and organizations to challenge actions of local bodies taken in violation of the Brown Act and have such actions declared "null and void." Specifically, actions taken in violation of Section 54953, which generally requires meetings to be open, and the above-described Section 54954.2, requiring posted agendas, will be subject to judicial challenge.

If the court determines that the challenged action was, in fact, taken in violation of either Section 54953 or Section 54954.2 of the Brown Act, it may declare such action "null and void." Presently, there is no mechanism by which the illegal actions of local bodies may be invalidated. It is a well-established rule that the Brown Act is not "mandatory", but, merely "directory." This means that actions taken in violation of the Brown Act are, nonetheless, valid; they may not be struck down as "null and void."

In essence, proposed Section 54960.1 makes the open meeting and posted agenda requirements of the Brown Act mandatory. (The Bagley-Keene Open Meeting Act already makes its open meeting requirement and more stringent agenda requirement mandatory (Section 11130.3).)

In an effort to avoid frivolous lawsuits from being filed under this section, the bill contains a requirement that before a lawsuit is filed, the local body be given an opportunity to cure or correct an action alleged to have been taken in violation of the Brown Act. This written demand to cure or correct must be filed with the local body within 30 days from the date the challenged action was taken. The local body has 30 days to respond. Thereafter, any lawsuit must be filed with another 15 days. In no event, can any lawsuit be filed after 75 days from the date the challenged action was taken.

Lastly, in recognition of the need for finality of government actions, this provision of the bill exempts the following actions from being declared "null and void":

(1) actions taken in substantial compliance with the Brown Act.

(2) actions taken which give rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) actions taken in connection with the collection of any tax.

(4) actions taken in connection with the sale or issuance of notes, bonds or other evidences of indebtedness.

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ORIGINAL FILED
NOV 0 4 1985
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DOROTHY GREEN, Taxpayer and Voter, Petitioner/Plaintiff, vs. CITY OF LOS ANGELES, LOS ANGELES CITY COUNCIL, and JAMES HAHN, AS CONTROLLER OF THE CITY OF LOS ANGELES, Respondents/Defendants.	Case No. C 554145 STATEMENT OF INTENDED DECISION

After a review of the evidence presented on October 28, 1985, and further argument and a reading of the briefs, the Court finds and rules as is further stated in this intended decision.

FACTS

On June 5, 1985, by unanimous vote of the twelve (12) members present (Messrs, Bernson, Braude, Cunningham, Farrell, Ferraro, Flores, Lindsay, Snyder, Stevenson, Wachs, Yaroslavsky, and President Russell), the City Council voted to approve an ordinance, designated Ordinance No. 159926, increasing by 10 percent the salaries of the Mayor, the City

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Attorney, all City Council members, and the City Controller. The matter of the salary increases was designated as item "53." The salary ordinance was not on the Daily Council Printed Calendar which affords the public prior notice of intended Council business. The term "Item 53" did not appear on the daily or supplemental printed calendar. The motion dealing with the salary ordinance was not read aloud prior to the vote. The salary ordinance was not read aloud by the clerk.

The ordinance was not posted nor placed where it could be reviewed by the public prior to the time item "53" was called up during the morning session by Councilman Snyder. The motion to increase salaries and the ordinance providing for the same and the O.S.A. Report were not distributed to the public or news media prior to or during consideration and vote on the matter on June 5, 1985.

There was no prior notice to the public that the Council was to consider the salary ordinance during its June 5, 1985, session. It is noted, however, that the Official Salaries Authority Report was filed on May 22, 1985, and placed in the City Clerk's File under No. 85-0918 -- this report was available to the public prior to the proceedings that took place on June 5, 1985. The dollar amount of salary increases for each office were not included in the recommendations of the Official Salaries Authority. The O.S.A. Report of May 22, 1985, recommended that the City Council "...enact an ordinance granting the Mayor, City Attorney, members of the City Council and City Controller the maximum salary increase allowable by Current Charter provisions."

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As the evidence disclosed, there was no discussion on the motion by the City Council. Item 53 was distributed to council members in the course of its general deliberations without identification until such time as Councilman Snyder obtained the attention of the council's president, Pat Russell. Although there was no discussion with respect to the motion a the ordinance dealing with their salary, the Court concludes that council members reviewed them during the 15 or 30 minutes the items were placed before them.

Item 53 was taken out of order after the council's president initialed approval with the knowledge that Councilman Snyder had indicated a desire that council rules be suspended with respect to item 53. In accordance with that request, the motion was stamped "Suspension Requested" and the following ensued:

"MS. RUSSELL: If there is no objection - ITEM 53. Is there any objection to suspension. If not, the matter is before us. Is there any discussion? Open the roll on Item 53. Close the roll.

CLERK: 12 Ayes.

MS. RUSSELL: That matter is approved.

MR. SNYDER: The ordinance Madam President - I have another roll call on the ordinance.

MS. RUSSELL: Open the roll on the ordinance.

MS. RUSSELL: Close the roll.

CLERK: 12 Ayes.

MS. RUSSELL: That matter. . .

MR. SNYDER: Forthwith to the mayor.

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MS. RUSSELL: Forthwith to the mayor. Next order, Madam Clerk."

The practice of the council has been to direct the clerk to identify the subject of the ordinance before a vote. However, in this instance, the clerk was not requested to identify the subject matter of the ordinance that was included in item 53. Ten votes were required for the suspension of the rules. Twelve votes were required for the approval of the ordinance on its first reading and ten votes were required for approval of salary increases of elected officials. The 12 Aye votes cast met all of these requirements.

The council's actions were reported in the journal as 85-0918. The Digest of Council Calendar (Journal) is the report of City Council actions published by the City Clerk <u>after</u> each City Council session. It is not available to the public until several days after the City Council actions have taken place.

A member of the press requested and received copies of the motion and the ordinance on June 5, 1985, and a story appeared in the local paper on June 6, 1985. The Ordinance, increasing salaries, was signed by the Mayor on June 6, 1985.

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DISCUSSION

<u>The City Council's action did not violate the Ralph M. Brown Act</u> (California Government Code §54950, <u>et seq.</u>).

The City Council's consideration of the motion and the salary ordinance in a public place, during its regular session and its members having cast their votes in public met the

minimum requirements of the Brown Act. The Court agrees with defendants' position that the act does not require prior distribution or posting of agendas, prior publication or distribution of material to be considered, nor does it require that matters be given a particular number or that they be orally described prior to the taking of a vote.

The openness of the proceedings coupled with public availability (provided on request) of documents and a written record of what transpired is sufficient under the act. It is said that the Brown Act attempts to strike a balance between public knowledge about the legislative processes and the efficiency of the processes.

Government Code §54957.5 states, in relevant part, that agenda and other writings, when distributed to the legislative body, are public records and shall be made available pursuant to Government Code §§6253 and 6256. The essence of the latter sections is that the documents or materials shall be made available and provided upon request, which, as a practical matter, is usually after the legislative body has acted.

The City Council complied with its procedural rules.

Rule 76 (Suspension) of rules adopted by the Los Angeles City Council provides:

"These rules or any one thereof, except as provided in Rule 32 and Rule 63 may be suspended by a vote of two-thirds of the members of the Council."

Twelve votes were cast to suspend the rules although only 10 were required.

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Rule 63 provides:

"No ordinance shall be introduced for adoption by the Council except upon motion by one of the members thereof. Upon such ordinance being introduced, it shall be read the first time by the Clerk. Any member may withhold unanimous consent to the adoption of such ordinance at its first reading. If unanimous consent is withheld such ordinance shall be laid over for one week. An ordinance may be adopted at its first reading if approved by unanimous vote of all of the Council present, provided there shall not be less than 12 members present."

Section 26 of Article III of the Los Angeles City Charter (Mandatory Provisions) states: "No ordinance shall be passed finally on the day it's introduced, but the same shall be layed over for one week, unless approved by the unanimous vote of all the members present, provided there shall not be less than three-fourths of all members present."

The record discloses that the required number (12) were present and voted to pass the ordinance finally on the day it was introduced (June 5, 1985). It is noticed that the charter provision does not refer to a reading aloud or otherwise of ordinance, although Council Rules appear to require such a reading.

The Court concludes that the City Council had the power to suspend its procedural rules and that the passage of the ordinance was accomplished within the mandatory provisions of Section 26 of the City Charter.

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Government Code §54950 sets forth legislative intent with respect to the conduct and openness of public agencies' handling of public business. In relevant part it reads "It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

Although the court has concluded that the City Council's actions on June 5, 1985 met minimum requirements of the letter of the law, it nonetheless failed to comply with the spirit of the law as is set forth in Section 54950. A recently adopted City Council practice requiring the Minute Clerk to read aloud the title or synopsis of a measure sought to be passed "on Suspension of Rules," will certainly inform Council members on the one hand and on the other it will alert the public and the media so that they will know what to request of its Council since predistribution or prepublication of materials and notice are not mandatory under these circumstances.

Suspension

<u>Salary Ordinance No. 159926, increasing salaries by 10% violates Article V, Section 65.6 of the Charter of the City of Los Angeles</u>.

The relevant portion of Charter Section 65.6 that is at the heart of the dispute reads in part: "... however, that once salaries have been initially established as provided in this section, <u>no increase in the annual salary for an official shall thereafter be greater than five percent for each calendar year following the operative date of the most recent change for the salary for that office</u>.

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Although the court recognizes that the Charter provision as set forth above is capable of several interpretations, as the briefs and argument of counsel have demonstrated, it adopts a common sense interpretation consistent with what the voters had before them when Proposition T was submitted for a vote.

The court finds that the five percent limitation of Section 65.6 is a limitation on the salary increase for each of two years. (July 1, 1985 thru June 30, 1987). The court concludes that the 5% limitation of Section 65.6 is a limitation on salary increases available for each of the two fiscal years. Charter Section 65.6 does not authorize compounding of salaries, therefore the second year's 5% increase shall not be compounded on the first year's increase. The court expressly rejects defendants' contention that the 5% limitation is only part of the calculation of the amount of salary increases available for the ensuing two-fiscal year period. An argument that employees' salaries are compounded is not persuasive since the salary of elected officials is set by Charter Section 65.6.

According to several reports, filed by the Official Salary Authority, City officials are underpaid and should be paid more than they currently receive. If that is so, the answer to the problem is the submission of a new proposition that will amend the Charter to increase salaries rather than strained interpretations of the present charter provision in an attempt to obtain a salary that was not voted by the electorate. The court concludes that the ordinance increasing salaries is void.

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CONCLUSION

Consistent with this court's decision as set forth previously, it will order appropriate injunctions precluding the defendants from implementing a salary ordinance that provides more than a five percent increase for each year.

This court will issue its order that:

1. Ordinance No. 159926, which increased City officials' salaries by 10%, is void.

2. Defendants are permanently enjoined from disbursing salaries to public officials as provided for in Ordinance No. 159926.

3. Defendants are permanently enjoined from implementing any salary increase that is more than 5% for each year under Charter Section 65.6 as presently constituted.

4. Compounding of salaries is not provided for in City Charter Section 65.6 as presently constituted.

The matter of attorneys' fees shall be determined by this court pursuant to notice of motion provided for in Civil Code Section 1717.

Counsel for plaintiffs shall submit a judgment consistent with this court's ruling within 10 days.

In the event a statement of decision is requested, this intended notice of decision shall serve as a statement of decision as provided in California Rules of Court 232.

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Counsels' attention is directed to People v. Casa Blanca Convalescent Homes, Inc. (1984) 159 Cal.App.3d 509.

DATED: NOV 0 4 1985

RAYMOND CARDENAS

Raymond Cardenas
Judge of the Superior Court

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SACRAMENTO CALIFORNIA 95816
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STATE CAPITOL
SACRAMENTO CALIFORNIA 95814
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Assembly
California Legislature

COMMITTEES
WAYS AND MEANS
JUDICIARY
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
AGING & LONG TERM CARE

SUBCOMMITTEES
CHAIR ADMINISTRATION OF JUSTICE
STATE ADMINISTRATION
HEALTH & WELFARE

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

Contact: Gene Erbin
324-7593

For Immediate Release:
January 15, 1986

Brown Act To Be Toughened By Connelly Bill

Legislation that proposes major amendments to the Ralph M. Brown Act was introduced today by Assemblymen Lloyd Connelly (D-Sacramento) and Ross Johnson (R-Fullerton). The Brown Act generally requires that meetings of local entities, such as city councils and boards of supervisors, be open to the public.

"AB 2674 does two things," said Connelly. "It requires local entities to post specific agendas for their meetings so that citizens can learn beforehand what business will be transacted and, secondly, allows citizens to go to court to have actions taken in violation of the Brown Act declared 'null and void'."

Presently, there is no law that requires specific agendas or permits the invalidation of illegal actions.

"This is an important bill because it puts sharp enforcement teeth into the Act. Right now, the Act is toothless," said Connelly.

The principal co-author of the bill is Assemblyman Ross Johnson (R - Fullerton). "This bill deserves bi-partisan support", said Johnson, "because it gives real meaning to the idea that citizens can participate in government and retain some degree of control over their own government."

A recent example of an egregious violation of the spirit of the Act which points out the need for this bill is the Los Angeles City Council's nearly

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secret decision to raise its own pay. When the pay raise was voted on, it was referred to only as "Item 53," no description of the motion was given, and it was not available in print prior to the vote. In a subsequent court ruling, the judge concluded that the Council's actions violated the spirit of the law but not the letter of the Act, precisely because of the deficiencies in the Act this bill corrects.

The bill is supported by the Attorney General, the California District Attorney's Association and several individual district attorneys. Common Cause is the sponsor of the bill.

"Why shouldn't the people have some form of minimal notice of the meetings of their local government?" asked Connelly. "Why shouldn't the people have some opportunity to invalidate the illegal actions of their government?"

AB 2674 is based on Connelly's AB 214 (Chapter 936 of 1985) that was signed into law last year. That bill added the "null and void" provision of law to the Bagley - Keene Open Meeting Act which governs the meetings of state agencies.

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Assembly Bill No. 214

CHAPTER 936

An act to amend Section 11130.5 of, and to add Section 11130.3 to, the Government Code, relating to meetings of state bodies.

[Approved by Governor September 25, 1985. Filed with Secretary of State September 25, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

AB 214, Connelly. State bodies: open meetings.

Existing law authorizes any interested person to commence an action by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of statutory provisions relating to open meetings of state bodies or to determine the application of those provisions.

This bill would authorize any interested person to commence an action by mandamus, injunction, or declaratory relief to determine if the action by the state body is null and void, within 30 days of the action by the state body. It would provide that any action taken in violation of the open meeting, notice, and specific agenda requirements shall not be determined null and void under certain specified conditions.

Existing law authorizes a court to award reasonable attorneys' fees to a plaintiff where it is found the state body has violated provisions of law relating to open meetings, or to a prevailing defendant in cases in which the court finds the action was clearly frivolous and totally lacking in merit.

This bill would authorize the award of reasonable attorneys' fees under specified circumstances in actions to determine null and void the actions of a state body.

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

SECTION 1. Section 11130.3 is added to the Government Code, to read:

11130.3. (a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 30 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

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(1) 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 related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

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

SEC. 2. Section 11130.5 of the Government Code is amended to read:

11130.5. A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

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LLOYD G. CONNELLY
CHAIRPERSON

May 7, 1986

The following newspapers have published editorials supporting AB 2674:

LOS ANGELES TIMES
SAN JOSE MERCURY NEWS
ORANGE COUNTY REGISTER
THE SACRAMENTO UNION
THE SACRAMENTO BEE
THE BAKERSFIELD CALIFORNIAN
THE TEHACHAPI NEWS
THE FRESNO BEE
OAKDALE LEADER
VISALIA TIMES DELTA
SAN FRANCISCO EXAMINER
SANGER HERALD
PORTERVILLE RECORDER
RIVERSIDE COUNTY RANCHO NEWS
ONTARIO DAILY REPORT
GARBERVILLE REDWOOD RECORD
SALINAS CALIFORNIAN

THE OCEANSIDE BLADE TRIBUNE
THE ESCONDIDO TIMES-ADVOCATE
LONG BEACH PRESS-TELEGRAM
THE OAKLAND TRIBUNE
THE SAN MATEO TIMES
SALINAS CALIFORNIAN
VAN NUYS DAILY NEWS
BELVEDERE CITIZEN
SANTA BARBARA NEWS-PRESS
THE UNION (Grass Valley-Nevada City)
PALOS VERDES PENINSULA NEWS
SAN FRANCISCO CHRONICLE
PALO ALTO PENINSULA TIMES TRIBUNE
LAKE ELSINORE VALLEY SUN-TRIBUNE
RANCHO SANTA FE HOME COURIER
OROVILLE MERCURY - REGISTER

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Los Angeles Times
A Times Mirror Newspaper

Publishers
HARRISON GRAY OTIS, *1882-1917*
HARRY CHANDLER, *1917-1944*
NORMAN CHANDLER, *1944-1960*
OTIS CHANDLER, *1960-1980*

TOM JOHNSON, *Publisher and Chief Executive Officer*
DONALD F. WRIGHT, *President and Chief Operating Officer*
WILLIAM F. THOMAS, *Editor and Executive Vice President*
VANCE L. STICKELL, *Executive Vice President, Marketing*
LARRY STRUTTON, *Executive Vice President, Operations*

JAMES D. BOSWELL, *Vice President, Employee and Public Relations*
WILLIAM A. NIESE, *Vice President and General Counsel*
JAMES B. SHAFFER, *Vice President, Finance and Planning*

GEORGE J. COTLIAR, *Managing Editor*
ANTHONY DAY, *Editor of the Editorial Pages*
JEAN SHARLEY TAYLOR, *Associate Editor*

Cutting Down Secrecy

California's Brown Act requires boards of supervisors, city councils, water districts, school boards and other local bodies to conduct business in public. The broad protections are good for democracy, but an action that violates the law can remain valid and secrecy is rarely, if ever, penalized. Those weaknesses need correcting.

Assembly Bill 2674 would strengthen the Brown Act and make it easier to enforce. The California Legislature should make it law.

The new legislation would require policy bodies to post a specific agenda at least three days before a regular meeting and one day before a special session. No items could be added during a meeting. The new requirement would prevent cunning council members from hiding controversial motions until the last moment. Exceptions would be made for genuine emergencies, and the exemption for discussing personnel matters would remain.

Had the changes been in effect last year, members of the Los Angeles City Council could not have sneaked through a motion for a 10% pay raise, identified only by number and not by topic, without public discussion or public notice.

Had the new enforcement provision been in effect, the council's action could have been redressed without proof of criminal intent. Superior Court Judge Raymond Cardenas subsequently found that the process had violated the spirit, but not the letter, of the Brown Act. He struck down the pay raise, however, because he found that it violated a provision of the city Charter.

AB 2674 would allow any action, found in violation of the law by a court, to be declared void automatically. Sneakiness would no longer pay off. That is significant, because there is no record of a successful criminal prosecution of the Brown Act, according to Assemblyman Lloyd G. Connelly (D-Sacramento), one of the bill's sponsors.

Connelly's co-sponsor is Assemblyman Ross Johnson (R-La Habra). That bipartisan support indicates that both Democrats and Republicans support the precepts of good government. The attorney general, the California District Attorneys Assn. and the League of Women Voters also support the measure. Common Cause, the citizens' lobby, is the original sponsor.

A similar measure, sponsored by Connelly during the last legislative session, tightened up the Bagley-Keene Open Meeting Act, which governs meetings of state agencies just as the Ralph M. Brown Act governs meetings of local agencies.

Local officials may chafe at the new restrictions. They may protest that the requirements would slow government business. Secrecy may speed some decisions, but that efficiency is at the expense of democracy. AB 2674 deserves passage.

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Salinas, CA
(Monterey Co.)
Californian
(Cir. 6xW. 23,602)

APR 15 1986

Allen's P. C. B Est. 1888

Teeth for the Brown Act

Local residents who have resented being locked out of government meetings should be very interested in a bill headed for the California state Senate.

So, we'll admit, should newspaper reporters.

The bill, passed by the state Assembly Monday, would allow citizens to sue to overturn actions taken in meetings that are closed illegally by local government bodies.

The Ralph M. Brown Act sets out the requirements that must be met before a government board or commission is allowed to close its meetings. So, for citizens trying to gain legitimate access to the public's business, it is an invaluable tool. At least, as far as it goes.

But, when it comes to enforcement, it doesn't go far enough. A board that violates the open meetings act might find itself hauled into court. But, as a practical matter, about the only punishment that is ever handed out is a declaration that the meeting was, indeed, closed illegally, and that the board shouldn't do it again. Actions taken in the illegal meeting stand.

This bill, sponsored by Assemblyman Lloyd Connelly, D-Sacramento, would allow a citizen to pursue the issue in court and have actions taken in an illegal meeting declared null and void.

Without a more effective means of enforcement, the current Brown Act says excluding the public from the decision making process is not much more than a bad idea. The Connelly bill would make it plain that such exclusion is illegal. Which is exactly what it should be.

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Oroville, CA
(Butte Co.)
Mercury-Register
(Cir. 6xW. 11,107)

MAR 31 1986

Allen's P. C. B Est. 1888

New law would put teeth in Ralph Brown Act

306060

It was more than 30 years ago that the state Legislature passed the Ralph M. Brown Act that required meetings of boards of supervisors, city councils and other local governmental agencies be open to the public and that voting on issues be conducted openly. The Brown Act passed because their was much abuse of the public's right to know in those days and freedom of information simply didn't exist in some areas of the state.

The Brown Act was better than nothing. In fact, it actually went a long way toward bringing the meetings of public bodies out into the open. The threat of the Brown Act was credited with a turnaround in the way many nonpublic public meetings were conducted.

But the act had its shortcomings. One of the major defects in the law was the absence of teeth to enforce it. Now, however, the Legislature is considering a bill by Assemblyman Lloyd Connelly, D-Sacramento, that would supply a set of effective dentures and make the Brown Act much more effective.

The bill by Connelly would, for the first time, provide that courts could overturn local government actions taken in violation of the Brown Act.

Private citizens and organizations who believed an action to be illegally passed, could, after first asking the involved body to undo the action, take the issue to court where judges would have the power to find an action null and void if it was, indeed, adopted in violation of the Brown Act.

Another key provision of the new Assembly bill would require posting of special agendas for public agency meetings at least three days before regular meetings.

The Brown Act was a step in the right direction when it was passed 33 years ago but it was found to be lacking in many areas as various government agencies sought and found ways to circumvent the letter of the law. Many of these loopholes have since been plugged, but the lack of teeth in the law still kept it from being the strong freedom-of-information legislation it was intended to be.

Connelly's bill, AB 2674, deserves a vote of approval when it goes before the Assembly's Local Government Committee on April 1.

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LEGISLATIVE INTENT SERVICE (800) 666-1917

Up on a stump

Keep business public

Garberville, CA
(Humboldt Co.)
Redwood Record
(Cir. W. 1,247)

MAR 20 1986
Allen's P. C. B Est. 1888

Doing the public's business in public is, more often than not, a matter of attitude. If a city council, hospital board or harbor district desires to keep the public out of the deliberation process, it's easy to hide behind "open meeting" laws. Too many exceptions are allowed.

Some Crescent City harbor commissioners seem to think it's a good idea to keep the doors closed. At a recent meeting, a local commercial fisherman wanted to discuss the job description of any new harbor master hired to replace the late Bob Clarke. One commissioner got so upset about discussing in public what the duties of a new harbor master should be that he walked out of the meeting in a huff. He claimed it should only be talked about behind closed doors because it is a "personnel matter."

Personnel matters are one of the exceptions to the state's requirement of open public meetings. In this case, however, the issue was not about a person, it was about the nature of the harbor master's job — clearly something the public has a right to discuss.

During the lease negotiations between Sutter and Seaside Hospital's board of directors, several attempts were made to keep things from the public. In almost every case the "secret" material leaked to the press.

One document, written by Seaside's attorney James Hooper, was a history of the lease process and an outline of the positions taken by the board. It told of the goals the district had set for the lease. Timely release to the public by the board would have provided citizens with an accurate insight into the lease negotiations process.

As it turned out, by the time **The (Del Norte) Triplicate** obtained a copy of the secret document the issue was no longer relevant to the public interest — the lease had already been voted upon by the board. Of course, all this secrecy was legal — even if it was unnecessary. The board could have released the secret document without jeopardizing the lease negotiations. It had the right, and perhaps the obligation, to do so, but chose not to.

The California Legislature may put new teeth into our open meetings laws. Assembly Bill 2674, sponsored by Assemblyman Lloyd G. Connelly, D-Sacramento, Assemblyman Ross Johnson, R-Fullerton, and Senator Milton Marks, D-San Francisco, will make two changes:

- Require that local entities post specific agendas for their meetings so that citizens can learn beforehand what business will be transacted.
- An individual could challenge any action taken in violation of the open meetings laws and a court could declare such action "null and void." Under existing law, actions taken in violation are, nonetheless, valid.

At times it appears as though some local public entities would rather not have the public involved. These measures will help defend the public's access to our own government.

—Steven L. Yarbrough
Managing Editor
Del Norte Triplicate

A21

LEGISLATIVE INTENT SERVICE (800) 666-1917

Rancho Santa Fe, CA
(San Diego Co.)
Mobile Homes Courier
(Cir. W.)

MAR 1 4 1986

Allen's P. C. B. Est. 1888

Editorial

A flip of the coin

Tails, you lose. Heads, we win. That's the current situation in the marble halls of Sacramento with new legislation geared at the public's right to know how their public bodies are behaving.

On one hand, we've got Assembly Bill 2674 by Assemblyman Lloyd Connelly, (D-Sacramento), which would back up the Brown Act, the state's open meetings law. This proposed legislation, which is going before the lower house's committee this week, would allow any actions of a governmental agency taken in a meeting that violated the anti-secrey law to be declared null and void. At the very least, the bill in its present form would mean the public agency would have to do it all over again, in front of friends and foes.

On the other hand is Senate Bill 1914 that would allow hospital districts to conduct more of their (and our) business in secret. Authored by Sen. Nicholas Petris(D-Oakland), the legislation would exempt from the California Public Records Act any hospital district records that "relate to any contract for inpatient or outpatient services." That means keeping such information from the public. That's us.

Like other public agencies, hospital district meetings are open to the public, with some exceptions under the Brown Act. Hospitals districts are governed by trustees or boards of directors, elected by the public for specific terms of office. Public hospitals are partially supported by taxes. Most of the buildings were constructed with bonds approved by the public. Many of the patients, especially the elderly, are being cared for, with the public paying part of the fare (Medicare).

So what's the need for keeping secrets from the public?

According to the bill's sponsor, the Association of California Hospital Districts, open meetings hamper public districts from competing with the private, for profit hospitals. Public hospitals, they say, may not survive in such a situation. The public's private pocketbooks, we say, will be hard pressed to survive for long in such a situation.

Contrary to popular opinion, modern medical care is not the basis for increased life spans. Nor are modern miracle drugs and their high tech counterparts of advanced equipment. Longevity here and around the world has increased during the 20th Century due to sanitation measures and the immunization programs.

Today, folks are paying more than ever for health care services. They're paying more of their income now for such help than they paid before such publicly assisted programs (Medicare and Medical) came into being. Now more than ever is the importance of overseeing the facilities that are charged with taking care of us and our bodies. Connelly's bill is such a measure and deserves our support.

His amendment to the California Code would require specific meeting agendas to be posted 72 hours in advance of a local body's regular meeting. That means the public is guaranteed advance warning that their elected officials are considering certain actions.

If there is a violation of the Brown Act, it allows any member of the public to ask the courts to nullify any action taken at the meeting. Now prosecution under the Brown Act is all but impossible; it must be proven that the offending officials intended to violate the law. But Connelly's measure notes that a violation must be more than a minor technicality. And the agency has another chance to redo their motion which has been undone by the courts if they do so in a legitimate public meeting.

We don't feel that our public hospitals need to conduct their affairs in secret. There is too much mumbo-jumbo associated with medicine anyhow. And always has been. It's our lives we're talking about.

Editorials

It's time to make acts of illegal meets illegal

Rancho News Opinion

Often, the doings up in Sacramento seem far removed from the real world in which we all live and work — especially if those doings are related to some technical piece of legislation about government operations.

Well, there's one of those in the works right now that is as much a "local story" as the PTA or the water district board.

It's Assembly Bill 2674 and it has to do with open meetings of local governmental agencies.

What AB 2674 would do, in essence, is make actions taken illegally null and void — if a local public agency holds a meeting behind closed doors (which is a violation of a state law known as the Brown Act), the action itself would be illegal and could be declared null and void.

Introduced by Assemblyman Lloyd G. Connelly, D-Sacramento, the bill has already had a quick hearing before the Assembly Local Government Committee, on which sits Assemblyman Bill Bradley, R-Escondido.

Bradley's district encompasses a pretty good chunk of Southwest Riverside County, including Rancho California, Murrieta, Wildomar and more, and that means he's the guy to contact if you, like this newspaper and a lot of other interested parties, want to tell someone that you think public agencies should act legally and openly on the public's business.

If you want to see school boards, city councils, water district boards and other local agencies having to conform to a law with as much teeth as the one that dictates open meetings and open-meeting rules for state agencies — a bill adding the "null and void" provision to the Bagley-Keene Open Meeting Act for state agencies already is law — Bradley is the one to contact.

His aides both in Escondido and in Sacramento say their boss "favors the bill" and we expect to see his "aye" on the record when the committee holds follow-up hearings this week. The bill is scheduled for a vote on April 1.

AB 2674 is a worthy piece of legislation and, should it be reported out of committee for a full vote of the Assembly in the near future, we'd hope Assemblyman Steve Clute D-Riverside, the representative of the rest of Southwest Riverside County, could be counted on to support it.

Rancho News

A-10

Wednesday, March 19, 1986

A-23

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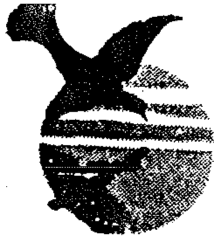

Our Opinion

It's time to make acts of illegal meets illegal

Sun-Tribune Opinion

Often, the doings up in Sacramento seem far removed from the real world in which we all live and work — especially if those doings are related to some technical piece of legislation about government operations.

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LAKE ELSINORE VALLEY
Sun-Tribune
C-10
Wednesday, March 19, 1986

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-24

Palo Alto, CA
(Santa Clara Co.)
Peninsula Times Tribune
(Cir. D. 60,288)
(Cir. S. 60,011)

MAR 11 1986

Allen's P. C. B Est. 1888

Getting Brown on line

60

IT'S TIME for a couple of amendments to the Brown Act. That act, as you may recall, was passed to give citizens greater access to the workings of such local government bodies as city councils, school boards and boards of supervisors. It has opened up local governments to a considerable degree, but still has two unacceptable shortcomings.

These problems are addressed in Assembly Bill 2674, introduced by Lloyd Connelly, D-Sacramento. The bill goes for hearing today before the Assembly Local Government Committee, chaired by Santa Clara Assemblyman Dom Cortese.

Connelly's bill would improve the Brown Act by requiring local entities to post specific agendas for their meetings 72 hours in advance of regular meetings and 24 hours in advance of special meetings, and by authorizing private citizens or organizations to seek and obtain judicial invalidation of actions taken in violation of the Brown Act.

The first amendment is, quite obviously, intended to make the business of a public meeting known in advance so that interested parties can attend.

It is curious that the second amendment is needed at all. But the fact is that under the Brown Act as it stands today, a local government action which violates the act is immune from challenge and invalidation.

These amendments are long overdue.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-25

Porterville, CA
(Tulare Co.)
Recorder
(Cir. 6xW. 12,013)

FEB 18 1986

Allen's P. C. B Est. 1888

Government in the open

65 60

Last year the state Legislature put some teeth into the open-meeting law covering state agencies. This year, it has a chance to do the same for the law covering local governments. It's long overdue.

A bill by Assemblymen Ross Johnson, R-Fullerton, and Lloyd Connelly, D-Sacramento, not only would strengthen existing requirements that local governments notify citizens of actions they plan to take, but it would also impose penalties on governments that fail to comply.

Under the existing Brown Act, passed in 1953, local legislative bodies such as city councils, school boards, boards of supervisors, water districts and many special districts need only post notices of upcoming meetings. The Johnson-Connelly bill would require that they post specific agendas 72 hours before their meeting.

Perhaps most importantly, the bill would allow courts to invalidate actions taken at meetings that do not comply with the law.

The Johnson-Connelly collaboration came about after the Fullerton assemblyman learned of the unorthodox manner in which Los Angeles City Council members voted themselves a 10-percent pay increase last June. The pay-increase issue, known only as "item 53," did not appear on the council's agenda, and was not discussed in an open meeting prior to the vote.

Although the increase was later voided because it exceeded a ceiling imposed in the Los Angeles City Charter, the judge in the case admitted that the council's vote was legal under the Brown Act.

That's just one example of the arrogant manner in which governments sometimes handle what is euphemistically called the "public's business." It's unfortunate that government officials seem to need constant reminding, but in order for a free society to remain free it is essential that people be fully aware of actions supposedly taken on their behalf, and that they have the power to nullify actions of which they were not made aware.

There may be no foolproof way to ensure that government business is conducted in the "open." And operating in the open is still no substitute for a more wisespread conviction that many of the actions governments take are none of their business in the first place.

But if governments continue to arrogant power unto themselves, they should at least have some incentive to do so in public rather than behind closed doors. To this end, the Johnson-Connelly bill is a welcome and overdue contribution.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-26

Opinion

Editorial

Herald backs state bill

Public access to open meetings is a vital part of a free society. A bill now making its way through the state Legislature, Assembly Bill 2674, proposes to strengthen the California open meeting law and maintain the freedom we enjoy. In that respect, the Sanger Herald fully endorses its passage.

AB 2674 — authored by Assemblyman Lloyd Connelly, D-Sacramento — proposes two major amendments to the state's existing open meeting law, otherwise known as the Ralph M. Brown Act of 1953.

AB 2674 says in effect that local governmental entities must post specific agendas for their meetings 72 hours in advance of regular meetings, and 24 hours prior to special meetings.

There is no stipulation in the Brown Act, as it stands, that requires those public entities to publish such agendas. AB 2674 changes that for the public betterment.

Another advantage of the 72-hour agenda posting is that it cuts down the common practice of adding agenda items at the last minute. It holds public officials accountable for sticking by that advance agenda, while also offering tax-paying citizens a chance to know beforehand what business their public officials will be conducting.

But there's more. AB 2674 also proposes that citizens can seek recourse in the courts if any action by a local governmental agency is found to be in violation of the Brown Act.

In other words, if a citizen found an agency's action in violation of the Brown Act, he or she could seek to nullify it in court. The agency's action would then be invalid.

That changes the existing situation: Under the Brown Act now, some violations may go unchallenged and remain on the record.

AB 2674 is definitely an advantage for the private citizen. It allows people access to the goings-on of the public officials he or she voted into office.

Disadvantages? Well, the bill may pose problems to government bureacracies because it sets more rigid guidelines in black and white.

But the bill in essence holds our officials responsible for honest government, and that's a step in the right direction no matter how you look at it.

Which is mainly why the Sanger Herald is joining other newspapers statewide in endorsing AB 2674.

The bill is something sorely-needed in California, even in 1986; many agencies still manage to find loopholes in the existing Brown Act and use them to their own advantage.

Terry Francke, legal counsel for the California Newspaper Publishers Association, cites numerous examples of continuing conflicts involving agencies that step over the bounds of honest government in violation of the Brown Act — whether deliberately or unintentionally.

At press time, AB 2674 had just come out of the Assembly Local Government Committee. The next step will be the Assembly Ways and Means Committee, where some opposition is expected — mostly from the League of California Cities.

Hopefully, with enough push from the public, press and our state legislators, AB 2674 will be signed into law within the year's end.

In the meantime, the Sanger Herald stands behind the bill 100 percent.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-27

Tuesday, March 18, 1986.

San Francisco Chronicle

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EDITORIALS

Null and Void

THIRTY-THREE YEARS ago, the state Legislature approved a law requiring that meetings of boards of supervisors, city councils and other local government bodies be open to the public and that votes be conducted openly. Until passage of the Ralph M. Brown Act, it was not unknown for boards and councils to meet and vote in private on some issues.

Though the Brown Act has served California well, it has had certain shortcomings. The major one of these is the absence of enforcement teeth. Now, however, a bill before the Legislature by Assemblyman Lloyd Connelly (D-Sacramento) would supply the missing teeth.

His bill would provide, for the first time, that courts could overturn local government actions taken in violation of the Brown Act. Private citizens and organizations, after first asking the involved board or council to undo an action, could take the issue to court, where judges will have the power to find an action null and void if it was adopted in violation of the Brown Act. The other key provision of the Connelly bill would require posting of specific agendas for public agency meetings at least three days before regular meetings.

THE BILL, now known as AB 2674, will come up for a vote by the Assembly Local Government Committee on April 1. It deserves approval.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-28

San Francisco Examiner
FOUNDED 1865

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Strengthen the right to know

WITH FEW EXCEPTIONS, government business in an open and democratic society should be conducted publicly. That conviction is at the heart of California's Ralph M. Brown Act, which requires that all meetings of legislative bodies of local agencies be open to the public. The law is an important guarantor of the public's right to know, and it is, of course, crucial to the business of gathering and reporting the news.

But the Brown act has two flaws that render it considerably less forceful than it should be. At present, the law lacks a significant requirement that the governmental bodies it covers post notices or agendas in advance of their meetings. And it fails to provide remedies for violations; the Act lets stand actions that are taken in secret meetings.

Assembly Bill 2674 (by Assemblyman Lloyd Connelly, D-Sacramento) would put a spine into the Brown Act by addressing these shortcomings. Connelly's amendments would require local legislative bodies to post specific agendas for all regular meetings no later than 72 hours before the meeting. (Exceptions are allowed for emergency cases as defined by the Brown Act, or if the agency, by a two-thirds vote, makes a written assertion that that the need to take action arose suddenly and after the regular agenda was posted.)

The amendments also would give private citizens and groups 30 days to challenge actions taken in violation of the Brown Act. If a court determines that there was a violation, it could declare the action "null and void." The bill would permit a local body to convene a second meeting to rescind the questionable action, and if it did so, any later lawsuit for violating the Brown Act would be declared moot. Thus government agencies would be dissuaded from taking actions in secret, since these actions would then be subject to litigation.

It should be emphasized that the Connelly measure allows the present, legitimate exceptions to the Brown Act's requirements to continue. Meetings dealing with personnel matters, issues of national and public security, pending litigation, labor negotiations and several other matters now can be conducted in closed sessions; the bill retains these exceptions.

There will always be government officials who think they know better — who will persist in finding reasons why their business should be conducted behind closed doors. Strong and rigorously enforced open-meeting laws are the public's best defense against such officials. The Connelly bill comes up before the Assembly's Local Government Committee on Tuesday; in support of open government and the public's right to know, the committee should vote its approval.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A.29

Palos Verdes Estates,CA
(Los Angeles Co.)
Peninsula News and
Rolling Hills Herald
(Cir. 2XW 6,766)

FEB 13 1986

Allen's P. C. B Est. 1888

Letting Some Light In

60

A pair of Assemblymen are seeking to let a bit more light shine on the actions of the public bodies which decide so many of those things which tell us what we can and cannot do.

Lloyd G. Connelly, a Sacramento Democrat, and Ross Johnson, a Fullerton Republican, have introduced Assembly Bill 2674, a tightening up of the provisions of the Ralph M. Brown Act—which says simply that the public's business must be done in view of the public.

Under AB 2674, local government agencies would be required to post specific agendas before meetings, and citizens could go to court and have any actions taken in violation of the Brown Act nullified.

Under present rules, actions taken in violation of the Brown Act can only be remedied by taking the members—say of a city council—to court on criminal charges. It has never been done.

In one notorious case last year, the Los Angeles City Council suspended its rules and the members voted unanimously for "Item 53."

It wasn't until later that a curious reporter ferreted through the paperwork and learned that "Item 53" gives the council members a 10 percent raise in pay.

While the council's action violated the spirit of the Brown Act, it did not violate the provisions of the law.

The Connelly-Johnson proposal would do little to deter such slick parliamentary maneuvers, but it could put a damper on "retreats," in which public agencies retire to some resort to beaver away at public business. While most are careful to state that the public is welcome to attend, the onus on the public to incur substantial travel and lodging expense—in addition to the expense it already is shouldering for the public officials—makes the invitation a hollow one.

One Peninsula city council last year took its "retreat" to Palm Springs. A couple of weeks ago, the Rancho Palos Verdes City Council held a "retreat" in Long Beach—a bit closer to home.

AB 2674 would not cure all local government secrecy problems, but would put a stop to the practice of adding last-minute items to the agenda without prior discussion in the hope an item can slip through unnoticed.

The bill is endorsed by the California District Attorneys Association, and should be endorsed by every citizen of California interested in having their local government bodies conduct the public's business in the open.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-30

Visalia, CA
(Tulare Co.)
Times Delta
(Cir. 6xW. 20,137)

FEB 3 - 1986

Allen's P.C.B Est. 1888

Open meeting bill a must

On June 5, 1985, at a meeting of the Los Angeles City Council, Councilman Burt Snyder asked the council president for a suspension of the rules to take them up Item 53. That item had neither appeared on the council's agenda nor had it been posted in public. But there was no objection from other members, and the council president asked for discussion. When no member of the council wished to speak, the president called for a vote.

Item 53, never identified and never read in public, passed without objection.

Not until the next day, when the mayor signed the ordinance, did the people of Los Angeles learn what the council had wrought: a 10 percent salary increase for council members, the mayor, the city attorney and the city controller. It was all perfectly legal.

That kind of conduct would be prohibited under AB 2674, by Assemblymen Lloyd Connelly and Ross Johnson. AB 2674 revises the Brown Act, California's open meetings law, to require local agencies to post agendas for all regular and special meetings and to prohibit action on any item not on the agenda. Such requirements already exist for school and community college boards and state bodies.

And to put teeth into the Brown Act, the bill would also authorize private citizens and groups to sue local agencies that try to hide their actions. The courts would be given the authority to strike down actions taken without proper notice or at illegally closed local meetings. The Legislature last year passed a similar provision applying to state agencies.

Open meetings are vital to free government. But open meetings, by themselves, are not enough if officials can obscure their actions. By removing the shadows where timid local governments now hide from public controversy, AB 2674 would strike a blow for accountability and responsiveness.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-31

San Jose Mercury News

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Editorials Sunday, March 9, 1986 6P

Doing it in public

A bill would allow people to nullify actions taken in secret by local agencies

FOR almost two decades, California law has required local governments and state agencies to conduct their business in public. Unfortunately, the law contained no enforcement teeth — until last year.

In 1985, for the first time, Californians were able to go to court to nullify actions taken in secret by state agencies.

Now, the people need similar leverage against city councils and county boards of supervisors that insist on skirting the intent of the law. Assembly Bill 2674, by Sacramento Democrat Lloyd G. Connelly, gives them that leverage.

Connelly's proposal will be considered, and should be approved, by the Assembly Local Government Committee Tuesday. AB 2674 puts teeth in the Ralph M. Brown Act, which has required local governments to conduct the public's business in public since 1953 but which has never imposed adequate penalties for violations.

In addition to giving the people the power to invalidate laws made in secret, AB 2674 requires local legislative bodies to post their agendas three days in advance of regular meetings.

It also forbids the addition of unscheduled, last-minute items. The Los Angeles City Council took advantage of this loophole in the Brown Act last June to vote itself a 10 percent pay raise.

The pay raise was called up by a council member who identified it simply as agenda "Item 53." It won passage by unanimous consent. The people of Los Angeles didn't learn what the council had done until the next day.

The Brown Act needs strengthening in just the manner Connelly's bill provides.

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A-32

Editorial

Brown Act amendment is worthy of your support

by Pam Stowell

Very few pieces of legislation have done more for guaranteeing the public "the right to know" than the Ralph M. Brown Act.

The Brown Act, as it is referred to, requires (with some exceptions) that all meetings of legislative bodies be open and public, including meetings of city councils, school boards, county boards of supervisors and planning commissions. The meetings of many other local government entities are also covered by the Brown Act.

Through this important legislation, the public gained the right to attend governmental meetings, and ask questions and have them answered.

However, some legislators believe the Brown Act has some real deficiencies, particularly in its neglect to enforce its statutes. Assemblyman Lloyd G. Connelly (R-Sacramento) is one of those representatives, and has introduced a bill, AB 2674, that proposes major amendments to the Brown Act.

Joining Connelly as principal co-authors are Assemblyman Ross Johnson (R-Fullerton) and Senator Milton Marks (D-San Francisco).

The bill proposes two major improvements to the Brown Act: to require local entities to post specific agendas for their meetings 72 hours in advance of regular meetings and 24 hours prior to special meetings; and to authorize private citizens and organizations to seek and obtain judicial invalidation of actions taken in violation of the Brown Act.

Presently, there is no provision in the Brown Act that requires local entities to publish agendas of their meetings. Moreover, the practice of "add-on" agenda items will be halted. AB 2674 requires the posting of specific agendas so that citizens can learn beforehand what business will be transacted at meetings of local governmental entities.

Also under the bill, individuals would gain the right to challenge any action they feel is in violation of the Brown Act, and a court would have the authority to declare any action "null and void."

AB 2674 is just one more step to provide you, as citizens, a chance to speak out. We at the *Tehachapi News* urge your support of this important legislation.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-33

JANUARY 30, 1986

PRESS-TELEGRAM

604 Pine Avenue, Long Beach, California 90844 / Telephone 435-1161

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A move to tighten Brown act provisions

Putting a bicuspid or two into anti-secrecy law.

California's Ralph M. Brown Act states a simple ideal: that the public's business shall be done in view of the public.

Public officials manage to get around the act a good deal of the time. They hold closed meetings with vague explanations. They leave town on "retreats." In one notorious case last year, the Los Angeles City Council members suspended their rules and voted unanimously for Item 53. The item wasn't on the meeting agenda. No one would have known what it was if an alert reporter hadn't checked later and discovered that Item 53 gave council members a 10 percent pay raise.

Did that violate the spirit of the Brown Act? You bet. Did it violate the letter of the law? Nope. And if it had, the only remedy under current law would have been criminal prosecution of the council members. No such criminal prosecution has ever been undertaken. It's unlikely one ever will be. It's even less likely such a prosecution would be successful. So the current law is obeyed only to the extent that the press, public opinion and concerned public officials manage to persuade government bodies to obey it. Their success in doing so is spotty.

Legislation to make the Brown Act a bit more effective has been introduced by Assemblymen Lloyd G. Connelly, D-Sacramento, and Ross Johnson, R-Fullerton. Their bill, AB 2674, would require local government agencies to post specific agendas before meetings, and it would allow citizens to go to court to have actions taken in violation of the Brown Act declared null and void.

The bill wouldn't cure all local government secrecy problems, but it would put a stop to stunts like the Item 53 pay raise. It would block the practice of adding last-minute items to agendas and then voting on them without discussion in the hope reporters won't notice. And, when the Brown Act is violated, it would give John or Mary Citizen a chance to ask a court to say so and require the government agency involved to handle the action involved all over again in the light of day.

The bill is endorsed by the California District Attorneys Association. The DAs are tired of having to tell concerned citizens that they won't take on the almost impossible task of prosecuting Brown Act violators. "Take 'em to court yourself," the district attorney will be able to say. "If you win, the court can order the local agency to pay the court costs and your legal fees."

That holds some promise of deterring Brown Act violations. AB 2674 should become law.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-34

Salinas, CA
(Monterey Co.)
Californian
(Cir. 6xW. 23,602)

JAN 17 1986

Allen's P. C. B Est. 1888

A remedy to secrecy

60

Last year, the Legislature moved halfway toward toughening the state's open meetings law. This year, it should finish the job.

A bill signed into law last year allows citizens to sue to have actions of state agencies overturned if they violated the state's Brown Act. That act requires government bodies to make decisions in public and to post public notice of meetings.

Now, Assemblymen Lloyd Connelly, D-Sacramento, and Ross Johnson, R-La Habra, are sponsoring a bill that would apply similar standards to local government boards and councils.

The 32-year-old Brown Act has been a valuable wedge for the public and news media to use to gain access to public business. But its value has been undermined by the fact that it carries with it little enforcement clout. The law carries no penalties unless criminal intent can be proven, which is nearly impossible.

So, if a citizen fights for access to a public meeting, he may win the satisfaction of having a court say he's right, that the law should be enforced. Then, the offending agency lets him into the next meeting, no penalties are issued, the decisions made secretly remain in force.

Allowing citizen suits to overturn secret actions would recognize the fact that, in a democracy, public participation is a mandatory part of the process.

Without it, an act has no validity, and the court should be allowed to say so.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-36

THE TRIBUNE

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B-8 Tuesday, March 4, 1986 **Oakland, California**

Beef up the Brown Act

The state Open Meetings Act generally works well to keep public bodies in public view. Known as the Brown Act, the law requires that local elected bodies meet openly except under well-defined exceptions, so that citizens can participate in and monitor their proceedings.

But that doesn't stop entities from testing the law to its limits, and sometimes getting away with actions that may be legal but do damage to the law's intent.

Only after a recent Los Angeles City Council approved "Item 53" on its agenda did the public find out the otherwise unidentified item was a motion for a council pay raise. In another instance, the Pasadena City Board approved a proposal for a controversial rock concert endorsed by Nancy Reagan after the concert was brought up as a non-agenda item.

Both actions fell within the letter of the Brown Act, but did not serve well the cause of public access to key decisions made by local governments.

Now, a bipartisan-backed bill in the Legislature would toughen weak spots in the law, making it harder for local elected officials to slip through its loopholes. Co-sponsored by liberal Lloyd Connelly, D-Sacramento, and conservative Ross Johnson, R-Fullerton, in the Assembly, AB 2674 deserves support.

AB 2674 proposes two major amendments to the Brown Act that would strengthen its notice and agenda requirements and provide legal remedies now lacking for violations.

One amendment would require city councils, county boards of supervisors and boards of special districts to post specific agendas including the subject matter of all items no later than 72 hours before regular meetings or 24 hours before special meetings. No action could be taken on items not on the agenda nor could additional items be added.

The other amendment would allow the public to petition a court to declare "null and void" actions taken by any local body that are later declared in violation of the Brown Act.

The League of California Cities objects to the amendments as too strict. Its members want to retain the flexibility to add non-controversial items to city council agendas closer to the time of meetings.

But public school and community college districts already operate under rules requiring posting of specific agendas 48 hours in advance of regular meetings and 24 hours ahead of special meetings. And state agencies operate under even tougher mandates that require that agendas be mailed to interested citizens 10 days in advance. City, county and special district boards can do as well.

The amendments won't change the prerogative of all elected bodies to convene emergency meetings within 24 hours with no advance agenda postings required. Local jurisdictions hit by natural disaster, public service strikes or any number of legitimate crises must retain the power to act swiftly to protect the public welfare.

Connolly favors the amendments because they provide needed enforcement teeth for the Brown Act. Johnson says they will help citizens "retain some degree of control over their own government." Wherever their support comes from, the amendments will help an already good law work better.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-35

Van Nuys, CA
(Los Angeles Co.)
Daily News
(Cir. D. 135,010)
(Cir. Sat. 145,767)
(Cir. Sun. 122,031)

JAN 20 1986

Allen's P. C. B Est. 1888

Editorials

60

No more secret raises?

No more stealth city councils? That remains to be seen. But at least it may be more difficult in the future for the Los Angeles City Council to raise its pay in secret, as it so adroitly did June 5.

Assemblyman Lloyd Connelly, D-Sacramento, introduced a bill Wednesday that would require city councils and other local governments to post specific meeting agendas to tell the public, in advance, what they are doing. Connelly said his measure (an amendment to the state's open-meeting law, the Ralph M. Brown act) was expressly designed to prevent actions like that of the Los Angeles City Council, which quietly voted itself a 10 percent raise over two years through an agenda item identified to the press and public only as "Item 53." Only after the fact did observers of the meeting realize what had happened.

The action was later overturned in court, but not because of secrecy. Superior Court Judge Irving A. Shimer noted that the council's conduct obviously violated the spirit of the Brown Act, but he had to grant that the act does not require notice of all actions to be taken at a given meeting — as long as the meeting itself is open. And this meeting was open, although a key part of the agenda was secret. So the raise was invalidated on the grounds the council took liberties with the City Charter provision allowing it no more than one 5 percent raise every year. By giving itself 10 percent at once to cover the next two years, the council had given itself the second-year raise too early.

The council hardly seemed chastened by this setback. Later in the summer, it was found to be placing last-minute motions on the agenda almost routinely. On its meeting of Aug. 20, for instance, it brought out seven such surprise items; on Aug. 28, it acted on three zoning motions for which written copies were not even distributed to council *members*, much less the press. All this was legal, the city attorney's office said. If that was so, then clearly there had to be a change in the law.

Connelly's bill, AB 2674, would make the necessary revisions. Not only would it require agenda items to be posted in advance, but it would make that provision enforceable by allowing citizens to sue to have an unannounced council action overturned in court. The bill deserves bipartisan support and quick passage.

That's not to say it will ensure open government throughout the state. One bill won't close all the potential loopholes in the Brown Act, nor will it discourage secretive city councils and their sympathetic legal counsel from inventing new dodges. It's a constant struggle to keep public business open to the public, and the Brown Act, much amended since its original passage in 1953, probably will have to be revised again and again. But every time the Brown Act is tightened, local officials do have a tougher time finding ways to hide from the public. That's progress.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-37

Fresno, CA
(Fresno Co.)
Bee
(Cir. D. 129,955)
(Cir. S. 152,301)

FEB 1 - 1986

Allen's P. C. B Est. 1888

A cure for sneaky government

On June 5, 1985, at a meeting of the Los Angeles City Council, Councilman Burt Snyder asked the council president for a suspension of the rules to take up item 53. That item had not appeared on the council's agenda nor had it been posted in public. But there was no objection from other members, and the council president asked for discussion. When no member of the council wished to speak, the president called for a vote. Item 53, never identified and never read in public, passed without objection.

Not until the next day, when the mayor signed the ordinance, did the people of Los Angeles learn what the council had wrought: A 10 percent salary increase for council members, the mayor, the city attorney and the city controller. It was all perfectly legal.

That kind of conduct would be prohibited under AB 2674, co-authored by Assemblymen Lloyd Connelly and Ross Johnson. AB 2674 would revise the Brown Act, the open meeting law, to require local agencies t post agendas for all regular and speci meetings and to prohibit action on any ite not on the agenda. Such requirements a ready exist for school boards, communi college boards and state bodies.

And to put teeth into the Brown Act, tl new legislation would also authorize priva citizens and groups to sue local agencies th try to hide their actions. The courts would given the authority to declare null and vo actions taken without proper notice or illegally closed local meetings. The Legis ture last year passed a similar provision a plying to state agencies.

Open meetings are vital to free gove ment. But open meetings, by themselves, not enough if local officials can obscure th actions. By removing the shadows wh timid local governments now hide from p lic controversy, AB 2674 would strike a b for accountability and responsiveness.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-38

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Monday, January 27, 1986

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Editorials

Closed Votes At Open Meetings

On June 5, 1985, at a meeting of the Los Angeles City Council, Councilman Burt Snyder asked the council president for a suspension of the rules to take up item 53. That item had neither appeared on the council's agenda nor had it been posted in public. But there was no objection from other members, and the council president asked for discussion. When no member of the council wished to speak, the president called for a vote. Item 53, never identified and never read in public, passed without objection.

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That kind of conduct would be prohibited under AB 2674, by Assemblymen Lloyd Connelly and Ross Johnson. AB 2674 revises the Brown Act, California's open meeting law, to require local agencies to post agendas for all regular and special meetings and to prohibit action on any item not on the agenda. Such requirements already exist for school and community college boards and state bodies.

And to put teeth into the Brown Act, the bill would also authorize private citizens and groups to sue local agencies that try to hide their actions. The courts would be given the authority to strike down actions taken without proper notice or at illegally closed local meetings. The Legislature last year passed a similar provision applying to state agencies.

Open meetings are vital to free government. But open meetings, by themselves, are not enough if local officials can obscure their actions. By removing the shadows where timid local governments now hide from public controversy, AB 2674 would strike a blow for accountability and responsiveness.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-39

Oakdale, CA
(Stanislaus Co.)
Leader
(Cir. W. 4,717)

FEB 5 - 1986

Allen's P. C. B Est. 1888

Our Opinion

Closed meeting law needs help

Popular country western singer Charlie Rich had a big hit several years ago with his recording of "Behind Closed Doors." Rich, however, wasn't referring to how some government agencies work. He wasn't referring to California's open-meeting law, but perhaps he should have been.

Too many government agencies, including some locally, flirt with the legalities of doing business behind closed doors, over lunch or with giving proper and advanced notice to the public. This is wrong. It should be pure and simple illegal.

The current penalty for when agencies violate the open-meeting law is a slight slap on the wrist (usually a public reprimand or an editorial by a newspaper). More definite control and penalties are needed and help, hopefully, is on the way.

Last year, the state Legislature put a little bite into the open-meeting law covering state agencies. This year, it has a chance to do the same for the law covering local governments. It's about time.

Assemblymen Ross Johnson (R-Fullerton) and Lloyd Connelly (D-Sacramento) have introduced a bill that not only would strengthen existing requirements that local governments notify citizens of actions they plan to take, but it would also impose penalties on governments that fail to comply.

Under the existing Brown Act, passed in 1953, local legislative bodies such as city councils, school boards, water districts, board of directors and others, need only to post notices of upcoming meetings. The Johnson-Connelly proposal would require that they post specific agendas 72 hours before their meetings.

More importantly, however, the bill would allow courts to invalidate actions taken at meetings that do not comply with the law. This might discourage agencies from closing their sessions at the last minute.

Johnson and Connelly got together after the Fullerton assemblyman learned of the unorthodox manner in which Los Angeles City Council members voted themselves a 10 percent pay raise last summer. The pay increase was known only as "item 53" on the consent caledar and did not appear on the council's agenda and was not discussed in an open meeting prior the vote.

The increase was later voided because it exceeded the ceiling imposed in the Los Angeles City Charter. However the council's vote was legal under the Brown Act, which certainly reveals a major flaw in the current Brown Act.

This is just one example of the arrogant manner in which goverments sometimes handle what is euphemistically called the "public's business."

It's unfortunate that government officials seem to nee[d] constant reminding, but in order for our free society to re[-] main free it is essential that people be fully aware of ac[-] tions supposedly taken on their behalf. We must also hav[e] the power to nullify actions of which they were not mad[e] aware.

There is no foolproof way to ensure that governmen[t] business is conducted in the "open."

But if governments continue to arrogate powe[r] themselves, they should at least have some incentiv[e] so in public rather than behind closed doors. A[...] necessary, their actions should be nullified by the courts illegal. The Johnson-Connelly bill is long overdue and certainly needed.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-40

Support for reform

60

Bakersfield, CA
(Kern Co.)
Californian
(Cir. D. 66,867)
(Cir. S. 74,643)

FEB 9 - 1986

Allen's P. C. B Est. 1888

It takes far more than just great, ethical principles eloquently articulated to make democracy work.

One of the tools that makes things work as well as they do is the Ralph M. Brown Act, California's anti-secret meeting law.

Despite an almost slavish fealty to it on the part of the media, and a *sotto voce* complaint — sometimes bordering on the bitter — by politicians and bureaucrats that it is an unneeded, insulting encumbrance, most dispassionate observers admit that the Brown Act is flawed.

There is a way to correct some of the problems in the form of AB2674 by Assemblymen Lloyd Connelly, D-Sacramento, and Ross Johnson, R-Fullerton.

The Brown Act requires that agencies notify the public of meetings and make decisions in public. There are exemptions, such as personnel matters and pending lawsuits, which may require confidential debate and deliberation.

AB2674 will plug two enormous loopholes. It will require that specific agendas be available to the public between 24 and 72 hours before a meeting, depending on the type of meeting; and it will allow a court to void actions that are taken if they are adopted illegally.

As things stand now, all the public has a right to know is that a body — such as a city council — is going to meet. Incredibly, what the meeting will be about need not be stated, making citizen preparation difficult, to say the least.

And, if the act is violated, there is nothing that anyone can do about it, except, perhaps, to try to embarrass the perpetrators.

Unfortunately, those who are most likely to disregard citizen rights normally don't embarrass too easily.

Lest some politicians start yelping about the added burden this will place on government, with a concomitant decrease in efficiency — the usual bromides that they try to get the public to swallow when reforms are proposed — note that school districts, commmunity college districts and state agencies already are operating under the new rules. They have been tested — and found to work — for a year, through corrective legislation to the Bagley-Keene Open Meeting Act, which governs state agencies, and the Education Code.

The new provisions apply only to two of the five types of meetings (regular and special) of government. Emergency, adjourned and continued meetings remain exempt, providing flexibilty local officials may need occasionally.

One sample of what can happen: The Los Angeles City Council decided it was time for a pay raise for its full-time, paid members (who number 15, but they generously included the mayor — who had to sign the bill — the city attorney and the city controller).

The matter was not included in the daily or supplemental printed calendar. The motion was not read prior to the vote and then by an obscure reference ("Item 53").

The dialogue of suspending procedural rules, taking the matter out of order, reading by item number only, adopting and forwarding to the mayor for signature takes 15 lines in a trial transcript and never makes reference to what the matter was about. A slow, out-loud reading takes 38 seconds.

In a taxpayer suit to void the action, the Los Angeles County Superior Court said the council's procedures were legal, and complied with the minimum requirements of the law. The Opinions of the Attorney General support that. The matter ultimately was voided because of a fluke relating to an ambiguity in the Los Angeles City Charter regarding maximum magnitudes of pay raises.

As Johnson says, "This bill deserves support because it gives real meaning to the idea that citizens can participate in government and retain some degree of control over their own government."

A-411

LEGISLATIVE INTENT SERVICE (800) 666-1917

The Sacramento Union
THE OLDEST DAILY IN THE WEST
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Richard M. Scaife Publisher
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Editorials

Toughen open meeting law

Last June, members of the Los Angeles City Council, without any notice to the public and without debate or discussion, unanimously approved "Item 53," an ordinance giving a 10 percent pay increase to themselves, the mayor and other top city officials. Mayor Thomas Bradley signed the ordinance the next day, but the resultant public uproar brought a law suit and a Superior Court judge overturned the council's action.

However, the judge didn't say the officials violated the state's open meeting law for local governments requiring advance notice and public discusssion of agenda items. Thus did the court emphasize the toothless nature of the law, known as the Ralph M. Brown Act.

Now, however, a bill has been introduced to amend the law to require local entities to post specific agendas for meetings at least 72 hours before items are acted upon. More importantly, it allows citizens to go to court to nullify actions taken in violation of the Brown Act.

Assemblymen Lloyd Connelly, D-Sacramento, and Ross Johnson, R-La Habra, are authors of the measure, indicating the bipartisan support for the bill (AB 267). Mr. Connelly was the author of a measure signed by Gov. Deukmejian last year adding similar enforcement provisions to the open meeting law covering state agencies.

The latest measure has broad support from law enforcement officials, but some local government officials don't like it because it impedes upon their "finality of action." This seems like a minimal problem compared with informing citizens about what their elected officials are voting for and letting citizens invalidate illegal actions of their government.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-42

Editorial Page

Monday, Feb. 10, 1986 CC SANTA BARBARA NEWS-PRESS

The public's business

None of it should be handled secretly

California generally has done well in prohibiting government bodies from meeting in private, away from the public's eyes and ears.

School districts and community college districts are required to tell the public in advance what items of business they plan to discuss. That's covered in the Brown Act. State agencies are required by the Bagley-Keene Open Meeting Act to tell all interested individuals in advance what they plan to discuss, so that the public can be on hand.

But the Brown Act needs more teeth in it. It deals with local governing bodies—city councils, county boards of supervisors, planning commissions. Its intention is clear: These bodies, with few exceptions, must handle the public's business in public. But the act's weakness is that it doesn't provide any remedy for violations.

Assemblyman Lloyd G. Connelly, whose legislation last year strengthened the Bagley-Keene Act covering state agencies, wants to do the same with the Brown Act. His new bill would require local bodies to post their specific agenda well in advance of any regular or special meetings. But if a council or board did ignore this requirement and take actions in private, the courts would be authorized to declare these actions "null and void."

There is no hardship here on these governing bodies. Our system is designed with open doors for the citizenry. Connelly's new bill deserves the full support of the Legislature.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-43

Santa Ana, CA
(Orange Co.)
Register
(Cir. D. 279,452)
(Cir. Sat. 246,128)
(Cir. Sun. 311,062)

JAN 17 1986

Allen's P. C. B Est. 1888

Government in the open

Last year the state Legislature put some teeth into the open-meeting law covering state agencies. This year, it has a chance to do the same for the law covering local governments. It's long overdue.

A bill by Assemblymen Ross Johnson, R-Fullerton, and Lloyd Connelly, D-Sacramento, not only would strengthen existing requirements that local governments notify citizens of actions they plan to take, but it would also impose penalties on governments that fail to comply.

Under the existing Brown Act, passed in 1953, local legislative bodies such as city councils, school boards, boards of supervisors, water districts and many special districts need only post notices of upcoming meetings. The Johnson-Connelly bill would require that they post specific agendas 72 hours before their meeting.

Perhaps most importantly, the bill would allow courts to invalidate actions taken at meetings that do not comply with the law.

The Johnson-Connelly collaboration came about after the Fullerton assemblyman learned of the unorthodox manner in which Los Angeles City Council members voted themselves a 10-percent pay increase last June. The pay-increase issue, known only as "item 53," did not appear on the council's agenda, and was not discussed in an open meeting prior to the vote.

Although the increase was later voided because it exceeded a ceiling imposed in the Los Angeles City Charter, the judge in the case admitted that the council's vote was legal under the Brown Act.

That's just one example of the arrogant manner in which governments sometimes handle what is euphemistically called the "public's business." It's unfortunate that government officials seem to need constant reminding, but in order for a free society to remain free it is essential that people be fully aware of actions suposedly taken on their behalf, and that they have the power to nullify actions of which they were not made aware.

There may be no foolproof way to ensure that government business is conducted in the "open." And operating in the open is still no substitute for a more widespread conviction that many of the actions governments take are none of their business in the first place.

But if governments continue to arrogate power unto themselves, they should at least have some incentive to do so in public rather than behind closed doors. To this end, the Johnson-Connelly bill is a welcome and overdue contribution.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-44

Editorials

Blame Item No. 53

When the Assembly Local Government Committee opens hearings next Tuesday in Sacramento on Assembly Bill 2674, city and county governing bodies around the state can blame the Los Angeles City Council and Item No. 53 for it.

AB 2674 would give the Brown Act, California's open-meetings law, a few teeth to back up its abundant spirit. Until now, the Brown Act has been little more than a few nice passages of prose in the state law about how the public ought to be allowed in on its own business. You won't find much in it that would allow the public to chew up — or even nibble on — an offending elected official.

The amendment to the law would allow actions of a government agency taken in a meeting that violated the Brown Act to be declared null and void. At the very least, it would mean the agency would have to do it all over again, out in the sunshine where interested observers might be able to make their feelings known on the issue.

What brings us to this particular juncture is the L.A. City Council and Item 53 and the fact that they rubbed Dorothy Green's nose in it a little too hard.

The L.A. council, last June 5, unanimously passed Item 53 on its agenda. That's all the agenda said, just Item 53. Just before passing Item 53, the council voted to suspend its normal rule of having its clerk read the subject matter aloud before the vote. This one was just slam-dunked on a very fast break.

Turns out that Item 53 was a 10 percent pay raise for council members, the mayor, the city attorney and the city controller. Dorothy Green was outraged. She took the city to court.

Technically, there was no violation of the Brown Act, the court found. The action occurred in an open, legal meeting. But Superior Court Judge Raymond Cardenas found that the council had violated the spirit of the law. He also voided the pay hikes because they violated the city's charter.

This little episode got the attention of Lloyd Connelly, a Democratic assemblyman from Sacramento. He wrote AB 2674 to plug the holes the in Brown Act through which the L.A. council slithered.

The amendment would require specific meeting agendas to be posted 72 hours in advance of a local body's regular meeting. That means the public is guaranteed advance warning that their elected officials will undertake such efforts as giving themselves pay raises. The Palomar-Pomerado Hospital District's directors pulled one of those a couple of years ago on an item added quietly at the last minute to their agenda. The public outcry was immense, but the horse was already out of the barn.

Connelly's bill would bring the horse back. It would allow a member of the public to ask the courts to nullify any action taken at a meeting that violated the Brown Act. Prosecution under the Brown Act is now all but impossible; it must be proven that the offending official intended to violate the law. And few who favor open government are interested in seeing elected officials behind bars; most just want to see them while they carry out the public's business. Connelly's bill would give California citizens the opportunity to enforce openness without the messy matter of criminal prosecution.

Gene Erbin, legal counsel to the Assembly subcommittee on the administration of justice, observes that it will be "difficult" for any politician to come out against such a motherhood-apple-pie issue as open meetings during an election year. You might want to reinforce that prediction with a telephone call on Monday to Bill Bradley or Bill Frazee, North County's own assemblymen, both of whom sit on the Local Government Committee.

Erbin also says he expects "concern if not outright opposition" to the bill from the League of California Cities and the County Supervisors Association. Connelly, however, has not left them much room for complaint. The bill features a couple of safety valves. For an action to be nullified, the violation of the Brown Act must be more than a minor technicality. And an agency would have that second chance to take the action in a legitimate public meeting.

But if the cities and counties really want to gripe about AB 2674, they ought to be complaining to the L.A. council. Pull a few minor transgressions against the Brown Act and you get a few outraged edito[illegible] and you get the whole state after you.

Times-Advocate

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March 7, 1986

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A-45

FEB 18 1986

The Times

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To give our readers the widest scope of information, The Times prints the informed and varying opinions of many leading columnists. Their opinions are not necessarily those of The Times.

B12— San Mateo — Friday, Feb. 14, 1986

Two additions to Brown Act merit approval

The public has a right to know how public business is being conducted. That is the purpose in this state of the Ralph M. Brown Act — to prevent government from being conducted in secret.

The Legislature will soon consider two crucial improvements (AB2674) to the Brown Act, sponsored by Assemblymen Lloyd Connelly of Sacramento and Ross Johnson of Fullerton. They point out that, as the act now stands, it contains no meaningful advance notice and agenda requirements, and no effective remedy for actions taken by local public bodies in violation of the act.

In other words, there is no mechanism by which decisions adopted in violation of the Brown Act can be declared "null and void."

These two critical shortcomings would be corrected by additions to the Brown Act contained in AB2674. We think the public interest will be served by prompt approval of this legislation.

Local legislative bodies subject to the open meeting requirements of the Brown Act include city councils, county boards of supervisors, school districts and planning commissions. The courts have held that the act applies to informal as well as formal meetings of such bodies.

One might reasonably assume that action taken by a governmental body in secret, when the law requires such decisions to be made in an open meeting, would render the action null and void. The courts have consistently stated, however, that the action is still valid.

To remove the inadequacies in the present law, AB2674 would add a new section to the Brown Act requiring local bodies to post a specific agenda of all items of business to be transacted or discussed at regular and special meetings no later than 72 hours prior to regular meetings and 24 hours prior to special meetings.

No action could be taken on items of business that did not appear on the posted agenda, and no item could be added to the agenda after it had been posted.

A second addition would authorize private citizens and organizations to challenge in court the actions of local bodies taken in violation of the Brown Act and have such actions declared "null and void."

Assemblyman Connelly points out that AB2674 is modeled on AB214 last year, which he also authored. The latter bill added a "null and void" provision to the Bagley-Keene Open Meeting Act which pertains to meetings of state agencies. We agree with Connelly, now that AB214 is law, it is time for the Legislature and the governor to strengthen the Brown Act.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A-46

OCEANSIDE BLADE TRIBUNE - SAN DIEGO COUNTY

16 — Blade-Tribune Sunday, March 2, 1986

B-T editorial

Plug the loophole

The California Legislature this year will consider another bill to add teeth to the state's open meeting laws.

This year, AB 2674 proposes to put enforcement teeth in the Brown Act, the state's first and most meaningful open meeting law.

It would add amendments to the Ralph M. Brown Act which would require that local governmental agencies post specific agendas for meetings 72 hours in advance of regular meetings and 24 hours in advance of special meetings, and would authorize private citizens and organizations to seek and obtain judicial invalidation of actions taken in violation of the act.

At the moment, any governmental agency can add last-minute agenda items, thus avoiding public scrutiny, and can take legally-binding action upon them without prior notice.

This quite clearly subverts the spirit and intent of the Brown Act as well as the Bagley-Keene Open Meeting Act.

A favorite tactic of those who would subvert the state's open meeting laws is to wait until the audience attending late night meetings has departed, and then bring up items which they seek to hide from the public.

A classic example of this occurred two weeks ago at the Fallbrook Elementary School Board meeting. School boards, unlike city councils or other public agencies, are specifically forbidden from bring up off-agenda items.

But Fallbrook Elementary School trustees evaded that law by "not taking a vote" while approving appointments to a school site selection committee. Trustees, instead of voting verbally, nodded their heads — at the suggestion of school board president Mitch Rolin — as a means of endorsing the item without taking a formal vote.

The board conducted this outrageous violation of the state's open meeting laws as a means of circumventing it. There is nothing to force their action to be repealed — but AB 2674 would do so.

A more outrageous example of voting on off-agenda items occured at a recent Los Angeles city council meeting, where council members voted themselves a pay raise on an off-agenda item.

Because this particular action did not violate the Brown Act, which does not have an off-agenda item clause, the action is legal, even though every Los Angeles citizen was deprived of the right to comment on the pay raise.

To conduct the public's business in such a manner deprives the public of input to those issues acted upon under such circumstances.

San Diego County city attorneys recently met and voted to oppose AB 2674. We wonder why these "men of the law" would oppose such a law to protect the public, unless they enjoy undermining the spirit and intent of the state's open meeting laws by finding loopholes in them.

If city attorneys oppose such a law, it should be impetus for every conscientious citizen to support it, for city attorneys frequently become devious instruments of city councils, instead of defenders of the public's rights.

There are so many abuses of the Brown Act and the state's open meeting laws that it is high time the Brown Act had teeth, and the public started biting back at nefarious board actions.

AB 2674 is sponsored by Common Cause, and supported by the League of Women Voters, California's attorney general, the California District Attorneys Association, the Los Angeles District Attorney, and many other groups.

The League of California Cities, the body composed of representatives from the city agencies which are abusing the state's open meeting laws, is opposed to the bill.

We suggest you contact your local state assembly and senate representatives and tell them how you feel about AB 2674.

You can contact State Sen. Bill Craven's office at 438-3814, Assemblyman Robert Frazee's office at 434-1749, and Assemblywoman Sunny Mojonnier's office at 457-5775.

It's time the state's public bodies were made fully accountable to the public, and bring an end to the continuing violations to the state's open meeting laws.

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Viewpoints

6—THE UNION, Grass Valley-Nevada City, Ca.—Friday, March 7, 1986

Unsigned columns are the opinions of The Union. Signed columns and cartoons are the opinions of the authors.

The Union's Opinion

Putting teeth into the Ralph M. Brown Act

From the California Legislature to the smallest of special districts, the Ralph M. Brown Act — the state's anti-secrecy law — applies to all.

It mandates that every official policy-making body must, with some exceptions, conduct its business openly and with adequate notice to the public of its meetings and agenda.

The Act, part of the state Government Code, reads:

"The people of this state do not yield their sovereignty to the agencies which serve them.

"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

"The people insist on remaining informed so that they may retain control over the instruments they have created."

In adopting this most important Act, the people simply said we are ready, willing and able — through our representatives — to play a role in our government.

This is one of the most important pieces of state legislation ever adopted. It can be compared to the First Amendment of the United States Constitution which reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

Regardless of the value of the Brown Act, there are loopholes which two legislators are attempting to plug.

Through AB 2674, Assemblymen Lloyd Connelly (D-Sacramento) and Ross Johnson (R-Fullerton), are seeking to amend the Act to allow a vote only on items posted on an agenda 72 hours in advance and prohibiting additions to the agenda after that time period.

In addition, AB 2674 would allow members of the public to file a court injunction to declare "null and void" any action taken on items not posted in advance.

Current law does not require local agencies to adopt regulations to assure that members of the public have an opportunity to speak at the various meetings. AB 2674 would ensure that right.

Although the Nevada County Board of Supervisors has historically allowed the public to address agenda items regardless of whether it is conducting a "public hearing," not all area agencies follow that example. Of course, if it is not on the agenda, how would one know it is to be discussed?

Terry Francke, counsel for the California Newspaper Publishers Association (CSAC) said the League of Cities and a number of other governmental groups have been lobbying against the passage of AB 2674 claiming, in part, that agenda deadlines would unfairly restrict them from functioning properly.

That notion doesn't carry a lot of weight with us however, since school superintendents of this state have been living with a similar requirement (under the Education Code) for at least a decade.

Mark Wasser, general counsel for the County Supervisors Association of California (CNPA), said his group was originally troubled by the 72-hour provision in light of the number of small, north state county boards which meet only once or twice a month. However, through discussions with the sponsors of the bill, action on items requiring immediate attention would be permitted so long as the matter arose subsequent to the adopted agenda.

Wasser said CSAC is continuing to meet with the sponsors to hash out another major concern: What would be the effect on members of the public of the "null and void" provision.

Wasser said he believes "there is an extraordinary importance to having finality in decisions which affect private individuals." If an individual incurs commitments following an agency's action which is subsequently invalidated, "we have really hung that guy out to dry."

He said exemptions to protect innocent third parties have been discussed. "Private individuals need to rely with certainty on what government does. They exemptions) would not take away the deterrent value of the bill because that does not affect the supervisors, only the public."

Wasser added, "We support the Brown Act and we think we will be able to support the bill as soon as some of our questions are worked out...interpretation of the specific language, etc. Perhaps by next week we will be in a position to support it"

Francke believes that although a lot of noise is being made by the opponents of the bill about agenda deadlines, "The big threat is the potential threat of invalidation of their actions. It would raise the stakes, so to speak, for being ignorant or contemptuous of the rules."

We must agree with the CNPA attorney as to the real "bottom line" here. While the Brown Act is an absolute necessity to the people of California, it definitely lacks teeth without these new amendments.

The bill will go before the Local Government Committee in Sacramento Tuesday. We urge our local and state lawmakers to endorse AB 2674 without reservation and we encourage all Nevada County residents to contact their representatives, both local and at state level, to let them know they want control over their government.

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Ontario, CA
(San Bernardino Co.)
Ontario Daily Report
(Cir. D. 37,230)
(Cir. S. 38,494)

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7 EDITORIALS

The public deserves a tougher law

The Ralph M. Brown Act makes a few local officials in California uncomfortable. Most members of public agencies understand, accept and adhere to the state's open meeting law.

But the few secretive public officials who abhor the light of public scrutiny have made the Brown Act ineffective — full of unenforceable good intentions.

Northern California Assemblyman Lloyd G. Connelly has introduced AB 2674, that proposes two major improvements to the Brown Act.

Mr. Connelly's bill would:

- Require local entities to post specific agendas for their meetings 72 hours in advance of regular meetings and 24 hours prior to special meetings.
- Authorize private citizens and organizations to seek and obtain judicial invalidation of actions taken in violation of the Brown Act.

These two provisions are important for a number of reasons: chief among them is that they allow greater and stronger public participation in the government process.

Mr. Connelly uses the example a pay raise *for* members of the Los Angeles City Council, *approved by* the Los Angeles City Council. The issue was an "add-on" item that no one, save the council, knew was coming. By the time the press and public knew what had happened, the pay raise had been approved.

AB 2674 would halt the practice of "add-on" items by all local entities in the state. Further, it would allow the courts to invalidate such actions should they be found illegal.

A similar case could take place in the West Valley. In fact, it already has.

In January, Ontario-Montclair School District trustees approved a 100 percent raise with a first and final reading in the same evening. With no prior public knowledge, the raise was passed without board or audience dissension.

The OMSD case may be somewhat less clear-cut than the one involving the Los Angeles council. Nonetheless, Mr. Connelly's bill would help prevent any potential abuses and reverse violations.

There is opposition to revisions in the Brown Act. Notably, the California Community College Trustees. But most of the reservations are unfounded.

Currently, the bill has been referred to the Assembly Local Government Committee and is scheduled for hearing on March 11. We encourage the committee — especially local members Bill Lancaster, R-Covina, and Gerald Eaves, D-Rialto — to approve the bill and give California residents even more input into their government process.

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68 AG 65 (4/2/85; Op. # 85-103)

59 AG 619 (1976)

Note footnote 6 (p 69) - other state cases prohibiting secret public balloting.

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AG Opinion

85-103

4/21/85

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CRCEA

CALIFORNIA RETIRED COUNTY EMPLOYEES ASSOCIATION

P.O. BOX 336 • RANCHO CUCAMONGA, CALIFORNIA 91730 • TELEPHONE (714) 987-1945

August 26, 1986

Mr. Gene Erbin,
Counsel, Assembly Subcommittee,
Administration of Justice,
1100 J. Street, 5th Floor,
Sacramento, California 95814.

Dear Mr. Erbin:

A belated thank you for the copies of the latest amended SB 2173 which I received several days ago.

I am enclosing a copy of the editorial which appeared in the Santa Barbara-News Press in the Monday, July 17th issue. You will note that the newspaper supports SB 2173.

I am very interested in AB 2674 (Connelly) and SB 2173 (Roberti), as my personal feelings are in harmony with these two bills.

Again thanking you, I remain,

Cordially,

Ray B. Romero.

R. B. ROMERO
2222 State Street
Santa Barbara, CA 93105

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Editorial Page

Monday, July 7, 1986 CC SANTA BARBARA NEWS-PRESS

Cut the secrecy

Law against closed meetings needs strengthening

California's state and local governments have long operated under the Ralph M. Brown Act, which was intended to prevent public bodies from handling the public's business in private. Many governing units have spent much energy over the years in finding ways to step around that law, and some are still trying today.

There have been some rare cases, involving especially sensitive personnel matters, where private discussion could be justified. But there have been many other problems and plans brought up behind closed doors simply because the officials didn't want the public to know how they were handling these matters.

The Brown Act's restrictions were tightened by legislation in 1984. It said that public agencies must give the public notice 10 days in advance of their meetings. It said they could close the public out only to discuss personnel matters or to confer with their attorneys.

Confer with attorneys? John Van de Kamp, the state's attorney general, has told governing officials this provides a loophole that can be used for making all sorts of decisions without letting the public in on how they were made. His view is that state agencies, city councils, county supervisors, school boards and other official districts can secretly meet with their attorneys about many issues because there is always the possibility of litigation in the future.

Van de Kamp, whose first responsibility is to the public, knows the law's intent. When he was elected in 1982, he was a strong supporter of open meetings. Now he applies a personal interpretation to a law, suggesting how to make a joke of its intent. This indicates a lessened regard for the public interest which we also noted in Van de Kamp's recent campaign against Proposition 51, the initiative that puts a reasonable limit on the taxpayers' liability in certain damage suits. In that case he tried unsuccesfully to convince voters that 51 would damage the environment — a contention too far-fetched to be taken seriously.

The attorney general's loophole in open-meetings law must be closed. There is a bill in the state Senate (SB2173) that will do it. It would restrict those secret meetings with attorneys to instances when a lawsuit has been filed against the governing body or it is considering filing a legal suit. No longer could a council or a board "use" its attorney's presence to legitimize its excuse for secrecy in other matters. The bill deserves strong public support.

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Sac. Union - 9/10/86
SB 2173

Mr. Isenberg v. Mr. Connelly

The Legislature has acted responsibly by approving a bill that closes a potential loophole in California's open meeting laws. The measure (SB2173 - Roberti-Keene) carefully limits occasions in which local or state governmental bodies may go into closed session by invoking the attorney-client relationship. Approval came after a lively bit of sideline oratory pitting two former Sacramento City Council members against each other.

The bill now on Gov. Deukmejian's desk says governmental bodies may go into executive session with attorneys only to discuss the legal aspects of planned, threatened, or continuing legislation. The League of California Cities and other local government groups wanted to amend the bill to permit closed sessions with attorneys to discuss contract negotiations. They moved after Attorney General John Van de Kamp had indicated that he was prepared to issue an opinion stating that any legal questions could be grounds for closed-door meetings. However, the attorney general subsequently expressed unqualified support for SB 2173, thus assuring its passage.

The California Newspaper Publishers Association backed Roberti-Keene bill provisions in support of the principle that elected officials should conduct as much business in the open as possible. Officials like to say that they could strike a better financial deal with developers behind closed doors, but we believe that such decisions may involve too many crucial public policy issues such as traffic congestion and school overcrowding and should receive a full airing in public.

Conflicting viewpoints on the bill and the accountability of elected officials were neatly framed by two Democratic assemblymen who have usually been found in agreement since their election to the Legislature. Assemblyman Phillip Isenberg, former Sacramento mayor, contended that the measure would impose "silly limitations" on local governments based entirely on the "premise that something somewhere is wrong."

Assemblyman Lloyd Connelly, the other former Sacramento city councilman, argued that the attorney general's view as originally interpreted would permit local government officials to go behind closed doors and discuss virtually anything that was even remotely related to litigation or potential litigation. "There is a tremendous potential for abuse," he said.

Mr. Isenberg's statement, along with his past disparagement of open meeting laws, leave little doubt that he comes from the "Father-knows-best" school of governance. We prefer Mr. Connelly's view, and hope Gov. Deukmejian will sign SB 2173.

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CHAPTER 286

PUBLIC BUSINESS, MISCELLANEOUS PROVISIONS

Sec.

286.011 Public meetings and records; public inspection; penalties.
286.012 Voting requirement at meetings of governmental bodies.
286.021 Board of trustees of the internal improvement trust fund to hold title to patents, trade-marks, copyrights, etc.
286.031 Authority of board of trustees in connection with patents, trade-marks, copyrights, etc.
286.041 Prohibited requirements of bidders on contracts for public works relative to income tax returns.
286.09 to 286.22 Repealed.
286.23 Real property conveyed to public agency; disclosure of beneficial interests; notice; exemptions.

Fla.St.1941, Chapter 286, "Public Business Generally", consisting of §§ 286.01 to 286.08, was added by Laws 1941, c. 20864, §§ 1 to 8, related to the Florida Centennial Commission, and was repealed by Laws 1949, c. 25035, § 11.

286.011 Public meetings and records; public inspection; penalties

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizens of this state.

(3) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation or any political subdivision who violates the provisions of

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this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

Historical Note

Derivation:

Laws 1971, c. 71-136, § 159.
Laws 1967, c. 67-356, § 1.

Laws 1967, c. 67-356, enacting this section, provided in section 2 that the Act should become effective on July 1, 1967. The Act did not become law until subsequent to the specified date. O.A.G. 067-49 dated Aug. 10, 1967, recites that under these circumstances the specific effective date provision must be disregarded and that the general effective date for the 1967 regular session applies.

Laws 1971, c. 71-136, § 159, made the offense defined by subsec. (3) of this section a "misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083" in lieu of punishment by a maximum fine of $500 or maximum imprisonment in the county jail of 6 months, or both such fine and imprisonment.

Law Review Commentaries

Government in the Sunshine: Promise or placebo? 23 U.Fla.L.R. 361 (1971).

Library References

Counties ⟹52.
Municipal Corporations ⟹85 to 92.
States ⟹67.
C.J.S. Counties § 88.
C.J.S. Municipal Corporations §§ 158, 411 et seq.
C.J.S. States §§ 58, 66.

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1. Validity

Fact that this section, in addition to requiring that all meetings of certain public boards and commissions, at which official acts were to be taken, be public meetings also contained provisions for criminal penalties and injunction by application of citizens did not violate constitutional provision prohibiting passage of act of legislature embracing more than one subject. Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (1969).

This section making all meetings of certain public boards and commissions, at which official acts were to be taken, public meetings was sufficiently definite and contained sufficiently adequate standards to afford due process to county board of public instruction charged with violation thereof. Id.

2. Construction and application

This section should be construed so as to frustrate all evasive devices. Town of Palm Beach v. Gradison, 296 So.2d 473 (1974), on remand 298 So.2d 443.

Under this section, when in doubt, members of any board, agency, authority or commission should follow the open-meeting policy of the state. Id.

The decision-making process of a duly appointed committee of a public body composed of more than one member of that body must be held in public, even though such members constitute less than a quorum of the public body. Bigelow v. Howze, App., 291 So.2d 645 (1974).

Committee of a public body can interview others privately concerning the subject matter of the committee's business or discuss among itself in private those matters necessary to carry out the investigative aspects of the committee's responsibility, but at the point where the members of the committee who are also members of the pubic body make decisions with respect to the committee's recommendation, such discussion must be conducted at a public meeting, following notice. Id.

In order for there to be a violation of the government in the Sunshine Law, a meeting between two or more public officials, must take place which is violative of the statute's spirit, intent and purpose. Hough v. Stembridge, App., 278 So.2d 288 (1973).

The Government in the Sunshine Law, having been enacted for the public benefit, should be interpreted most favorably to the public. Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (1973).

Effect of open meeting statute is to waive the privilege of confidentiality existing in attorney-client relationship on behalf of the board or commission governed by statute. Times Pub. Co. v. Williams, App., 222 So.2d 470 (1969).

A meeting of a public body to which the public and press are invited held in a public dining room may not conform to the spirit or letter of the Sunshine Law. Op.Atty.Gen., 071-159, June 17, 1971.

Actions taken by boards and commissions in violation of this section are individually voidable and subject to challenge by persons with proper standing to sue in court cases. Op. Atty.Gen., 071-32, March 3, 1971.

3. Legislative intent

One purpose of government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to point just short of ceremonial acceptance. Town of Palm Beach v. Gradison, 296 So.2d 473 (1974), on remand 298 So.2d 443.

Obvious intent of the government in the Sunshine Law is to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action may be taken by the board. Hough v. Stembridge, App., 278 So.2d 288 (1973).

Intent of the Government in the Sunshine Law was to cover any gathering of some of the members of a public board where those members discussed some matters on which foreseeable official action will be taken by the board. Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (1973).

Legislative intent in enacting this section making all meetings of certain public boards and commissions, at which official acts are to be taken, public meetings was to cover any gathering of members where members deal with some matter on which foreseeable action will be taken by the board. Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (1969).

In enacting new open meeting statute Legislature intended to extend application of open meeting concept to bind every board or commission of state or of any county or political subdivision over which it had dominion and control and to void any formal action taken by such bodies at closed meetings. Times Pub. Co. v. Williams, App., 222 So.2d 470 (1969).

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In enacting new statute declaring that all meetings of any board or commission at which official acts are to be taken must be public meetings, it is entire decision-making process that Legislature intends to be affected by statute; and since every step in decision-making process, including decision itself, is the necessary preliminary to formal action each such step constitutes an "official act" an indispensable requisite to "formal action" within meaning of this section. Id.

With one narrow exception relating to attorney-client relationship, Legislature has intended that provisions of open meeting statute be applicable to every assemblage of board or commission governed by act at which discussion, deliberation, decision, or formal action is to be had or taken relating to, or within the scope of, official duties or affairs of such body: and personnel matters do not enjoy any insulation from operation of statute. Id.

4. Exceptions

Where bond proposal before commission was a public record and spelled out in detail each project, its location and estimated costs and bond issue was highly publicized by public media which fully advised voters on all different aspects of bond issue, including specific projects, electors were given adequate information on projects for an intelligent exercise of franchise. Grapeland Heights Civic Ass'n v. City of Miami, 267 So.2d 321 (1972).

Open meeting statute (this section) has an exception limited to that area of attorney-client relationship in which ethical obligations of attorney clearly conflict with dictates of statute, but statute does not permit private consultation between agency and its attorney in any except those instances in which the ethical obligations of attorney would clearly conflict with dictates of statute. Times Pub. Co. v. Williams, App., 222 So.2d 470 (1969).

Discussion by a public body with its attorney concerning whether pending litigation should be settled does not constitute an exception to the Sunshine Law and must therefore be held openly and publicly as required by this section. Op.Atty.Gen., 073-56, March 13, 1973.

Provisions of this section are not applicable to the judicial branch of government nor to legislative bodies performing quasi-judicial functions. Op.Atty.Gen., 071-32, March 3, 1971.

A conversation or discussion between two or more members of a board or commission at which no one else is present is not an illegal act per se. Id.

5. "Secret meeting"

Luncheon meeting held by private organization for city, county and school board officials, members of organization, and other members of public at which there was no discussion among officials of any official action is not a "secret meeting" of public bodies represented in meeting within the purview of this section. Op.Atty.Gen., 072-158, May 11, 1972.

Two or more legislators may not hold a secret meeting, with the intention of excluding the public and press, for the purpose of deciding upon a "mutual voting pattern" or other course of action with respect to a particular legislative matter. Op. Atty.Gen., 072-16, Jan. 12, 1972.

An inspection trip made by members of a public body, together with staff members and officials of other organizations and members of the press, is not a "secret meeting" within the purview of this section, even though the general public is not invited to participate therein. Op. Atty.Gen., 071-361, Nov. 4, 1971.

Public body should avoid secret meetings, from which the public and the press are actively excluded, preceding official meetings, even though such secret meetings are held ostensibly for purely social purposes only with the understanding that members of the public body will, in good faith, attempt to avoid any discussion of official business. Op.Atty.Gen., 071-295, Sept. 24, 1971.

6. **Telephone conversations**

A telephone conversation between two members of a board or commission relating to or bearing upon the public's business is not illegal per se. Op.Atty.Gen., 071-32, March 3, 1971.

7. **Boards and commissions, generally**

Government in the Sunshine Law applied to activities of citizens' planning committee which was appointed by town council after town entered contract with professional planner calling for planner to work with either a planning commission or town council, and zoning ordinance adopted on planner's submission was invalid where committee meetings were private and no minutes were taken, although committee was not appointed as a subterfuge, it had no authority to do more than make recommendations, and ordinance was adopted publicly. IDS Properties, Inc. v. Town of Palm Beach, App., 279 So.2d 353 (1973).

Those to whom public officials delegate de facto authority to act on their behalf in formulation, preparation, and promulgation of plan on which foreseeable action will be taken by such public officials stand in shoes of such public officials insofar as Government in the Sunshine Law is concerned. Id.

It is permissible prior to a meeting to circulate drafts of proposals of actions to be taken so that members may have the opportunity to study the proposals prior to the time of the formal meeting. Op.Atty.Gen., 074-294, Sept. 24, 1974.

It is permissible to circulate a draft of minutes of previous meeting among members for concurrence and for individual members to make suggested corrections for the minutes to the secretary for inclusion in the draft of the minutes which is to be considered by the members at their next ensuing regular meeting. A vote on the concurrence and revisions of the members should be taken at an open meeting with the minutes and any changes or revisions thereto also discussed during the open meeting before and at the time the board adopts such minutes. Id.

A single member of a board or commission to whom the authority to act on behalf of the board or commission in matters such as lease of land, etc., has been delegated is subject to the Government in the Sunshine Law, and, therefore, cannot negotiate for such a lease in secret. Id.

This section applies to a quasi-judicial hearing or meeting of the Florida board of dentistry, or to any investigatory proceedings authorized by and under the direction of the board; and, an individual member of the board or a member and the board's executive director who conducts such hearing, meeting or investigatory proceedings on behalf of the entire board are required to hold it in the sunshine. Op.Atty.Gen., 074-84, March 25, 1974.

Judicial nominating commissions are not subject to this section. Op. Atty.Gen., 073-348, Sept. 17, 1973.

8. **Advisory boards**

Purely advisory board is not within the purview of the Sunshine Law. However, statutory body having statutory powers and duties that are governmental in nature should hold its meetings "in the sunshine" even though it functions only in an advisory capacity. Op.Atty.Gen., 071-380, Dec. 3, 1971.

9. **Municipal boards or commissions**

Mere showing that this section has been violated constitutes irreparable public injury so that ordinance is void ab initio. Town of Palm Beach v. Gradison, 296 So.2d 473 (1974), on remand 298 So.2d 443.

Section 165.22 which required meetings of a city or town council to be public and which had been interpreted to be applicable only when municipal council was assembled in a formal session attended by quorum was superceded by statute providing that all meetings at which official acts are to be taken are public meetings and no resolution, rule, regula-

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tion or formal action shall be considered binding except as taken or made at such meeting. City of Miami Beach v. Berns, 245 So.2d 38 (1971).

When municipal officials meet at a time and place to avoid being seen or heard by public to transact or agree to transact public business at a future time in a certain manner, they violate the "government in the sunshine" law regardless of whether the meeting is formal or informal. Id.

This section making public all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision is applicable to governing bodies of municipal corporations without exception and trial court's order enjoining mayor and members of city council from holding meetings of city council other than in public and order restraining city from prosecuting petitioner for offense of disorderly conduct with which he had been charged upon his refusal to leave closed session of city council were valid. City of Miami Beach v. Berns, App., 231 So.2d 847 (1970), writ discharged 245 So.2d 38.

There could be a potential or possible violation of this section when two or more city council members meet with representatives of urban planning firms at city hall following presentation of plans or proposals for study by various planning firms in an immediately preceding regular council meeting, when notice of such meeting was not given to the public or press. Op.Atty.Gen., 074-273, Sept. 6, 1974.

Fact-finding discussions between a planning firm and two or more city council members are governed by this section. Id.

A conference session or "workshop meeting" of a town council where matters are discussed on which foreseeable action will be taken by the council is under the purview of this section and minutes of any such meeting must be promptly recorded and open to public inspection. These minutes are to be no different from those required for any other meeting of the town council. Op.Atty.Gen., 074-62, Feb. 28, 1974.

It is not a violation of this section for a city manager to meet individually with members of the city council to discuss city business provided that he does not act as a liaison for board members by circulating information and thoughts of individual councilmen to the rest of the board. Op.Atty.Gen., 074-47, Feb. 13, 1974.

The board of governors of a municipal country club is subject to the Government in the Sunshine Law. Op.Atty.Gen., 073-366, Oct. 1, 1973.

The functions and duties which are exercised by the Venice planning commission are sufficient to bring it within the purview of the Sunshine Law, and accordingly, the meetings and proceedings of the planning commission must be conducted openly and publicly as required by this section. Op.Atty.Gen., 073-159, May 10, 1973.

City commission should not use a secret ballot in fulfilling a vacancy in office; however, such an initial violation of the sunshine law, this section, may be cured by subsequent corrective open, public vote upon the matter. Op.Atty.Gen., 072-326, Sept. 20, 1972.

Quasi judicial deliberations of a town council under the Government in the Sunshine Law (this section) need not be open to the public, nor conferences with council's attorney, necessarily open to the public. Op. Atty.Gen., 070-37, April 30, 1970.

10. County boards and commissions

Under this section requiring that official acts be taken at public meetings, where two of five county commissioners, as part of a committee, went on a fact finding mission to Tennessee, they should not, while they were still on their trip, have discussed what recommendation the committee would make, despite contention that adequate publicity was given to the committee's trip. Bigelow v. Howze, App., 291 So.2d 645 (1974).

Meeting of committee which included two of five county commissioners and which constituted a continuation of committee's deliberations with respect to a recommendation for action by the commission was not "public" for purposes of this section merely by reason of fact that it took place in a public room at an inn, where there was no advance notice and reasonable opportunity for the public to attend. Id.

Where two of five members of county commission, as members of a committee, decided on recommendation for action by the commission with respect to contract proposals under circumstances which did not satisfy statutory public meeting requirements, ratification of award of contract by the entire commission did not validate the contract. Id.

11. Civic organizations

Though legislature would have no right to require meetings of civic organizations, unconnected with municipal government, to conform to this section, a subordinate group or committee selected by governmental authorities should not feel free to meet in private. Town of Palm Beach v. Gradison, 296 So.2d 473 (1974), on remand 298 So.2d 443.

Citizens' planning commission, composed of private citizens, and established by town council, which appointed its members, was subject to this section. Id.

12. Special district meetings

The meetings of the district board of commissioners of the Indian Rocks special fire control district must be conducted in accordance with requirements of this section. Op.Atty.Gen., 074-169, June 12, 1974.

13. Board of regents

Board of regents must comply with the Government in the Sunshine Law; and, when its authority is, in essence, delegated to and carried out by the council of deans, the council, too, must follow the dictates of that law. Op.Atty.Gen., 074-267, Sept. 5, 1974.

14. Health boards and commissions

Local health related commissions, councils or agencies, which are private, non-profit organizations, and which receive state or federal funds are not subject to this section. Op. Atty.Gen., 074-22, Jan. 17, 1974.

15. Civil service board

Government in the Sunshine Law requires that the civil service board hold open deliberations and an open vote on the guilt or innocence of an employee at a disciplinary hearing. Op.Atty.Gen., 073-370, Oct. 2, 1973.

Deliberations of the Miami civil service board following a hearing on disciplinary matters are required to be conducted in the presence of public and press pursuant to this section. Op.Atty.Gen., 071-29, Feb. 19, 1971.

16. Public service commission

It is a violation of the Government in the Sunshine Law, to hold a closed meeting of the public service commission excluding participation by members of the media and public, to discuss disciplinary actions brought against a commission employee by another state agency. Op. Atty.Gen., 073-344, Sept. 13, 1973.

The withholding from the news media and the public of the results of a final decision of the public service commission for 7 days or longer is a violation of the Government in the Sunshine Law and the Public Records Law, c. 119. Id.

17. Zoning board

Matter of whether landowner was entitled to maintain action to review granting of an application for unusual or special use by zoning appeals board should not have been disposed of without recipient (owner of land benefiting from unusual or special use) being in litigation, since, if litigant was successful, result would have been to deprive recipient of a special privilege or use of his property without an opportunity to be present and to be heard. Shaughnessy v. Metropolitan Dade County, App., 238 So.2d 466 (1970).

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Action of zoning appeals board, as affirmed by county commission, in granting an application for unusual or special use would not be disturbed where substantial evidence established that matter was at least fairly debatable. Id.

A workshop meeting of a planning and zoning commission, which meeting is for the purpose of formulating land use plans for the development of the local area, is open to the public under this section. Op.Atty.Gen., 074-94, March 27, 1974.

18. School boards

Where court's approval of integration plan was necessary 84 hours before seventh largest school system in United States was due to open, and to require immediate desegregation of all schools in county would result in chaos, court approved plan approved by school board and department of health, education and welfare, though plan did not meet constitutional standards and state court had ruled that school board in adopting plan had violated this section requiring proceedings to be taken publicly and written record of proceedings to be made. Pate v. Dade County School Bd., D.C., 303 F.Supp. 1068 (1969) modified 307 F.Supp. 1288, cause remanded 430 F.2d 1175, on remand 315 F.Supp. 1161, affirmed in part, reversed in part 434 F.2d 1151, certiorari denied 91 S.Ct. 1613, 1633, 402 U.S. 953, 29 L.Ed.2d 123.

Judiciary should not encroach upon the legislature's right to require that activities of school board be conducted in the "sunshine." Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (1973).

Legislature may require all meetings of school board at which official acts are to be taken to be public meetings open to the public. Id.

The characterization of a decision-making process by a school board as "quasi-judicial" does not make the body into a judicial body or authorize board to avoid the Government in the Sunshine Law. Id.

Even though school board was acting in a "quasi-judicial" capacity in deciding whether student's suspension should be continued, the board was a part of the legislative branch of government and the Government in the Sunshine Law was applicable and was violated when board recessed hearing to reach a decision. Id.

Any initial violation of law resulting from election of chairman and vice-chairman of school board by secret written ballot was cured by the corrective open, public vote which followed. Bassett v. Braddock, 262 So.2d 425 (1972).

Attorney employed in public by school board for preliminary or tentative teacher contract negotiations with teachers' representatives could negotiate outside of public meetings without being in violation of the "sunshine law." Id.

School board may instruct and consult with its labor negotiators in private without being in violation of the "sunshine law." Id.

Neither public nor press has any right to enter judicial deliberations of members of county board of public instruction. Canney v. Board of Public Instruction of Alachua County, App., 231 So.2d 34 (1970).

When school board was deciding whether or not student's suspension should be continued for failure to comply with regulation regarding hairstyles, it was acting in quasi-judicial capacity, and conference held by it was privileged and did not fall within purview of Government in Sunshine Law. Id.

Unless it can be clearly demonstrated that informal luncheon meetings between individual school board members and administrative staff members are purely social in nature and thus are not being used by the board as a vehicle by which to circumvent this section by secretly discussing matters pending before the board, such meetings should be immediately discontinued. Op.Atty.Gen., 074-197, July 10, 1974.

Appointive bodies, as well as elective, fall under the purview of the

Sunshine Law. Advisory bodies can be controlled by the Sunshine Law. Committees of a governing board composed of members of the board must have public meetings where such meetings deal with matters pertaining to the duties and responsibilities of the board. Op.Atty.Gen., 073-223, June 20, 1973.

A district school board conducting employment interviews for superintendent applicants would violate the Sunshine Law, if such interviews were held in secret. Op.Atty.Gen., 071-389, Dec. 7, 1971.

Where the Hillsborough county board of public instruction conducts negotiations with the class room teachers association on an administrative level and where the negotiators have no power to bind their principals, this section is not violated by such negotiation being held in private. Op.Atty.Gen., 071-32A, July 9, 1971.

Where the county school board votes for code numbers rather than names of nominees in the election of the superintendent of schools, such action, is not per se a violation of this section. Op.Atty.Gen., 071-58, March 31, 1971.

A luncheon attended by members of a school board and a prospective superintendent of schools prior to selection by the school board of a superintendent does not necessarily violate this section. Id.

Where a school board violates this section by the manner in which it selects a school superintendent, a subsequent contract with such superintendent is not necessarily rendered invalid. Id.

Election of the chairman of the county school board by secret ballot of the members of the board during public meeting is in violation of this section. Op.Atty.Gen., 071-32, March 3, 1971.

Destruction of secret ballots in the election of the chairman of the county school board during a public meeting by the chairman of the school board or any other officer or employee of the board is an invalid act. Id.

19. Political subdivision

A county mosquito control district is a "political subdivision" within the meaning of the Government in the Sunshine Law, and any meetings which are held by its governing body to discuss or formulate an explanation or rebuttal to the findings of the auditor general's report, including the corrective action to be taken with respect to the adverse findings, must take place openly and publicly, and minutes of such meetings must be recorded and be open to public inspection. Op.Atty.Gen., 073-8, Jan. 22, 1973.

A special taxing district is within the purview of this section. Op. Atty.Gen., 071-171, June 30, 1971.

20. Federal agencies

Federal agencies operating within the state do not come within the purview of this section. Op.Atty.Gen., 071-191, July 9, 1971.

21. Members-elect

Members-elect of boards, commissions, agencies, etc. are within the scope of the government in the Sunshine Law. Hough v. Stembridge, App., 278 So.2d 288 (1973).

Members-elect of boards and commissions are within the scope of this section. Op.Atty.Gen., 074-40, Feb. 11, 1974.

22. Labor negotiations

Employee grievance committee hearings of the career service personnel at Florida state university are subject to this section. Op.Atty.Gen., 074-290, Sept. 20, 1974.

Negotiations between a public body's labor representative and its employees' representative in preliminary contract negotiations may be held in secret without violating the Sunshine Law. The public body may meet in secret with its labor representative to consult with or instruct him as to matters involved in the

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collective bargaining proceedings. Op.Atty.Gen., 073-200, June 4, 1973.

Members of a public body may not bargain or negotiate in secret with representatives of public employee groups over the terms of a labor contract without violating this section. Op.Atty.Gen., 071-32, March 3, 1971.

A public body may not employ a skilled negotiator to bargain and negotiate on its behalf in secret with representatives of public employee groups over terms of a labor contract without violating this section. Id.

23. Voting by secret ballot

Following the deliberations and at the open and public session, the members of a personnel board, a quasi-judicial body, should not cast their individual votes either for or against the employee being tried by secret written ballot. Op.Atty.Gen., 073-264, July 17, 1973.

24. Notice of meeting

Government in the Sunshine Law does not prohibit a board or commission from taking action on a matter which has not been placed on an agenda, but it does prohibit a board or commission from holding "a public meeting" without reasonable notice to the public. Hough v. Stembridge, App., 278 So.2d 288 (1973).

Zoning Appeals Board, after notice and hearing and having deadlocked at a 2 to 2 vote to deny application for an unusual or special use, was entitled to continue hearing by setting it over to another date without further notice. Shaughnessy v. Metropolitan Dade County, App., 238 So.2d 466 (1970).

In order to fully comply with the Government in the Sunshine and Public Records Laws the public service commission should give reasonable notice of all meetings and agendas; should take votes and discuss all matters involving public businesses on which foreseeable commission action may be taken at public meetings open to the news media and the public at all times; and should make vote sheets, final orders and all other documents and materials made or received pursuant to law or ordinance or in connection with the transaction of official business open to inspection by the public and the news media at all reasonable times. Op.Atty.Gen., 073-344, Sept. 13, 1973.

The meaning of the term "due public notice" is variable, depending on the facts of each situation. The purpose of notice is to apprise individuals or the public generally of the pendency of matters which may affect their personal or property rights, and afford them the opportunity to appear and present their views. The nature of the proceeding at which these rights are to be affected, the nature of the rights themselves, the applicable statutory provisions, and other surrounding circumstances will influence the notice requirements of each case. But in every case the notice must reasonably convey all the information required in that situation and it must afford a reasonable time for interested persons to make an appearance if they wish. Op. Atty.Gen., 073-170, May 17, 1973.

Regulatory boards under the department of professional and occupational regulation are required to give to the public and press reasonable and ample notice of all meetings at which any official action of the board is to be taken. Of course, said meetings are required to be open to the public at all times. If any applicable statute prescribes notice, such statute controls and must be strictly observed. Op.Atty.Gen., 072-400, Nov. 10, 1972.

Notice of an official meeting of members of a city council constituting a "committee" of such council should be given when official matters are to be considered and discussed, even though the committee membership is less than a quorum of the city council. Op.Atty.Gen., 071-346, Oct. 21, 1971.

25. Injunction

Appeal taken by city from judgment granting injunction predicated on the government in the Sunshine Law operated as a supersedeas, thereby staying execution or performance of the judgment; accord-

ingly, rule to show cause, issued by trial court on application alleging violation of the terms of the injunction, constituted a proceeding for the enforcement of the injunction while the supersedeas was in effect, and therefore was improper. Hough v. Stembridge, App., 278 So.2d 288 (1973).

Inasmuch as this section requiring that meetings of certain public boards and commissions, at which official acts were to be taken, be made public did not contain any exception, judgment enjoining county board of public instruction from holding any meeting or conference session wherein public is excluded, at which are held any discussions on current, or foreseeably so, matters, not privileged, pertaining to duties and responsibilities of the board was amended to enjoin board from holding any meeting or conference session wherein public is excluded at which are held any discussions on matters pertaining to duties and responsibilities of board. Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (1969).

In view of section 1.01 providing that singular includes plural and vice versa in construction of word in statutes, although this section requiring that all meetings of certain public boards and commissions at which official acts were to be taken be public provided for issuance of injunctions upon application by "citizens", circuit court could properly entertain application of only one citizen. Id.

Judgment enjoining county board of public instruction from violating statute requiring that meetings of county board at which official acts were to be taken be made public and specifically enjoining holding of specified kinds of meetings or conference sessions at which quorum is present when all or part of public is excluded, specified enjoined acts with such reasonable definiteness and certainty that board could readily know what it was required to refrain from doing without speculation and conjecture. Id.

Provision of open meeting statute (this section) granting jurisdiction to circuit courts to issue injunctions to enforce statute is the equivalent of a legislative declaration that violation of statutory mandate constitutes irreparable public injury, and means that in a subsequent judicial proceeding such requisite for issuance of injunction need not be proven and a mere showing made that statute has been or is clearly about to be violated would be sufficient. Times Pub. Co. v. Williams, App., 222 So.2d 470 (1969).

26. Criminal actions and proceedings

Although criminal prosecution requires proof of scienter, unintended violation of this section will negate any action taken by a town council. Town of Palm Beach v. Gradison, 296 So.2d 473 (1974), on remand 298 So.2d 443.

This section making it misdemeanor for person to attend meeting held in violation of provisions requiring meetings of certain public boards and commissions to be open to public requires charge and proof of scienter. Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (1969).

Fact that this section contains penal provision does not make entire statute penal so that it must be strictly construed. Id.

Judicial construction of this section making it misdemeanor for person to attend meeting held in violation of provision requiring meetings of certain public boards and commissions to be open to public so as to require charge and proof of scienter did not constitute judicial amendment of statute. Id.

Criminal violations of this section required charge and proof of scienter or guilty knowledge. Op.Atty. Gen., 074-273, Sept. 6, 1974.

Standards under this section in criminal prosecutions require proof of scienter while in civil suit seeking injunction may be determined in declaratory proceedings by one in doubt as to his rights regarding the holding of secret meeting by public officials

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or the implementation of enactments adopted at such secret meetings. Op.Atty.Gen., 071-32, March 3, 1971.

A board member who votes against specific conduct by secret procedure but who then participates in that procedure after its approval by the board is not absolved of criminal responsibility under this section. Id.

286.012 Voting requirement at meetings of governmental bodies

No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act, and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is or appears to be a possible conflict of interest under the provisions of § 112.311, § 112.313, § 112.314, § 112.315 or § 112.316. In such cases said member shall comply with the disclosure requirements of § 112.-313.

Historical Note

Derivation:

Laws 1972, c. 72-311, § 1.

Library References

Counties ⇐52.
Municipal Corporations ⇐92, 177.
States ⇐67.
C.J.S. Counties § 88.
C.J.S. Municipal Corporations §§ 400, 551 et seq.
C.J.S. States §§ 58, 66.

Notes of Decisions

Abstention from voting 5
Conflict of interest
  In general 2, 3
  Substantial benefit 3
Construction and application 1
Disclosure of interest 4

1. Construction and application

Action of board of county commissioners in declining to change zoning of tract, which had been zoned for multifamily development for several years, was not rendered invalid because one of the commissioners voluntarily left session of the board during the proceedings, notwithstanding this section requiring members of governmental bodies to participate in decisions made by such bodies. Walberg v. Metropolitan Dade County, App., 296 So.2d 509 (1974).

Where six members of the Dade County board of county commissioners are present at a meeting, the affirmative votes of at least four members are necessary for the adoption of an ordinance, resolution or motion. Op.Atty.Gen., 074-289, Sept. 20, 1974.

During the temporary absence of a member from a meeting of the Dade County board of county commissioners, such member should be regarded as being present and meeting should either be recessed or any vote should be postponed until the

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CHAIRMAN, SELECT COMMITTEE ON SMALL BUSINESS ENTERPRISES

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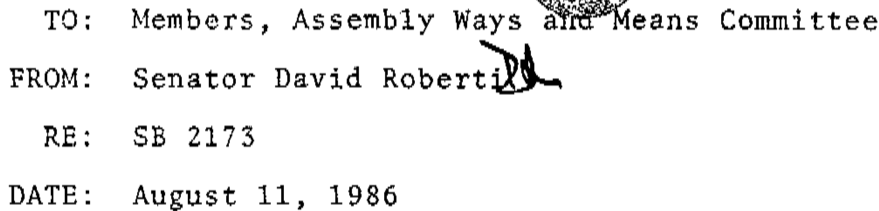
California Legislature

TWENTY-THIRD DISTRICT
LOS ANGELES COUNTY



TO: Members, Assembly Ways and Means Committee

FROM: Senator David Roberti

RE: SB 2173

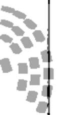
DATE: August 11, 1986

This memo is to briefly respond to any correspondence you may have received from the city councils or boards of supervisors in your district regarding SB 2173. This bill does several things; Only one change is the subject of the opposition by cities and counties.

In 1984, Senator Keene passed a measure SB 2216, which added the express language regarding attorney/client privilege for closed meetings under the Brown Act. This bill provided that local bodies could use the attorney/client privilege to go into closed session if they were discussing pending litigation if the following circumstances existed: an adjudicatory proceeding, significant exposure to litigation, whether or not to meet in closed session, or if they are deciding to initiate litigation.

SB 2173 merely clarifies and does not change existing law. This bill does not eliminate the attorney/client privilege nor does it affect other circumstances that currently permit local bodies to go into closed session under existing law.

I believe that the cities and counties are overstating the impact of the clarifying amendment on page 14 of the bill. If you have any questions or concerns, please do not hesitate to contact Donne Brownsey of my staff at 5-8390.



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A - 18b

DAN WALTERS

Sunshine laws need recharge

California didn't enact the nation's first law requiring public policy-making bodies to meet publicly, but the Brown Act and its successors have been among the most advanced examples of so-called "sunshine laws."

The central thesis of California's Brown Act is stated succinctly: "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be admitted to attend any meeting . . . except as otherwise provided."

As a practical matter, the guardians of the Brown Act are the reporters who are assigned to cover the city councils, school boards, county boards of supervisors and other local legislative bodies of California.

While the act grants the press no privileges beyond those accorded to members of the public, the media obviously have a keener and more professional interest than the casual attendee.

When, therefore, there are disputes over whether a meeting should be open or closed for some specific permitted purpose, it usually pits the press against the agency. And that carries over into the Legislature and the courts, where there are perennial disputes over the meanings of the Brown Act and the other sunshine laws.

During the years since the Brown Act's enactment, local governments' Sacramento lobbies, the League of California Cities and the County Supervisors Association of California, have pressed the Legislature for ever-more exceptions. Briefly put, local government officials want to conduct more and more of their business behind closed doors — for good reason, they assure us — and are always seeking more ways to do it.

One of the stickiest areas of dispute has been "pending litigation."

Local officials had contended, with some success, that they had the right to meet with their attorneys under the longstanding attorney-client privilege regardless of the Brown Act. There were frequent clashes between officials and reporters over what subjects could thus be discussed privately since, at least conceivably, almost anything could be subject to legal action.

Two years ago, in an effort to clear up the situation, the Legislature passed a Brown Act revision that allowed private sessions with attorneys to discuss suits already filed by or against the governmental body, "significant exposure" to a potential suit or the possibility of initiating legal action.

That should have been that. But an informal opinion by Attorney General John Van de Kamp has produced more chaos.

Van de Kamp, virtually ignoring the restrictions set forth in the Brown Act revisions, says that local officials have the innate right to meet with attorneys to discuss almost anything remotely connected to legal action — even to talk about policy decisions that could lead to litigation or affect some other pending lawsuit.

Van de Kamp's opinion has, in effect, opened the door to secret government in California at a point in the state's history when openness is more needed than ever.

The most awesome power possessed by local government is to decide zoning, planning and other development matters, and increasingly, such issues have become local hot potatoes. City council members and county supervisors would love to talk about the location of subdivisions, industrial parks and other developments in private, and the Van de Kamp opinion gives them the loophole to do so.

If the opinion becomes the guiding credo of local government in California, city and county attorneys will become powerful policy-makers and the spirit of the Brown Act — that the public's business should be conducted in public — will have been shattered.

Senate President Pro Tem David Roberti has introduced legislation, now pending in the Assembly, that clarifies whatever ambiguities Van de Kamp found in the last legislation and makes it clear when local officials may discuss substantive matters privately.

But — in a classic example of using the public's money to lobby against the public interest — the League of California Cities and the County Supervisors Association of California are trying to block passage of the Roberti bill.

Secret government, they are saying, would be more efficient government because local officials wouldn't have to put up with nosy reporters and pesky citizens as they discussed issues.

Secret government also would be something else: an open invitation to the kind of systemic corruption already evident in areas with heavy pressure from land developers.

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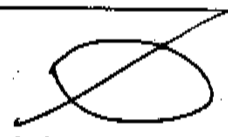
Open Meetings 48

Oakland Tribune
Tues. Mar 4

Beef up the Brown Act



The state Open Meetings Act generally works well to keep public bodies in public view. Known as the Brown Act, the law requires that local elected bodies meet openly except under well-defined exceptions, so that citizens can participate in and monitor their proceedings.

But that doesn't stop entities from testing the law to its limits, and sometimes getting away with actions that may be legal but do damage to the law's intent.

Only after a recent Los Angeles City Council approved "Item 53" on its agenda did the public find out the otherwise unidentified item was a motion for a council pay raise. In another instance, the Pasadena City Board approved a proposal for a controversial rock concert endorsed by Nancy Reagan after the concert was brought up as a non-agenda item.

Both actions fell within the letter of the Brown Act, but did not serve well the cause of public access to key decisions made by local governments.

Now, a bipartisan-backed bill in the Legislature would toughen weak spots in the law, making it harder for local elected officials to slip through its loopholes. Co-sponsored by liberal Lloyd Connelly, D-Sacramento, and conservative Ross Johnson, R-Fullerton, in the Assembly, AB 2674 deserves support.

AB 2674 proposes two major amendments to the Brown Act that would strengthen its notice and agenda requirements and provide legal remedies now lacking for violations.

One amendment would require city councils, county boards of supervisors and boards of special districts to post specific agendas including the subject matter of all items no later than 72 hours before regular meetings or 24 hours before special meetings. No action could be taken on items not on the agenda nor could additional items be added.

The other amendment would allow the public to petition a court to declare "null and void" actions taken by any local body that are later declared in violation of the Brown Act.

The League of California Cities objects to the amendments as too strict. Its members want to retain the flexibility to add non-controversial items to city council agendas closer to the time of meetings.

But public school and community college districts already operate under rules requiring posting of specific agendas 48 hours in advance of regular meetings and 24 hours ahead of special meetings. And state agencies operate under even tougher mandates that require that agendas be mailed to interested citizens 10 days in advance. City, county and special district boards can do as well.

The amendments won't change the prerogative of all elected bodies to convene emergency meetings within 24 hours with no advance agenda postings required. Local jurisdictions hit by natural disaster, public service strikes or any number of legitimate crises must retain the power to act swiftly to protect the public welfare.

Connolly favors the amendments because they provide needed enforcement teeth for the Brown Act. Johnson says they will help citizens "retain some degree of control over their own government." Wherever their support comes from, the amendments will help an already good law work better.

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open meeting

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Cutting Down Secrecy

California's Brown Act requires boards of supervisors, city councils, water districts, school boards and other local bodies to conduct business in public. The broad protections are good for democracy, but an action that violates the law can remain valid and secrecy is rarely, if ever, penalized. Those weaknesses need correcting.

Assembly Bill 2674 would strengthen the Brown Act and make it easier to enforce. The California Legislature should make it law.

The new legislation would require policy bodies to post a specific agenda at least three days before a regular meeting and one day before a special session. No items could be added during a meeting. The new requirement would prevent cunning council members from hiding controversial motions until the last moment. Exceptions would be made for genuine emergencies, and the exemption for discussing personnel matters would remain.

Had the changes been in effect last year, members of the Los Angeles City Council could not have sneaked through a motion for a 10% pay raise, identified only by number and not by topic, without public discussion or public notice.

Had the new enforcement provision been in effect, the council's action could have been redressed without proof of criminal intent. Superior Court Judge Raymond Cardenas subsequently found that the process had violated the spirit, but not the letter, of the Brown Act. He struck down the pay raise, however, because he found that it violated a provision of the city Charter.

AB 2674 would allow any action, found in violation of the law by a court, to be declared void automatically. Sneakiness would no longer pay off. That is significant, because there is no record of a successful criminal prosecution of the Brown Act, according to Assemblyman Lloyd G. Connelly (D-Sacramento), one of the bill's sponsors.

Connelly's co-sponsor is Assemblyman Ross Johnson (R-La Habra). That bipartisan support indicates that both Democrats and Republicans support the precepts of good government. The attorney general, the California District Attorneys Assn. and the League of Women Voters also support the measure. Common Cause, the citizens' lobby, is the original sponsor.

A similar measure, sponsored by Connelly during the last legislative session, tightened up the Bagley-Keene Open Meeting Act, which governs meetings of state agencies just as the Ralph M. Brown Act governs meetings of local agencies.

Local officials may chafe at the new restrictions. They may protest that the requirements would slow government business. Secrecy may speed some decisions, but that efficiency is at the expense of democracy. AB 2674 deserves passage.

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Editorials

Thursday, August 7, 1986 10B

In the public eye

The mere possibility of a lawsuit is not enough to hold a closed meeting

IN California, government belongs to the people. Except in a few, limited circumstances, city councils, county boards of supervisors and state agencies must conduct the public's business in public.

But a recent informal opinion by Attorney General John Van de Kamp threatens to shred the state's open-meeting laws by stretching the interpretation of lawyer-client privilege beyond recognition.

The state's chief lawyer suggests that state and local agencies should be able to meet secretly with their attorneys to discuss any issue or any proposal that *might someday* lead to a lawsuit.

In today's litigious society, that's just about anything, which is why the Van de Kamp interpretation is inimical to open government. (What proposed ordinance, regulation or permit revocation isn't a potential lawsuit magnet these days?)

Fortunately, Senate President Pro-Tempore David Roberti, D-Los Angeles, has responded with legislation that spells out — and limits — the lawyer-client exception to both the Ralph M. Brown Act, which covers local governments, and the Bagley-Keene Act, which applies to state agencies.

Robert's Senate Bill 2173 will be heard next Wednesday by the Assembly Ways and Means Committee, which should approve it promptly.

The measure sanctions closed meetings when a government agency is actually being sued, when it is being threatened with a suit or when it is thinking about suing somebody. "Apart from (these) limited circumstances," says SB 2173, ". . . no closed session is authorized by the attorney-client privilege."

That's reasonable.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A - 22b

Salinas Californian

July 1, 1986

The public in meetings ...

P-10 1462

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.
— Preamble, Ralph M. Brown Act.

As a general priciple, the right of the people to oversee and participate in their government wins universal applause.

So, why is that right being eroded?

Maybe citizen participation stands in the way of what some officials see as efficient business practices. But our democracy wasn't designed to be the most efficient form of government. It was, instead, the system that could best represent the wishes of the citizens, the one that best allowed them access to the decision-making process.

That's why recent attempts to undermine citizen rights are alarming.

Last week, Gov. George Deukmejian signed a bill that would allow the board of directors of a public hospital district to hold closed meetings to discuss plans for new services, programs and facilities with only the final action on those proposals to be taken in public session.

The public hospital districts argued that they required secrecy to better compete with private hospitals.

If public hospitals truly need the freedom from public scrutiny that private hospitals enjoy, they should be willing to give up the taxpayer subsidies that they enjoy. As long as tax money or bonding authority is being used to support these institutions, taxpayers should be able to demand accountability.

If this were the only evidence of the erosion of citizen rights, it would not be too alarming. But a far more devastating blow would result if an informal decision by Attorney General John Van de Kamp is put into effect.

That decision would plow a huge loophole through the Brown Act, the state's open meeting law that is designed to keep public business public.

That act recognizes the right of government bodies to discuss pending litigation in closed meetings. But, under this decision, boards could retreat to closed session to discuss any action that might result in litigation. In our society, that could cover nearly every action.

State Sen. David Roberti, D-Los Angeles, is sponsoring a bill to help close that loophole. We hope the Legislature reverses its recent trend and votes in favor of citizen access.

Increased secrecy may be attractive to officials who want to run government in what they see as a more businesslike manner. But curtailing citizen access and participation is a sure way to undermine popular support of government.

The two most hotly debated local government issues of the past year — the county's $150,000 payment to a former personnel director and Salinas' proposed home loan to its city manager — both touched off a furor, at least in part, because of the aura of secrecy that surrounded the deals. That secrecy was perfectly legal, but it still reinforced the opinion of many that something shady was going on with government funds.

People have a healthy distrust of government. But when they are allowed to see government in action, to read or see what it's doing in the news media, that distrust can be overcome.

But hell hath no fury like that of a taxpayer who is told that government business is none of his business, a message we seem to be hearing more and more these days.

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A - 23b

San Gabriel Valley Daily Tribune

July 24, 1986

Legislature should 'tighten' Brown Act

This newspaper has always believed that the public's business should be conducted in public.

We believe that most Californians agree with that. People rightfully feel that whatever elected boards do, they are doing it with the public's money. Therefore, the average guy should be entitled to know how these decisions are reached.

To that end, California has one of the most stringent open-meeting laws in the country. The Ralph M. Brown act requires city councils, school boards, county boards of supervisors, water districts and other agencies to meet in public.

Secret meetings are permitted only on sensivitve subjects. Unless you're dealing with such personnel matters, labor negotiations or pending court actions — you'd better do it in public.

SB2173, sponsored by Sen. David Roberti (D-Los Angeles) further clarifies the limited circumstances under which a public board can use lawyer-client protections to close a meeting.

That bill has passed the Assembly Governmental Organizations Committee and now goes to the Assembly Ways and Means Committee and then to the Assembly floor.

We urge its full support by lawmakers who are concerned about protecting open access to government and the public's right to know. If passed, it will override any opinion issued by the attorney general.

In fact, it was opinion by Attorney General John Van de Kamp that threatened to blow a loophole in the tightly worded act. His interpretation would allow agencies to discuss in secret any legal advice, any legal question, any mere threat of court action. That would let just about any controversial issue avoid public scrutiny.

Roberti's amendment would tighten the loopholes by limiting closed attorney-client sessions to matters of litigation by or against government bodies. It would also extend the Brown Act to cover task forces conducting official business.

Opposition from cities to the Roberti amendment has dissipated, for the most part, leaving associations for county supervisors and water agencies about the only ones against the clarifying language.

The Legislature should pass the Roberti amendment, lest the attorney general's opinion make a mockery out of the state's open meetings law. It would significantly limit the ability of public bodies from invoking "lawyer-client privilege" as an excuse for taking sticky policy discussions out of the public eye.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Antelope Valley Press

Palmdale, CA

July 8, 1986

Editorial

Bill would slow erosion of state open meeting law

1462

There is a constant tug of war going on in Sacramento between government officials who want to be able to discuss the public's business behind closed doors and the people, who believe that government should conduct its business in public view.

Those of us who toil in the media are on the side of the public because we, too, believe that the government should be out in the open.

The Ralph M. Brown Act, also known as the Open Meeting law, has been on the books for many years, but it is under constant assault in the legislature and in the courts.

The essence of the Brown Act is contained in this brief paragraph:

"The act's cental mandate . . . is deceptively simple: 'All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting . . . except as otherwise provided. . .' "

From time to time, government officials try to sneak something through the "except as otherwise provided" loophole.

The County Supervisors Association and the League of Cities would like to use the loophole to make it possible for government bodies to discuss all sorts of things with their attorneys.

The problem is that once public officials get behind closed doors they can generally talk about anything and, inasmuch as they know they can get into trouble if it becomes known that they didn't stick to the letter of the law, they are unlikely to tell anyone outside the closed session what really was discussed.

Last week, the Governmental Organization Committee voted 9-0 for Senate Bill 2173, written by Senate President Pro Tem David Roberti, D-Los Angeles, which would carefully restrict closed sessions by government bodies wishing to confer with their attorneys.

The bill would also require government task forces to hold open meetings.

Last month, Roberti introduced his bill which would specify when a government body can go into closed session to confer with its attorney.

Attorney General John Van de Kamp recently said that a 1984 law allows bodies to hold closed sessions to obtain general advice from their attorneys because there is always the potential of litigation.

The Roberti bill would allow such closed sessions with attorneys only when a lawsuit or claim has been filed against the government body, the body believes it is likely to be sued, the body is considering filing a legal action, or the body is deciding whether a closed session is authorized.

Attorney General Van de Kamp's opinion would give government bodies a big key to lock the door at almost anytime they wished. In modern America every public and private institution is constantly facing the "potential of litigation."

On behalf of the state's citizens, who are ill-served when their government officials sneak behind closed doors to make decisions that should rightfully be made in public view, we wholeheartedly support Roberti's bill.

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A - 25b

The Desert Sun

Palm Springs, CA

Want privacy? Be private

JUL 11 1986

Most local public agencies would be pleased to discuss public business without the irritation of curious, sometimes critical onlookers.

By being elected to public office, normally humble individuals sometimes are suddenly made aware that only they are qualified to administer public money and public affairs.

The state associations of city and county and district officials consistently support legislation in Sacramento designed to evade provisions of the Ralph M. Brown Act, California's open meeting law. City council members, county supervisors, board members all are vulnerable to the fascination with secrecy.

And they are becoming increasingly more successful. Attorney General John Van de Kamp apparently is sympathetic to their aims. In recent opinions, he has indicated a more generous view of the exceptions allowed under the law in regard to meetings to discuss matters of potential litigation

Gov. Deukmejian, too, recently signed a bill approved by the Legislature which would allow district hospitals to meet behind closed doors to discuss certain issues. Lobbyists for the public institutions insisted that secrecy is essential to compete on even terms with private hospitals.

Even that wasn't enough for the Board of Directors at Desert Hospital in Palm Springs, however.They voted 3-2 to turn operation of the hospital over to a "private" non-profit corporation. That parent corporation, in turn, will oversee the proceedings of several other "private" corporations, one with the avowed intent to make a profit — in partnership if necessary with outside commercial entities.

According to the board majority, the "private" corporations can operate shielded from the prying eyes of the press and public, despite the fact that the hospital will remain a recipient of tax revenues and represents a public capital investment of some $80 million.

That point remains arguable. What is not arguable is the arrogance of the proclaimed majority opinion that the taxpayers just don't "understand" the intricacies of the board action.

Even the scheduled signing of the lease, turning over administration of the hospital to the private organization, was moved ahead — in secret, of course — to avoid anticipated legal moves by opponents of the privatization.

Now comes Ted Sprague, an Atlanta consultant, to advise the board of the Palm Springs Convention and Visitors Bureau that the CVB, too, should keep its activities out of the newspapers and off the airwaves in the name of competition. Under the consultant's proposal to separate the agency from city government, of course, the CVB still would operate on tax revenues.

Other of Sprague's suggestions and recommendations are worthy of comment, but we'll get to that another day after we get this little piece off our chest.

It may be true, indeed, that hospitals, the tourism industry and other agencies can be more efficient and perhaps profitable simply be conducting their business in secret.

Fine.

Then the hospital should be sold to a private firm at a fair price and the reimbursement placed in the tax kitty. The CVB, if it desires, can operate on assessments against its potential beneficiaries.

That's called free enterprise. Free enterprise pays taxes. Free enterprise does not collect taxes. Free enterprise is really private. Free enterprise can operate with doors locked and blinds drawn.

Tax-supported agencies cannot. The people who pay taxes should be getting angry. We are.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Friday, June 27, 1986
The Los Angeles Daily Journal

Press to Challenge A.G.'s V

By MARK VANDERVELDEN

SACAMENTO — Newspaper groups are organizing to head off a potential expansion of local government's right to meet behind closed doors with their attorneys.

In dispute are limits on the litigation exception in the Ralph M. Brown Open Meeting Act and the scope of the attorney-client privilege between local government officials and their legal counsel.

The controversy has put the California Newspaper Publishers Association sharply at odds with Attorney General John Van de Kamp, who recently said local government officials are free to discuss any matters in secret with their attorneys so long as the purpose is "the avoidance of litigation."

According to CNPA General Counsel Michael B. Dorais, the attorney general's informal interpretation of a 1984 law designed to spell out the precise circumstances in which the litigation exception applies, opens

State News

the door to widespread abuse and holds the potential to "gut" the open meeting law altogether.

But Van de Kamp, proud of his record of support for efforts to keep government actions in full public view, strongly denys he has any intention of diluting the public's right to scrutinize official behavior.

The focal point of this simmering political feud is the Brown Act, Government Code sections 54950-54961, enacted in 1953 to insure that, with few exceptions, all meetings of local government bodies are adequately publicized and open to full public participation.

Those exceptions originally included discussions of personnel matters, national and public security issues, labor negotiations, and license applications by persons with criminal records. In 1984, the Legislature added two more exceptions — authorizing closed session to discuss real estate transactions and "pending litigation."

Key Sacramento Case

Although the Brown Act did not explicitly create a "pending litigation" exception, city attorneys and county counsel often implicity relied on a portion of the Evidence Code (sections 950-962) that allows private, secret meetings between attorneys and their clients.

Sixteen years ago, in *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal.App.2d 41, a state court of appeal held that there was indeed a lawyer-client exception to the Brown Act contained in the Evidence Code that also applied to local government.

But the court added, "Public Board members, sworn to uphold the law, may not arbitrarily or unnecessarily inflate confidentiality for the purposes of deflating the spread of the public meeting law. Neither the attorney's presence nor the happenstance of some kind of lawsuit may serve as the pretext for secret consultations whose revelation will not injure the public interest."

Still, newspaper reporters and local officials continued to do battle over what could and what could not legally be discussed behind closed doors. By 1984, press reports of local government officials meeting in secret "study sessions" with their lawyers to decide public business unrelated to litigation began to surface with increasing frequency.

It became clear to Benicia Democrat Sen. Barry Keene, at least, that the absence of an explicit statutory litigation-exception constituted "the most abusive loophole in the Brown Act. The notion that you can hold hands with counsel and decide public business out of public view is wrong."

In response, Keene authored SB 2216, which in addition to creating the real estate transaction exception, attempted to set strict rules for secret meetings between local government officials and their attorneys.

Limit on Secrecy

Under Keene's legislation, those secret meetings could only be held to discuss an existing case where the governing body is a party, situations where the facts at hand are so threatening as to pose "significant exposure" to a suit against the agency, or an instance where the agency itself is making plans to sue another party.

Moreover, the governing body in question would be required to issue a memorandum clearly stating the reasons why it went behind closed doors.

What Keene, the publishers, and the California League of Cities thought they had hammered out was a codification of prior case law and a narrowing of the scope of the local government attorney-client privilege to but a handful of circumstance.

According to CNPA counsel Dorais, "We wanted to make it clear that the Brown Act does not permit secrecy in other situations where private clients and attorneys enjoy confidentiality. For example, routine advice on client rights, contract responsibilites and liabilities, real property matters, employment, and so on."

But not long after SB 2216 took effect in 1985, the Justice Department issued a new edition of its "Open Meeting Laws" booklet, a summary of pertinent Brown Act court cases and attorney general opinions. The publication is used widely by reporters and local officials alike as a guide to the law about public meetings.

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A - 27b

'iew of Open Meetings Law

In interpreting SB 2216, the attorney general said, "It is unclear whether this legislation stands as an augmentation to the court-created attorney-client privilege or whether it represents the exclusive authority under which closed sessions may be conducted."

Keene, whose objective in carrying SB 2216 in the first place was to nail down the question of "exclusive authority," objected to the booklet's wording. In December, Keene sent a letter of protest to Van de Kamp asking him to change his interpretation in the next edition of the handbook.

In his reply to Keene, Van de Kamp seemed to go beyond the interpretation in the "Open Meeting Laws" booklet, declaring that local governments are free to discuss in closed session any matter with its attorneys so long as the purpose is "the avoidance of litigation."

Newspapers sharply object to the view that local officials may discuss anything secretly if its purpose is to avoid litigation.

"Examples of the type of issues which may not qualify as pending litigation," Van de Kamp wrote Keene, "but which legitimately fall under the implicit attorney-client privilege and should, in our opinion, be handled in closed session include:

"1) Advising a client that the proposed action may be illegal or unconstitutional.

"2) Advising a client that a proposed action poses legal difficulties but there are less problematical alternatives.

"3) Advising a client about matters which may indirectly impact upon pending litigation." Van de Kamp went on to say that, in his opinion, SB 2216 did not make clear Keene's intention to restrict attorney-client discussion to "pending litigation" rather than the "avoidance of litigation."

"Since the legislative history materials do not discuss the avoidance-of-litigation aspect of the privilege, we think the legislation has supplanted the pending litigation aspect of the implicit privilege but did not abrogate the avoidance of litigation aspect of the privilege," Van de Kamp told Keene.

Although Van de Kamp's letter to Keene does not carry the full force and effect of a formal attorney general's opinion, CNPA's Dorais says he is convinced that, if asked to render such an opinion, Van de Kamp's views would be identical to those expressed in the Keene correspondence.

"Not necessarily," says Van de Kamp. "We are not taking a policy position in those letters. We can only do that after we have gone through the opinion process, which is very involved and exhaustive."

Preemptive Strike

Unconvinced, Dorais and the CNPA have launched a preemptive strike, hoping to win legislative changes before a formal opinion can be issued. "Potentially, if the new Van de Kamp exception goes unchallenged, it would effectively destroy the Brown Act if local governments took advantage of it," warns Dorais. "The public will never know about abusive practices," he said.

Van de Kamp says it can be hard striking a balance between the need for open government, on the one hand, and government's legitimateom time to time, to operate out of public view.

"At a time when local governments are increasingly at risk for litigation, there has to be an opportunity for private consultations. I don't like secret policy session any more than Mike Dorais does," the attorney general said. "But often a case at hand can be averted if local officials can discuss sensitive matters in private."

On May 17, the newspaper publishers voted to make the litigation-exception issue their top legislative priority for this year. Working with Sen. David Roberti, D-Hollywood, the CNPA has drafted amendments to strictly limit secret attorney-client sessions to the discussion of pending litigation. "Pending litigation" will continue to mean legal matters at hand, rather than issues that might constitute the "avoidance of litigation."

Van de Kamp Puzzled

According to Dorais, those amendments will be introduced when SB 2173, a measure that would extend the Keene-Bagley Act to task forces and commissions appointed by the governor, reaches the Assembly.

Meanwhile, Van de Kamp insists he is sympathetic to the concerns raised by the newspaper publishers. "This office has consistently been pro-press," he says. "We have offered the publishers our own draft amendments, but we have never heard back from them. I don't know what they're thinking on this is now. I'm hopeful we can work something out with the publishers. But I don't know if we can work out something that will be in total agreement with what the press wants."

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A - 28b

Greenville, CA
(Plumas Co.)
Indian Valley Record
(Cir. W. 1,243)

JUN 18 1986

Allen's P. C. B Est. 1888

Bylines

by Ev Bey

1460

The pamphlet we give our reporters on California's open-meeting laws contains this little passage about the Ralph M. Brown Act:

"The Act's central mandate...is deceptively simple: All meetings of the legislative body of a local agency shall be open and public, all persons shall be permitted to attend any meeting..."

In an effort to educate the Board of Supervisors, school boards, city councils and other elected officials of various local districts, we have also provided them with copies of the pamphlet.

¶¶¶

We feel strongly that the public has a right to not only know what happens in their public agencies, but also the background that goes into those actions.

¶¶¶

There are three instances when a closed executive session may be legally held--with proper notice, and subsequent action being taken in public; when national security is involved; litigation, allowing private consultation with an attorney to discuss an existing case, to discuss "significant exposure" to a lawsuit, or to discuss filing a lawsuit; and personnel hiring and firing. In all such instances, action must subsequently be taken in public.

¶¶¶

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¶¶¶

It was established long ago that the appointment of a public official (not an employee) must be considered in public.

¶¶¶

Obviously, the County Counsel does not know the Brown Act or ignored it to allow the Board of Supervisors to meet secretly last week in considering the appointment of a fifth director for the Quincy Sanitary District. The matter came to the County Board after four Sanitary District directors were stymied by a 2-2 tie vote.

¶¶¶

To compound the open meeting violation, the Supervisors voted secretly to appoint Al Rice to the vacancy (3-to-1, John Schramel "No", Bill Coates absent).

¶¶¶

There has been erosion of California's once-model open-meetings law for a long time and right now it is under a threat which could all but void the intent of the act. And the man who is making that threat is the state's No. 1 law enforcement officer, Attorney General John Van de Kamp, who was elected in 1982 amid statements of undying adherence to the principle of open meetings.

Now, Van de Kamp is interpreting the Brown Act to permit a closed session whenever there is a discussion with an attorney... for the purpose of avoiding litigation. This is a very different matter. If a government agency may invoke attorney-client confidentiality at any time simply because it perceives the possibility of future litigation, then open meetings in California are headed for extinction.

If Supervisors want to rezone land for commercial use, there's always a threat of litigation by residential homeowners. May they then rezone in secret?

¶¶¶

The same can be said for practically every item on a Supervisors' or City Council's agenda... through innovative intent, an entire meeting could be conducted behind closed doors.

¶¶¶

Stanley Mosk, a former attorney general of consequence, wrote an opinion back in 1960, which said, in part:

"City councils are engaged regularly in deliberating or acting upon ordinances and regulations, where the legal implications of the subject matter are as important for a proper decision as factual or any other information in order to form an intelligent and proper decision. Thus a city attorney may be called upon to explain the legality of a proposal before the council. In such instances the public has a right to know all of this in order to assure that the representatives are acting in what it considers to be the public good. It is the sense of the Brown Act that such types of meetings be open to the public."

There is no room for secrecy in government at any level.

—Bye for now.

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A - 30b

Stockton, CA
(San Joaquin Co.)
Record
(Cir. D. 52,135)
(Cir. Sat. 51,407)
(Cir. S. 54,781)

JUL 7 - 1986

Allen's P. C. B. Est. 1888

Newspapers, Van de Kamp clash on bill

From staff and wire reports

SACRAMENTO — A newspaper group is butting heads with the state attorney general and local government organizations over a proposal to limit the ability of city and county officials to hold closed meetings.

California's open meeting laws, primarily the Brown Act, require the public's business to be conducted in public, but allow local officials to meet in private to discuss two subjects: personnel matters and litigation.

The disagreement centers on what kind of limits there should be on the right of city councils and other governing bodies to meet privately with their attorneys to discuss matters that might involve potential litigation.

VAN DE KAMP: Focus of dispute

At issue is a bill sponsored by Sen. David Roberti, D-Beverly Hills, that sets out conditions under which local governments can consult with their lawyers out of view of the public.

Mike Dorais, general counsel of the California Newspapers Publishers Association, said if the bill passes it will fend off an attack on the state's open meeting law by Attorney General John Van de Kamp.

(Please see MEETINGS, Page B-4)

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Meetings

(Continued from Page B-1)

But Van de Kamp argues that what Dorais perceives as an attack is merely the correct interpretation of the law.

Van de Kamp said he supports Roberti's bill because it could clarify and improve the open meeting law, but he wants an amendment that Dorais says would "gut" the bill.

He has proposed amendments that would allow public bodies "to consult in executive session for the purpose of avoiding litigation."

Philip Bookman, executive editor of The Stockton Record and chairman of the California Freedom of Information Committee, called Van de Kamp's proposal a "smoke screen."

"The attorney general is spreading a smoke screen," Bookman said. "His proposal would further inhibit the Brown Act."

Stockton Mayor Barbara Fass said she also is opposed to Van de Kamp's proposal.

"That would essentially gut the Brown Act," she said. "I think any clever attorney can argue that almost anything can be for the purpose of avoiding litigation."

City Council member Jack Clayton also opposed Van de Kamp's idea.

"I don't feel that's right," he said. "I think executive sessions are for litigation. If you do public business, you do public business in public."

But other local government officials say they may face more lawsuits in the future unless Van de Kamp's amendments are put into the bill.

"Taxpayers deserve a well-informed government," said Mark Wasser, general counsel for the County Supervisors Association of California.

"It (the bill) does not address the need to advise and just consult with" attorneys, he added.

The dispute started with publication of a booklet last year by Van de Kamp's office on the open meeting law which drew protests from state Sen. Barry Keene, D-Eureka.

He contended that Van de Kamp's interpretation placed too few restrictions on governmental bodies' ability to hold closed sessions with their lawyers, eroding the effect of a 1984 law designed to spell out limitations.

Keene demanded changes, and Van de Kamp responded with an interpretation that Dorais contends would provide even fewer restrictions.

It spelled out conditions under which closed sessions could be called, including the need for "advising a client that proposed action may be illegal or unconstitutional."

"Ever see an agenda item that that didn't cover?" said Dorais. "It looked to me that he was destroying the open meeting law."

Fearing an official attorney general's opinion in the future "that would grieve us mightily," the newspaper association asked Roberti to add language to a bill that would restate the law, Dorais said.

It says there are four circumstances under which local governments could hold closed sessions with lawyers: When the organization is being sued or is suing, when there is "significant exposure to litigation," when the organization is considering a suit, and to decide if there is a "significant exposure to litigation" that would authorize a closed session with a lawyer.

1462

Van de Kamp contends, however, that "significant exposure to litigation" is too vague.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Santa Cruz Sentinel
July 20, 1986

Opinion

Protecting open meeting laws

ONE OF THE best things this nation has going for it is the right to know not only what a public body decides, but why and how it made a particular conclusion.

California didn't pass the first open meeting law, but it approved one of the best in the land in the Brown Act that specifies "meetings of the legislative body," in particular local governments, be open to the public.

That was further bolstered a few years ago with passage of Sen. Barry Keene's SB 2216 that targeted state agencies to follow open meeting standards.

Pending before the Assembly Ways and Means Committee when the California Legislature returns for business Aug. 11, is SB 2173 by Senate Majority Leader David Roberti, D-Los Angeles. It should be passed, with the important amendment, "Except as otherwise permitted by this section, the lawyer-client privilege shall not be used as the basis for a closed session..."

In the interest of the public's right to know, the amended SB 2173 deserves support, lest the public lose its ability to know what actions were taken — and why — by city councils, boards of supervisors, commissions, task forces, etc.

Some local governing bodies are against the amendment to SB 2173, and they were assisted by California Attorney General John Van de Camp's proposal to close sessions in which elected/appointed officials discussed the "potential" for litigation. Such an all-purpose attorney-client loophole would open the gates for local officeholders closing the doors before talking over anything remotely connected to legal action.

Van de Camp, who is running for re-election, has since issued some "clarifying amendments" on his thoughts, but they haven't clarified his position to a point of satisfying press organizations that he isn't still pushing for potential increased secrecy.

One thing is clear: SB 2173 needs be passed as amended to guarantee the public's right to know what its elected officials are doing, and why.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Bakersfield Californian
July 18, 1986

Discuss it in public

1462

The Ralph M. Brown Act has been the subject of editorial commentary many times in this space — and once more, the reader's indulgence is begged.

Newspapers happen to be the front-line soldiers in most battles over the right to know, but it is the public interest that's ultimately at stake. The following attention to detail is provided to demonstrate that the state's open meeting law is rather easily abused, and to request that the practice stop.

In this case, we are respectfully asking City Council to conduct a public discussion of reasons why it hired IT Corp. for $20,000 to conduct tests for possible contaminants at the Bakersfield Airpark.

On July 9, the council met for one hour in "closed session" pursuant to government code section 54965.9, the Brown Act. At the conclusion of the closed session, the council voted — without public discussion — to transfer $20,600 from the general fund contingency to the airpark fund for the purpose of conducting a contaminant investigation.

Agreed, the Brown Act allows the council to meet in closed session to discuss pending or potential litigation. But that section also requires the council to state, prior to going into closed session, "the title of or otherwise specifically identify the litigation to be discussed." Since this wasn't done, we are left to assume that the closed session dealt with "potential litigation."

The Brown Act allows the council to discuss potential litigation where "there is a significant exposure to litigation against the local agency," or if the local agency's legislative body is deciding to initiate litigation.

In the case of potential litigation, the same government code section requires that a confidential memorandum be prepared and "shall include existing facts and circumstances on which it (the closed session) is based."

A copy of the confidential memorandum dated July 9 and prepared by City Attorney Richard Oberholzer does not describe any facts or circumstances to justify a closed session. It does not describe what facts exist to justify a closed session. It does not describe what facts exist that expose the city to liability or potential litigation — nor whether the city should decide to initiate litigation.

Clearly, the memorandum discusses only the work proposed by IT Corp. for soil tests and whether the council should wait until other tests are completed.

This is not a proper discussion for a closed meeting under the guise of "potential litigation." On the contrary, this is a discussion more appropriately held in public, particularly since it involves such an important public health issue as toxic chemical wastes.

We're formally asking the City Council to conduct a public discussion of this entire issue, including the hiring of IT Corp. to conduct soil tests, as well as any other alternative considered by the city to address potential soil and groundwater contamination at the airpark.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Tracy Press
July 14, 1986

EDITORIAL

Public meetings: a new threat

PI 1462

Provisions of SB 2173, a bill authored by state Senate President David Roberti, would provide guarantees that public meetings couldn't be closed for vague and imprecise reasons. But those guarantees are under fire in the state Assembly.

Roberti's bill has moved out of committee onto the Assembly floor, where representatives of a number of public agencies throughout the state hope to remove language that would prohibit closing of public meetings in order for the elected officials to discuss with their legal counsel any issue as long as the purpose is "the avoidance of litigation." Those are the words used by Attorney General John Van de Kamp in an informal, but potentially far-reaching opinion, that would allow public meetings to be closed because of any "potential" for litigation.

In today's litigious society, nearly every public policy or program involves this potential. On advice of their counsels, based on Van de Kamp's opinion, many elected officials, who otherwise would want open discussiond of issues at hand, would be forced to close the meetings "to be on the safe side."

To counteract Van de Kamp's opinion and the potential for abuse that it presents, Roberti has included language in his bill that would be added to both the Brown Act, which governs meetings of local agencies, and the Bagley-Keene Act, which applies to state bodies. The key words: "Except as otherwise permitted by this section, the lawyer-client privilege shall not be used as the basis for closed session." An exception to these words already exists: where an existing case, or one concretely feared or planned by an agency, requires consultation with the agency's lawyers, the meeting can be closed.

Roberti's bill, which permits lawyer-client closed meetings only under these defined circumstances, should be passed to prohibit wholesale decimation of the parameters established by this language. Otherwise, the degree of openess in public meetings in California could be seriously eroded. SHM

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Marin Independent Journal
San Rafael
July 15, 1986

State needs clear meeting rules

1467

ATTORNEY GENERAL John Van de Kamp says he just wants to make it easier for local government to talk about potential lawsuits behind closed doors.

But his regulations on when executive sessions are proper spell bad news for Californians who care about what their government does.

The attorney general has issued guidelines saying it's all right for officials to meet secretly to talk about matters that could lead to litigation. That includes almost any agenda item these days.

The California Newspaper Publishers Association responded by asking Sen. David Roberti, D-Beverly Hills, to introduce legislation defining when goverment could meet in private with lawyers. Chiefly, these sessions could take place if there is an actual suit or "significant exposure to litigation."

Van de Kamp opposes the bill in its present form.

Most local officials don't mind conducting public business in public, but a few would use Van de Kamp's guidelines to avoid public scrutiny. That is why Roberti's bill, which has passed the state Senate, should be adopted by the Assembly and signed by the governor. ■

LEGISLATIVE INTENT SERVICE (800) 666-1917

A - 36b

West County Times
July 16, 1986

Open meetings law needs help

1462

The Legislature should take action to protect the state's open meeting requirements when lawmakers return from their summer recess. If a suggestion by Attorney General John Van de Kamp becomes the basis for resolving secrecy issues, the public's ability to keep tabs on public agencies and officials will be significantly impaired.

California's landmark Ralph M. Brown Act prohibits city councils, school boards and other elected bodies from meeting in secret except under carefully delineated circumstances. These include sessions to discuss pending litigation, sensitive personnel matters and labor negotiations.

The purpose of making closed meetings the exception and openness the rule is twofold: to ensure the public is privy to governmental actions (often through the intermediary of the press) and that citizens have opportunities to participate in and influence their governance.

Van de Kamp, the state's highest law enforcement officer, has regrettably suggested that public bodies may shut their doors and discuss matters outside of the earshot of the public to avoid potential as well as pending litigation. If this interpretation prevails, it would allow public officials to take nearly any matter out of the public domain on the theory that it might be the subject of litigation in the future.

Senate President David Roberti has amended his Senate Bill 2173 to significantly limit the ability of public bodies to invoke "lawyer-client privilege" as an excuse for taking sticky policy discussions out of the public eye.

SB2173 would restrict this privilege to those occasions in which there is an existing court case under way; the public body in question has plans to sue someone; or there is a set of facts so threatening as to pose a signficant risk of a suit against the body. The bill would also extend "sunshine" requirements to government task forces conducting official business.

Sen. Roberti's measure would firm up language in open meetings legislation sponsored two years ago by Sen. Barry Keene, D-Benicia, and override any opinion issued by the attorney general. It deserves approval. The public's business should be conducted in public. As either taxpayers or voters, citizens have a right to know about the actions of their government.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Union Democrat, Sonora
July 15, 1986

More doors close on the public

California Atty. Gen. John Van de Kamp, who spent part of the past spring trying to protect opportunities of people who file suits (Proposition 51), is now opening new opportunities for public officials who want to hold secret meetings.

Under California's venerable Brown Act, public agencies — city councils, county boards of supervisors, school boards, water district boards, etc. — must work in full public view. The only exceptions the law allows are discussions of personnel matters and pending lawsuits, where it is clear that the public's interest is in fact best served by keeping the doors closed.

Most citizens take the open meeting requirement for granted, and with good reason. These agencies are conducting the public's business. The public has every right to see and hear what's going on.

Atty. Gen. Van de Kamp is an exception. He says public agencies can meet in secret to talk about any legal advice, any legal issue or even the threat of some legal matter.

It's hard to imagine what Van de Kamp's rules could possibly exclude. Almost everything — development, zoning, financing, condemnation, planning — could raise a legal question or the threat of one. And there's only too much evidence out there that many people are ready to sue at the hint of an opportunity.

The effect of Van de Kamp's interpretation, then, is to allow public agencies closed meetings whenever they wish. Unbelievably, that position has the financial support of the taxpayers. Not with their consent, of course. It's simply another flagrant use of public funds to defeat the public interest.

Senator David Roberti has introduced legislation (SB2173) that spells out specifically when it is in the public interest for local agencies to discuss sensitive matters privately. But Roberti's bill is being opposed by the League of California Cities and the County Supervisors Association of California, which are supported with dues paid from city and country treasuries.

In short, Van de Kamp has shot down the open meeting law. City and county office holders have instructed their Sacramento troops to make sure that it never gets up again.

The public's best hope is that the Legislaure will pass Roberti's bill anyway.

— hcm

LEGISLATIVE INTENT SERVICE (800) 666-1917

A - 38b

Orange County Register, Santa Ana
July 16, 1986

Keeping the doors open

1462

California has one of the most effective laws in the nation mandating that meetings of government policy-making bodies be open to the public. But that law, the Ralph M. Brown Open Meeting Act of 1953, is now under attack, by none other than Attorney General John Van de Kamp.

Van de Kamp insists that he is one of the strongest advocates anywhere of keeping government activities in full public view. But apparently this statement is to be taken in the same spirit that we take Ronald Reagan's declarations of devotion to reducing taxes, reducing the deficit, abolishing the Departments of Energy and Education, and getting government off our backs.

In a recent letter to Sen. Barry Keene of Benicia, Van de Kamp opined that the doctrine of attorney-client privilege in sections 950-962 of the Evidence Code allows local policy-making government bodies to hold more closed door meetings than they now do, if their attorney — the local city attorney, for example — is present and they are discussing "legal or constitutional" issues. This opinion, having been expressed informally, does not have the force of law. But all Van de Kamp would have to do is publish it, and it would have the force of law.

The result would be that local government bodies could, in the words of Sen. Keene, "hold hands with counsel and decide public business out of public view." They could decide virtually anything out of public view under Van de Kamp's interpretation, since nothing local policy-making bodies do does not involve legal or constitutional issues.

Of course, it would be better for all of us if such government bodies never met at all. It would be better still if they didn't exist.

But given that they do exist, since they and their activities — including their meetings — are paid for with money extorted from taxpayers, taxpayers should be permitted to see first-hand how their stolen money is being squandered. A bill pending in the Assembly, SB 2173, is designed to head Van de Kamp's dangerous opinion off at the pass and keep meetings of policy-making entities at least as open as they now are.

As a lesser of evils, the bill, authored by Hollywood Sen. David Roberti, deserves support. But it does not go far enough. The original Brown Act permitted closed-door sessions when personnel matters, national and public security issues, labor negotiations, and license applications by individuals with criminal records were under discussion. But it is difficult to see why these matters are none of the taxpayers' business. The taxpayers are paying the bills. They should be allowed to attend all meetings of public agencies and see what is being done in their names.

(800) 666-1917 LEGISLATIVE INTENT SERVICE

A - 39b

North Lake Tahoe Bonanza
July 2, 1986

1962 **As Others See It**

Amendment would help to keep meetings open

When the anti-secrecy law known as the Brown Act was passed, it did much to open up meetings of local governmental agencies in California to proper public scrutiny. There are always loopholes, however. And these entities can use them to find a seemingly legitimate basis for playing their cards very close to the chest.

So it is encouraging to see that state senator David Roberti, D-L.A., president pro tem of the State Senate, has amended a measure he is carrying, SB2173, to lay to rest an issue raised by State Attorney General John Van de Kamp. Van de Kamp had suggested in a letter to a legislator that these agencies could hold closed sessions to obtain general advice on the legality of proposed actions. The talks could fall within the attorney-client privilege.

But the California Newspaper Publishers Association has raised the valid point that such a situation will create a massive loophole in the open meeting laws. For the reality is that few if any government actions are not the subject for potential litigation.

There are also a growing number of "task forces" and "advisory committees" operating around the state these days. They should not be allowed to avoid public scrutiny by scuttling behind this potential cloak.

Senator Roberti's amendment will apply both to the Brown Act on local entities and the Bagley-Keene law covering state ones. It deserves approval by the Assembly Government Organization committee, which will be hearing it this week, and eventual enactment into law.

San Francisco Chronicle
June 30, 1986

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A - 40b

25¢

Gateway To The Monticello Dam

Winters Express

Volume 103 Winters, Yolo County, California, Thursday, July 17, 1986 Number 24

A QUICK OPINION

by Charles Wallace

Closed meeting law

I was at a commission meeting last week when a person in the audience asked to speak to the commission members privately in closed session after the meeting was over. Closed session is where the press and the public are not allowed to be in the room. When asked what he wanted to talk about, he said he had some development plans and would like to get an idea about how the commissioners felt. I brought up the California Brown Act that limits what can be discussed in closed session, and private talks aren't listed. He was told by the city attorney to talk to each commissioner privately, but that they couldn't talk to each other about the project until it came before them in an open meeting.

The Brown Act is a great piece of legislation. It stops government from conducting business behind closed doors. Recently Attorney General Van de Kamp ruled that government officials are free to discuss any matters in secret with their attorneys so long as the purpose is "the avoidance of litigation." People sue over everything these days and the avoidance of litigation is too broad. The present reading of the Brown Act exempts "pending litigation." If the city is sued and they have to talk to their attorney about the suit, they should have the right to talk privately without the suing party listening in.

The City of Winters used "the avoidance of litigation" to close the doors when John Atherton wanted something done about the noise levels emanating from Mariani Nut Co. The public announcement was that it was not the city's problem. How did they come to that conclusion and how did they vote? No one knows because it was in closed session.

Winters has a lot of rezoning and annexation going on right now. I for one like to know what's going on and listen to the discussion that take place. Fees, land use, garbage rates, everything that the city does affects all of us. Let's not be left out in the hallway.

Senator David Roberti has a bill, SB 2173, that would keep meetings open unless there is pending litigation. If you are a letter writer or phone caller, write or call your favorite politician and tell him that you want your government to be opened to public scrutiny, not put back into smoke filled rooms.

LEGISLATIVE INTENT SERVICE (800) 666-1917

A - 41b

Friday, July 18, 1986

PROGRESS BULLETIN Opinion

A measure to help keep doors open

It shouldn't have to be this way, but the public seems to need solid legal guarantees to be able to sit in on deliberations by local government. Since 1953, California's Brown Act has served that purpose well. The 33-year-old law requires local governing bodies — whether a city council, school board, water board or parks commission — to hold open meetings except when considering certain specified items — personnel matters and labor negotiations, for instance.

Now comes the need for another guarantee of public access to local agency meetings, this time against a threat posed by, of all people, state Attorney General John Van de Kamp. His preliminary interpretation of a 1984 law supplementing the Brown Act would seem to give local governing bodies carte blanche to slam the door on their constituent audiences.

Van de Kamp says the 1984 legislation by Sen. Barry Keene, D-Benicia, allows local agencies to hold closed meetings simply to discuss "the avoidance of litigation." That's not what Keene intended then, and that's not what the Legislature should want now. His 1984 bill meant to put strict limits on occasions that agencies could meet in secret over pending litigation.

At the urging of the California Newspaper Publishers Association, the state Senate approved SB 2173 by Sen. David Roberti, D-Los Angeles, a measure that closes the loopholes perceived by Van de Kamp. It clarifies the strict limits on litigation discussion allowable in closed meetings. The Assembly is due to take up the Roberti bill when it reconvenes next month.

"Avoidance of litigation," which Van de Kamp now says is sufficient reason for a secret meeting, gives local agencies a whole new, seemingly limitless basis on which to schedule closed meetings. The Assembly should do its part toward correcting that unintended interpretation. It should follow the Senate's lead and approve the Roberti bill. Such action would be an important step toward keeping the public informed on the proceedings of local government.

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San Francisco Chronicle
THE VOICE OF THE WEST

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EDITORIALS

June 30, 1986

The Public Has A Right to Know

WHEN THE ANTI-SECRECY law known as the Brown Act was passed, it did much to open up meetings of local governmental agencies in California to proper public scrutiny. There are always loopholes, however. And these entities can use them to find a seemingly legitimate basis for playing their cards very close to the chest.

So it is encouraging to see that state Senator David Roberti, D-L.A., president pro tem of the state Senate, has amended a measure he is carrying, SB2173, to lay to rest an issue raised by State Attorney General John Van de Kamp. Van de Kamp had suggested in a letter to a legislator that these agencies could hold closed sessions to obtain general advice on the legality of proposed actions. The talks could fall within the attorney-client privilege.

But the California Newspaper Publishers Association has raised the valid point that such a situation will create a massive loophole in the open meeting laws. For the reality is that few if any government actions are not the subject for potential litigation.

THERE ARE ALSO a growing number of "task forces" and "advisory committees" operating around the state these days. They should not be allowed to avoid public scrutiny by scuttling behind this potential cloak.

Senator Roberti's amendment will apply both to the Brown Act on local entities and the Bagley-Keene law covering state ones. It deserves approval by the Assembly Government Organization committee, which will be hearing it tomorrow, and eventual enactment into law.

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LOS ANGELES TIMES

July 1, 1986

Protection for the Public

California's Brown Act requires city councils, school boards, county boards of supervisors, water districts and other agencies to meet in public. Secret meetings are permitted only on sensitive subjects like personnel matters and lawsuits.

SB 2173, sponsored by Sen. David Roberti (D-Los Angeles), further clarifies the limited circumstances under which a public board can use lawyer-client protections to close a meeting. The bill, scheduled today before the Assembly Committee on Governmental Organization, deserves approval in order to protect the public debate.

Closing public meetings to discuss legal matters was a common excuse given before a 1984 law, shepherded through the California Legislature, by Sen. Barry Keene (D-Benicia). Under that law, boards and councils can go into executive session to plan legal action, contemplate the filing of a suit or discuss a significant risk of litigation.

A broad interpretation, by California Atty. Gen. John K. Van de Kamp, however, could allow agencies to discuss in secret any legal advice, any legal question, any mere threat of court action—a common and crippling occurence in today's overly litigious climate. Under that interpretation, any policy matter—particularly any controversial issue such as a rezoning change in which residents threatened to sue or any environmental decision that could prompt court action—could avoid public scrutiny.

SB 2173 would clarify the guidelines protecting the public's right to information. The bill also would extend the protection of the Brown Act to cover task forces conducting official business—another guarantee that the public would know more, not less. Approval is in the public's interest.

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Redwood City, CA
(San Mateo Co.)
Redwood City Almanac
(Clr. W. 34,000)

JUN 25 1986

Allen's P. C. B Est. 1888

IN OUR OPINION

Attorney General seems ready to gut open meeting law

1462

THERE DOESN'T SEEM any let up in the continuing effort to erode the state's Brown Act which forces governmental bodies to open their proceedings to the public.

Attorney General John Van de Kamp, recently made points with the trial lawyers by going on TV to describe the horrors of Prop. 51 (the public didn't buy his line). Now, he's trying to make points with city attorneys who would love to be able to advise their public agency "clients" to do anything they want under the guise of "attorney-client" privilege. The attorney general issued an informal opinion which shreds the protection the law now gives.

The Van de Kamp wisdom holds that local agencies are free to hold meetings in private provided their legal advisors are present for discussion of items potentially the subject of litigation.

In the past citizens of Menlo Park periodically found themselves locked out of council deliberations because of just such advice from the city attorney. The Van de Kamp advisory would practically make such action the rule rather than the exception.

A pending bill (AB2674) by Assemblyman Lloyd Connally would allow courts to invalidate actions taken in secret (rather than simply let the council agree that they won't do it again). Also, Senator David Roberti is carrying a bill (SB2173) to reverse what the attorney general is saying and strengthen the Brown Act's provisos against closed meetings. We would urge our readers to let their lawmakers and the governor know that both bills need to become law.

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A - 45b

Hayward, CA
(Alameda Co.)
Review
(Cir. D. 44,335)
(Cir. S. 44,434)

JUL 1 - 1986

Allen's P. C. B Est. 1888

Editorial

1462

Open meeting law endangered

STATE ATTORNEY General John Van de Kamp has a strange way of demonstrating the undying allegiance to open meeting laws he professed during his 1982 election campaign.

Van de Kamp now offers an opinion that threatens to weaken the state's major open meeting law beyond belief. The law, known as the Ralph M. Brown Act, ensures that government bodies conduct most business in a public forum, and restricts sessions that can be held behind closed doors.

But the attorney general, in a letter to a legislator, offered an opinion that would enable elected officials to virtually close every meeting whenever they wanted to confer in private with their attorneys. He stated that government agencies could meet in closed session to discuss *potential* litigation under the attorney-client privilege.

That's a ridiculous stance, one that threatens to make government secrecy the order of the day in California if Van de Kamp ever presents his position in a formal opinion.

Fortunately, state Sen. David Roberti, D-Los Angeles, has agreed to amend legislation he is carrying that will head Van de Kamp off at the pass. The amendment to SB 2173, requested by the California Newspaper Publishers Association, will stipulate that government agencies can meet in closed sessions with their attorneys only when discussing *existing* or *threatened* litigation.

Originally, SB 2173 restricted closed-door meetings between government bodies and their attorneys to litigation-related matters. Van de Kamp's position, however, indicated that such legal matters include discussion of government actions that could lead to litigation. Such a broad interpretation threatens to destroy the Brown Act, because most government actions carry the potential for legal action.

THE NEED for Roberti's amendment is obvious, since Van de Kamp's opinion could prove irresistible to government officials who might prefer to discuss certain public business in private. Such a tempting loophole should be closed immediately.

California must remain a state where citizens can freely monitor the activities of their elected or appointed local and state representatives who conduct the public's business and handle their hard-earned tax dollars.

Sen. Roberti's amendment will ensure that happens, making its passage by the Legislature a top priority.

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San Rafael, CA
(Marin Co.)
Marin Independent
Journal
(Cir. 6xW. 38,807)

JUL 10 1986

Allen's P. C. B Est. 1888

830

Open-meeting law reaching crucial legislative test

By Greg Campbell
Gannett News Service

SACRAMENTO — A newspaper group is butting heads with the ~~state attorney general~~ and local government organizations over a proposal to limit the ability of city and county officials to hold closed meetings.

California's open meeting laws require the public's business to be conducted in public, but allow local officials to meet in private to discuss two subjects: personnel matters and litigation.

The disagreement centers on what kind of limits there should be on the right of city councils and other governing bodies to meet privately with their attorneys to discuss matters that might involve potential litigation.

At issue is a bill sponsored by Sen. David Roberti, D-Beverly Hills, that sets out conditions under which local governments can consult with their lawyers out of view of the public.

Mike Dorais, general counsel of the California Newspapers Publishers Association, said if the bill passes it will fend off an attack on [illegible] attorney general.

But Attorney General John Van de Kamp argues that what Dorais perceives as an attack is merely the correct interpretation of the law.

Van de Kamp said he supports the bill because it could clarify and improve the open meeting law, but he wants an amendment that Dorais says would "gut" the bill.

It all started with publication of a booklet last year by the attorney general's office on the open meeting law which drew protests from state Sen. Barry Keene, D-Eureka.

He contended that Van de Kamp's interpretation placed too few restrictions on governmental bodies' ability to hold closed sessions with their lawyers, eroding the effect of a 1984 law designed to spell out limitations.

Keene demanded changes, and Van de Kamp responded with an interpretation that Dorais contends would provide even fewer restrictions.

It spelled out conditions under which closed sessions could be called, including the need for "advising a client that proposed action may be illegal or unconstitutional."

"Ever see an agenda item that [illegible] looked to me that he was destroying the open meeting law."

Fearing an official attorney general's opinion in the future "that would grieve us mightily," the newspaper association asked Roberti to add language to a bill that would restate the law, Dorais said.

It says there are four circumstances under which local governments could hold closed sessions with lawyers: When the organization is being sued or is suing, when there is "significant exposure to litigation," when the organization is considering a suit, and to decide if there is a "significant exposure to litigation" that would authorize a closed session with a lawyer.

Van de Kamp contends that "significant exposure to litigation" is too vague.

"Those involved in public meetings should have a reasonably clear road map as to what the ground rules for the exercise of the attorney-client privilege should be," he said.

He has proposed amendments that would allow public bodies "to consult in executive session for the purpose of avoiding litigation."

That and other amendments Van de Kamp is seeking don't set well with Dorais.

"This definition just makes 'significant exposure' worse," he said.

If the bill passes, it will have staved off an attempt to gut the state's open meeting law, said Dorais.

But local government officials say they may face more lawsuits in the future unless Van de Kamp's amendments are put into the bill.

"Taxpayers deserve a well-informed government," said Mark Wasser, general counsel for the County Supervisors Association of California.

"It (the bill) does not address the need to advise and just consult with" attorneys, he added.

He argued that local governments are not seeking carte blanche to meet in secret. Instead they want clarification of what the law says.

The bill passed the Assembly Government and Organizations Committee 9-1, and has passed the Senate.

LEGISLATIVE INTENT SERVICE (800) 666-1917

opinions

an editorial comment

Open meeting law threatened

The central passage of California's open meeting law, the Ralph M. Brown Act, reads: "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting . . . except as otherwise provided."

The exceptions to the original Brown Act are basically twofold: one is discussion of sensitive personnel matters and the other is pending litigation. However, some elected bodies have liberalized their interpretation of the litigation exception when they wanted to meet secretly. This loophole was apparently cleared up two years ago by a bill authored by State Sen. Barry Keene. Keene's amendment to the Brown Act spelled out when local governing bodies were allowed to meet privately to dicuss litigation.

However, Attorney General John Van de Kamp recently told Keene that the law still permits — and Van de Kamp would encourage — closed sessions to avoid "potential litigation." Van de Kamp's interpretation — while not having the weight of a formal attorney general's opinion — is a good indication of what that opinion would be if his office were asked to provide it.

Such an opinion by the attorney general would open a hole so wide that Keene's 1984 legislation would be rendered virtually useless. A city council or school board could discuss any policy matter of any controversy in secrecy with its attorney present on the theory that it might be the subject of litigation sometime in the future. And both we, the press, and you, the taxpayer, would be left outside.

Fortunately, Senate President Pro Tem David Roberti has agreed to amend an open meeting bill (SB 2173) he is carrying to include a cure for Van de Kamp's anticipated opinion undercutting restrictions on executive sessions. We laud Roberti's efforts to keep meetings of public agencies where they belong — out in the open.

The Brown Act has helped prevent elected officials from meeting in secret to spend your money and establish public policy without public input. It's an important law that doesn't need to be weakened.

LEGISLATIVE INTENT SERVICE (800) 666-1917

SB 2173

Editorial

Attorney General v. democracy

California Attorney General John Van de Kamp has told legislators and publishers that local governments have the right to stretch the Brown Act (forbidding secret meetings) to allow closed sessions to discuss any matter where there is a "potential" for litigation. We find this perversion of the law appalling.

The Attorney General's opinion is not law, but it suggests what his office will advise local governments when they ask if they are allowed to meet in secret.

California law since 1984 has allowed secret meetings by local governing boards when they need to discuss personnel, lawsuits, pending litigation, and circumstances which pose a significant risk of litigation. But Van de Camp believes local governments can also meet in secret to discuss any matter that has the "potential" of incurring a lawsuit.

Since people these days sue over almost any issue imaginable, Van de Kamp's opinion would allow county government, water districts, and school boards to meet in closed session whenever they want, as legislators such as State Senator Barry Keene have pointed out.

Van de Kamp's opinion — which has been outlined informally for Keene and the California Newspaper Publishers Association — would return this state to its political Dark Ages when scheming officials did their best to hide their negotiations from the citizenry and monied interest controlled local affairs.

The need for public business to be conducted publicly is obvious to all but the corrupt or politically devious, and it is these scoundrels who will benefit most from Van de Kamp's opinion.

Recognizing the danger to democratic government, Senate President Pro Tem David Roberti has now amended a proposed law, Senate Bill 2173, so that it would close the loophole in the Ralph M. Brown Act that Van de Kamp is trying to open.

We call on our legislators, Assemblyman Bill Filante and State Sen. Milton Marks, to support Roberti's effort to keep local government honest. We urge readers to write both men c/o the State Legislature, Sacramento, 95814. We'll be keeping readers posted on how Filante and Marks vote.

LEGISLATIVE INTENT SERVICE (800) 666-1917

The Herald
.28 Monterey, California • Friday, June 27, 1986

Van de Kamp Is Back

JUST WHEN the voters had repudiated California Atty. Gen. John Van de Kamp on Proposition 51, and you thought it was safe to go back in the water, the guy is back again to take another bite out of the public he is elected and sworn to represent.

Van de Kamp, when he wasn't off making television commercials distorting the scope and intent of the deep-pockets liability reform proposition, found time a few weeks ago to issue an informal opinion that poses an alarming threat to the public's right to know what its government agencies are up to.

California's Brown Act has served this state reasonably well over the years by requiring that all business of public boards such as city councils, county supervisors and special districts be conducted in open meetings, with two basic exceptions: matters dealing with the hiring or firing of personnel and matters dealing with pending litigation.

To the extent both exceptions are applied legitimately, they have made sense.

Van de Kamp, however, if he makes his opinion a formal one, would extend the litigation exception to apply to any subject of controversy or perceived potential controversy that might — someday — generate legal action, no matter how remote the possibility.

A city council, in other words, could conceivably listen to its legal counsel's advice that a rezoning matter could one day lead to a lawsuit, and then conduct its argument of the matter behind closed doors, emerging only for a perfunctory discussion and a formal vote in public. Thus the rationale that led to the decision could be kept from public review.

Fortunately, the Legislature has a chance to head Van de Kamp off by approving legislation carried by Sen. Majority Leader David Roberti.

Roberti's bill would insert language in both the Brown Act and the Bagley-Keene Act to tighten the pending-litigation provision. Only legal action that is either already filed, or threatened, or clearly impending simply on the basis of the facts (such as an accident involving potential liability of a public agency or employees) would qualify for a closed-door session.

Since it is public policy that is being set and public money that is being spent, such language seems totally reasonable.

As for Van de Kamp, this seems to be his year for taking on causes that earn him political enemies. Ultimately, he will find out how many.

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A - 50b

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **DALY v. BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY**
Case Number: **S260209**
Lower Court Case Number: **E073730**

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