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,

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

EXHIBITS TO APPELLANTS' MOTION FOR JUDICIAL NOTICE

VOLUME VI OF VI, PAGES 1365 – 1653 OF 1653

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TABLE OF CONTENTS		
EXHIBIT	**DESCRIPTION**	**PAGE**
VOLUME I – PAGES 1 – 295 OF 1653		
A	Declaration of Anna Maria Bereczky-Anderson of Legislative Intent Service, Inc. dated September 11, 2020	**6–9**
B	All versions of Assembly Bill 2674 (Connelly-1986)	**10-46**
C	Procedural history of Assembly Bill 2674 from the 1985-86 *Assembly Final History*	**47-49**
D	Two Analyses of Assembly Bill 2674 prepared for the Assembly Committee on Local Government	**50-57**
E	Material from the legislative bill file of the Assembly Committee on Assembly Bill 2674	**58–295**
VOLUME II – PAGES 296 – 593 OF 1653		
F	Analysis of Assembly Bill 2674 prepared for the Assembly Committee on Ways and Means	**301-302**
G	Material from the legislative bill file of the Assembly Committee on Ways and Means on Assembly Bill 2674	**303-311**
H	Material from the legislative bill file of the Assembly Committee on Ways and Means Minority on Assembly Bill 2674	**312-324**
I	Third Reading analysis of Assembly Bill 2674 prepared by the Assembly Committee on Local Government	**325-328**
J	Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 2674	**329-404**

TABLE OF CONTENTS		
EXHIBIT	**DESCRIPTION**	**PAGE**
K	Two analyses of Assembly Bill 2674 prepared for the Senate Committee on Local Government	**405-413**
L	Material from the legislative bill file of the Senate Committee on Local Government on Assembly Bill 2674	**414-593**
VOLUME III – PAGES 594 – 833 OF 1653		
L **cont'd**	Material from the legislative bill file of the Senate Committee on Local Government on Assembly Bill 2674	**599-665**
M	Two analyses of Assembly Bill 2674 prepared by the Legislative Analyst	**666-671**
N	Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 2674	**672-693**
O	Third Reading analysis of Assembly Bill 2674 prepared by the Office of Senate Floor Analyses	**694-698**
P	Material from the legislative bill file of the Office of the Senate Floor Analyses on Assembly Bill 2674	**699-726**
Q	Legislative Counsel's Rule 26.5 analysis of Assembly Bill 2674	**727-728**
R	Two Concurrence in Senate Amendments analyses of Assembly Bill 2674 prepared by the Assembly Committee on Local Government	**729-733**
S	Material from the legislative bill file of Assemblymember Lloyd Connelly on Assembly Bill 2674	**734-833**
VOLUME IV – PAGES 834 – 1132 OF 1653		
S **cont'd**	Material from the legislative bill file of Assemblymember Lloyd Connelly on Assembly Bill 2674	**839-1132**

EXHIBIT T

Volume 4

Journal of the Senate

Legislature of the State of California

1985–1986 Regular Session

Roll Call

The roll was called and the bill was passed by the following vote:

AYES (37)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Carpenter, Craven, Davis, Deddeh, Dills, Doolittle, Ellis, Foran, Bill Greene, Leroy Greene, Hart, Keene, Lockyer, Maddy, Marks, McCorquodale, Mello, Montoya, Morgan, Nielsen, Petris, Presley, Robbins, Roberti, Rosenthal, Royce, Russell, Seymour, Stiern, Torres, and Vuich.

NOES (0)—None.

Bill ordered transmitted to the Assembly.

Assembly Bill 3519—An act to amend Section 61765 of the Government Code, relating to community services districts.

Bill read third time and presented by Senator Presley.

Roll Call

The roll was called and the bill was passed by the following vote:

AYES (37)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Carpenter, Craven, Davis, Deddeh, Dills, Doolittle, Ellis, Foran, Bill Greene, Leroy Greene, Hart, Keene, Lockyer, Maddy, Marks, McCorquodale, Mello, Montoya, Morgan, Nielsen, Petris, Presley, Robbins, Roberti, Rosenthal, Royce, Russell, Seymour, Stiern, Torres, and Vuich.

NOES (0)—None.

Bill ordered transmitted to the Assembly.

Assembly Bill 2674—An act to amend Sections 35144, 35145, 72121, and 72129 of the Education Code, 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.

Bill read third time and presented by Senator Marks.

Roll Call

The roll was called and the bill was passed by the following vote:

AYES (37)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Carpenter, Craven, Davis, Deddeh, Dills, Doolittle, Ellis, Foran, Bill Greene, Leroy Greene, Hart, Keene, Lockyer, Maddy, Marks, McCorquodale, Mello, Montoya, Morgan, Nielsen, Petris, Presley, Robbins, Roberti, Rosenthal, Royce, Russell, Seymour, Stiern, Torres, and Vuich.

NOES (0)—None.

Bill ordered transmitted to the Assembly.

MOTION TO PRINT IN JOURNAL

Senator Marks moved that the following letter of intent be printed in the Journal.

Motion carried.

Sacramento, June 27, 1986

The Honorable David Roberti
President pro Tempore

Dear Senator Roberti: The enclosed letter will be submitted by Senator Marks for entry into the Senate Journal in conjunction with my legislation, AB 2674.

Thank you for your cooperation.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

Sacramento, June 27, 1986

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.

CONSIDERATION OF DAILY FILE (RESUMED)
THIRD READING OF ASSEMBLY BILLS (RESUMED)

Assembly Joint Resolution 80—Relative to the federal census.

Resolution read third time and presented by Senator Lockyer.

Roll Call

The roll was called and the resolution was adopted by the following vote:

AYES (37)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Carpenter, Craven, Davis, Deddeh, Dills, Doolittle, Ellis, Foran, Bill Greene, Leroy Greene, Hart, Keene, Lockyer, Maddy, Marks, McCorquodale, Mello, Montoya, Morgan, Nielsen, Petris, Presley, Robbins, Roberti, Rosenthal, Royce, Russell, Seymour, Stiern, Torres, and Vuich.

NOES (0)—None.

Resolution ordered transmitted to the Assembly.

Assembly Bill 2661—An act to add Section 546.5 of the Code of Civil Procedure, to add Section 68500.1 to the Government Code, and to amend Section 190.9 of the Penal Code, relating to courts.

Bill read third time and presented by Senator Lockyer.

Roll Call

The roll was called and the bill was passed by the following vote:

EXHIBIT U

JACK I. HORTON
ANN MACKEY
CHIEF DEPUTIES

JAMES L. ASHFORD
JERRY L. BASSETT
STANLEY M. LOURIMORE
EDWARD K. PURCELL
JOHN T. STUDEBAKER

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C. DAVID DICKERSON
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LAWRENCE H. FEIN
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JOHN FOSSETTE
HARVEY J. FOSTER
CLAY FULLER
ALVIN D. GRESS
THOMAS R. HEUER
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
EVE B. KROTINGER
ROMULO I. LOPEZ
JAMES A. MARSALA
PETER MELNICOE
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
MICHAEL B. SALERNO
MARY SHAW
ANN ELLIOTT SHERMAN
RUSSELL L. SPARLING
WILLIAM K. STARK
MARK FRANKLIN TERRY
JEFF THOM
PHILLIP TORRES
MICHAEL H. UPSON
RICHARD B. WEISBERG
DANIEL A. WEITZMAN
THOMAS D. WHELAN
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
August 22, 1986

Honorable George Deukmejian
Governor of California
Sacramento, CA

Assembly Bill No. 2674

Dear Governor Deukmejian:

Pursuant to your request we have reviewed the above-numbered bill authored by Assembly Member Connelly and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Sherwin C. MacKenzie, Jr.
Sherwin C. MacKenzie, Jr.
Principal Deputy

SCM:wld

Two copies to Honorable Lloyd G. Connelly pursuant to Joint Rule 34.

PE-1

NO ENROLLED BILL REPORT REQUIRED

YOUTH AND ADULT CORRECTIONAL AGENCY

DEPARTMENT	AUTHOR	BILL NUMBER
Youthful Offender Parole Board	Lloyd Connley	AB 2674

[X] Technical bill—no program or fiscal changes to existing program. No analysis required. No recommendation on signature.

[ ] Bill as enrolled no longer within scope of responsibility or program of this Department.

Comments:

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 closed session.

This bill has no impact on the Youthful Offender Parole Board. The Board is covered by the Bagley-Keene Open Meeting Act.

PE-2

DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
Wally D. Gram	8/19/86		8-20-86

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

SUBJECT

This bill revises local agency open meeting requirements.

SUMMARY OF REASON FOR SIGNATURE

The bill will assist local government.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1986-87	FC 1987-88	FC 1988-89	Code Fund
8885--Commission on State Mandates	LA	S $1	S $2	S $2	360

FISCAL SUMMARY--LOCAL LEVEL

	1986-87	1987-88	1988-89
Reimbursable Expenditures	$1	$2	$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)

PE-3

RECOMMENDATION: Department Director Date

Sign the bill. AUG 21 1986

Principal Analyst (621)	Date	Program Budget Manager	Date	Governor's Office
	8/20/86		8/20/86	Position noted Position approved Position disapproved
				by: date:

LR:0413A-1

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

BILL ANALYSIS/ENROLLED BILL REPORT--(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.

LR:0413A-2

PE-4

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 operations costs in this bill. There will be additional minor costs to local government which could be reimbursed from the State Mandates Claims Fund. Although the language in Section 12 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 failure to include the proper language should not be a serious problem because the information provided in this analysis could also be provided to the Commission on State Mandates if any local agency submits a claim for reimbursement to that Commission.

LR:0413A-3

PE-5

ENROLLED BILL REPORT

Analyst: Sharon Stevenson SMC
Bus. Ph: 322-4292
Home Ph:

AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 2674 (Amended 6-4-86
DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS	AUTHOR: Connelly

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
13 Budget
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 Other Fiscal
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

BILL SUMMARY

Current law provides for mandatory open and public meetings of state agencies and establishes specific notice and agenda requirements. The failure to comply with the specific agenda requirements could result in the invalidation of any state agency action taken at an improperly noticed meeting.

While current law establishes that all actions and deliberations of local legislative bodies shall be held in public session (Ralph M. Brown Act), it 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," or upon a finding by two-thirds of a local legislative body that the need to take action on the items arose after the posting of the agenda.

2. Existing law provides no civil remedy for a violation of the open meeting requirements of the Brown Act. This bill would permit a local agency to cure upon request any violation of the Brown Act by proper notice and subsequent meeting. Failure to correct the deficiency would permit the aggrieved party to seek judicial action to invalidate the action.

PE-6

VOTE:	Assembly	Partisan R D		Senate	Partisan R D
Concurrence:	76-0				
Floor:	69-4		Floor:	37-0	
Policy Committee:			Policy Committee:		
Fiscal Committee:			Fiscal Committee:		

RECOMMENDATION TO GOVERNOR: SIGN X VETO ____ NO POSITION ____ DEFER TO OTHER AGENCY ____

DEPARTMENT DIRECTOR: Claudia Goutz	DATE: 8/19/86	AGENCY SECRETARY:	DATE: 8/20/86

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

4. 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 violations of the Brown Act.

ANALYSIS

Background

Enacted in 1985, AB 214 authorized 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 a violation of the State Open Meetings Act was criminal misdemeanor sanctions.

AB 214 did not address violations of the open meetings provisions of the Ralph M. Brown Act as that law affected meetings of local legislative bodies (e.g., city councils, boards of supervisors, and other bodies).

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

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.

Apparently, without prior notice to the public of the ordinance, the twelve members of the Los Angeles City Council voted unanimously on a item of business simply referred to as "Item 53." Upon review by 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.)

PE-7

However, the court went on to conclude that these city officials "failed to comply with the spirit of the law" and had violated provisions of the City Charter. Although the violations were not based on the Brown Act, the court found the salary increase ordinance to be void and enjoined the city from disbursing the salaries.

Specific Findings

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 regard to 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 precendent to any suit. This provision of the bill will permit local agencies to cure any real deficiency without engaging in needless and costly litigation.

Further, 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, but 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 law has occurred may issue a written demand within 30 days of the action to the local legislative body to cure the deficiency (e.g., renotice and convene a subsequent meeting within 15 days to reconsider the action). 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 two-thirds 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, it was included in the bill to meet arguments that the measure unreasonably restricted the activities of local legislative bodies.

PE-8

Fiscal Impact

Since this bill will affect only local legislative bodies, there is no fiscal impact on our department.

Socio-economic Impact

See Specific Findings, above.

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
- California Newspaper Publishers Association

Opponents:
- 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 League of California Cities are neutral on the bill as amended.

Arguments

See Background and Specific Findings, above.

Recommendation

The Department of Consumer Affairs recommends that this bill be SIGNED.

PE-9

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

	NO.	ISSUE DATE	BILL NUMBER
Local Cost	3	AUG 20 1986	AB 2674
ESTIMATE	AUTHOR		DATE LAST AMENDED
Department of Finance	Connelly		June 4, 1986

I. SUMMARY OF LOCAL IMPACT:

Revises local agency open meeting requirements.

II. FISCAL SUMMARY--LOCAL LEVEL

	1986-87	1987-88	1988-89
	(Dollars in Thousands)		
Reimbursable Expenditures:	$1	$2	$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)

LIST VIII

PREPARED	Date	* REVIEWED	Date	* APPROVED	Date
LR:0421		*	8/14/86	*	8-14-86

PE-10

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 12 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 failure to include the proper language should not be a serious problem because the information provided in this analysis could also be provided to the Commission on State Mandates if any local agency submits a claim for reimbursement to that Commission.

LR:0421A-3

PE-12

OFFICE OF LOCAL GOVERNMENT AFFAIRS

ENROLLED BILL REPORT

BILL NUMBER	AUTHOR
AB 2674 (As Amended 6/4/86)	CONNELLY

SUBJECT
OPEN MEETINGS: LOCAL AGENCIES

SUMMARY

Would amend the Ralph M. Brown Act and the Education Code regarding the conduct of open meetings of local agencies, and school and community college district boards.

ANALYSIS

A. Detailed

Currently, the Ralph M. Brown Act and the Education Code require, with specified exceptions, that meetings of legislative bodies of local agencies, and governing boards of school and community college districts be conducted openly and publicly.

Under these existing laws, local agencies are not required to post an agenda of business to be transacted at a regular meeting. However, school and college districts must post an agenda 48 hours in advance. Currently, local agencies and school and college districts are not prohibited from taking action on an item which is not listed on an agenda.

AB 2674 would require legislative bodies of local agencies, and governing boards of school and community college districts to post an agenda containing a brief general description of each item of business to be transacted or discussed at a regular meeting. The agenda must be posted 72 hours prior to such meeting, and must be posted in a location that is freely accessible to the public. The bill would also prohibit such bodies from taking action on any item which does not appear on the agenda. However, such bodies could take action on items not listed on the agenda if:

1. A majority of the legislative body finds that an emergency situation exists, as defined in Government Code Section 54956.5.

2. The legislative body determines, by a 2/3 vote, that the need to take action arose subsequent to the posting of the agenda.

3. The item was continued from a prior meeting.

RECOMMENDATION	
SIGN	
BY PB	DATE August 18, 1986 PE-13
TITLE Huston T. Carlyle, Jr. Director	

PW

The Ralph M. Brown Act does not require that an agenda for a regular meeting for local agencies provide an opportunity for the public to directly address the legislative body on items of interest.

AB 2674 would require legislative bodies of local agencies to provide on every agenda, an opportunity for the public to directly address the legislative body on items of interest that are within the subject matter of jurisdiction, provided that no action shall be taken on any item not appearing on the agenda, excluding the exceptions noted above. The bill would authorize the local legislative body to adopt reasonable regulations for this purpose, including a limitation on the total amount of time allocated to each speaker for public testimony, and the total time alloted for public testimony at each meeting.

However, AB 2674 would not require allocated time for public testimony if an agenda item of a city council or county board of supervisors meeting has already been considered by a committee which is composed exclusively of council or board members; and such committee meeting was conducted openly, with the opportunity for public testimony at that time.

This provision relating to public testimony would not apply to school and community college districts.

The Brown Act and the Education Code authorize legislative bodies of local agencies, and school and community college districts to call a special meeting if they notify the legislative body members and the media, in writing, 24 hours prior to the meeting. The notice must contain the time and place of the meeting, and the business to be transacted.

This bill would further require these agencies and districts to post their special meeting notices 24 hours in advance in a location that is freely accessible to the public.

The Bagley-Keene Act, which governs open meetings for state legislative bodies, permits an individual to file an action by mandamus or injunction declaring a state body's decision null and void because it did not comply with open meeting requirements. A suit must be filed within 30 days of the state body's decision.

AB 2674 would authorize an individual to file an action by mandamus or injunction to determine if actions taken by a local legislative body or governing board of a school or community college district are null and void because these bodies did not comply with open meeting requirements.

Within 30 days of the body's decision, the individual must demand that the legislative body correct its action. The legislative body then has 30 days to either correct the action, or inform the individual that the action will not be corrected. If the action is not corrected, the individual has 15 days to file a lawsuit. However, if the legislative body later corrects the action, the court must dismiss the suit.

Exceptions to this null and void provision include actions which involved the sale or issuance of bonds, a contractual agreement, the

AE-14

collection of taxes, or cases where the action was determined to have been in "substantial" compliance with the open meeting requirements.

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

AB 2674 would authorize the award of reasonable attorneys' fees in suits to determine the null and void premises noted above.

B. Cost

No appropriation. The bill would create a state-mandated local program by requiring local legislative bodies and school and community college district boards to post agendas, and by requiring local legislative bodies to provide opportunity for public testimony.

AB 2674 would provide that reimbursement shall be provided through the State Mandates Claim Fund.

LEGISLATIVE HISTORY

AB 2674 is sponsored by Common Cause.

The Ralph M. Brown Act generally requires that meetings of legislative bodies of local agencies be open to the public. The Education Code contains similar provisions for school and community college districts.

The sponsor indicates that AB 2674 was introduced in response to a vote of the Los Angeles City Council on an agenda item, recognized only as item #53, which was later revealed as a salary increase for city council members, and other city officials.

AB 2674 would strengthen current open meeting requirements for local agencies, as well as school and community college districts, by requiring such agencies to post agendas which briefly describe each item, and by posting these agendas 72 hours prior to each meeting.

In addition, individuals would be authorized to file lawsuits to determine if actions taken by a local or school legislative body are null and void because the body did not comply with open meeting requirements. Reasonable attorneys' fees could be awarded in such cases.

This bill would also require legislative bodies of local agencies to provide the opportunity for public testimony at each meeting. This provision does not apply to school and community college districts.

Proponents contend that AB 2674 will afford a more efficient government operation, and would prohibit local officials from violating the Brown Act.

AB 2674 is supported by Cal-Tax, Attorney General, California District Attorneys Association, District Attorneys of Los Angeles, Alameda, San Joaquin, Peace Officers Research Association of California, Sierra Club, Schools of Legal Services, League of Women Voters, California State PTA,

PE-15

California State Freedom of Information Committee, California Grocers Association, California Society of Newspaper Editors, Department of Consumer Affairs, ACLU, and the Sonoma County Taxpayers Association.

This bill is opposed by the Association of California Water Agencies (ACWA), California Association of Sanitation Agencies, County Clerks Association, Amador County Water Agency, Jackson Valley Irrigation District, Barron Park Association, City of Los Angeles, and the San Mateo County Council of Mayors. The League of California Cities has withdrawn their opposition due to amendments which were introduced at the League's request.

Opponents argue that the 30 day null and void provision would delay all actions taken by a governing board. They are also concerned that AB 2674 would allow the public to add items to the agenda, after the agenda has been set, thereby placing a burden on legislative body staff.

There is no other known opposition.

VOTE: Assembly - 14 April 1986
Ayes - 69
Noes - 4

Senate - 3 July 1986
Ayes - 37
Noes - 0

Concurrence - 14 August 1986
Ayes - 76
Noes - 0

REASONS FOR RECOMMENDED POSITION

The Office of Local Government Affairs recommends the Governor SIGN AB 2674.

This measure will amend the open meeting requirements for legislative bodies of local agencies and governing boards of school and community college districts, in an effort to strengthen the Legislature's intent that the public has the right to be informed about local government decisions.

(Analysis prepared by Nancy Patton.)

PE-16

ASSEMBLY LOCAL GOVERNMENT COMMITTEE
REPUBLICAN ANALYSIS

AB 2674 (Connelly) -- OPEN MEETINGS:LOCAL AGENCIES
Version: 6/4/86 Vice-Chairman: Bill Lancaster
Recommendation: Support Vote: Majority

Summary: Amends the Ralph M. Brown Open Meeting Act and the Education Code to strengthen the laws requiring open meetings. The most significant change is allowing interested citizens to commence an action within 30 days to have any government action in violation of the open meeting laws declared "null and void". Authorizes the award of reasonable attorneys fees in "null and void" law suits. Makes numerous other less controversial changes. Fiscal effect: Unknown, possibly significant, state costs for reimbursement of "reasonable attorneys fees" and for required mailed and published notices.

Supported by: Common Cause (sponsor); Cal-Tax, Attorney General, CA District Attorneys Assn. , Counties of L.A., Alameda, San Joaquin, PORAC, Sierra Club, Schools Legal Services (80 school agencies), League of Women Voters, CA State PTA, CA State Freedom of Information Committee, CA Grocers Assn., CA Society of Newspaper Editors, Dept of Consumer Affairs, CA School Boards Assn, Community College Facility Assn. Opposed by: CA Assn. of Sanitation Agencies, San Mateo County Council of Mayors, City of San Diego. Neutral: Cities of L.A. and 33 others, Assoc. of CA Water Agencies, Dept of Finance, Youthful Offender Parole Board, Dept of Mental Health. Governor's position: None.

Comments: Introduced in response to a vote of the Los Angeles City Council on an agenda item #53, later revealed as a salary increase for the council and other city officers. Proponents state that, although the Brown Act has enforcement/penalties related to behind-the-scenes meetings, the Act has no teeth regarding (unannounced) special agenda items.

Opponents claim that the 30 day "null and void" period would create a cloud over all actions taken by local agencies and would delay enacting these actions for 30 days. They also stress that the public would be able to add agenda items after the agenda has been set which could cause a council's/ staff's workload to be greatly burdened.

Assembly Republican Floor Vote
Floor Ayes: All other Reps present
(69-4) Noes: Lancaster, Wright
Senate Republican Floor Vote -- 7/3/86
(37-0) Ayes: All Republicans present
Consultant: Tracy Morgan

PE-17

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Assembly
California Legislature

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

August 18, 1986

Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, California 95814

Re: AB 2674 (Connelly)

Dear Governor Deukmejian:

AB 2674, relating to the Ralph M. Brown Act which generally requires the meetings of local governmental entities to be open to the public, has been enrolled and awaits your signature. AB 2674 is sponsored by California Common Cause and the League of Women Voters and has received strong bipartisan support throughout its legislative history.

The purpose of the bill is to correct two major deficiencies in the Act. (The enclosed booklet, "Open Meeting Laws," prepared by the Attorney General concisely describes these deficiencies at pages 10 and 26, respectively.)

First, the bill requires local entities to post an agenda of the business to be conducted at regular meetings 72 hours before each regular meeting. The agenda must be posted in a place that is "freely accessible" to members of the public. Existing law does not require the preparation of an agenda. No action may be taken on an item not appearing on the posted agenda. However, items may be added to an agenda and action taken on such added items in three instances:

a) If the local entity determines that an emergency exists, as presently defined in the Brown Act.

b) If the local entity determines by a two-thirds vote that the need to take action on an item "arose subsequent to the agenda being posted."

c) If the item previously appeared on a properly posted agenda and was continued to a subsequent meeting, not more than five days later.

The second major provision of AB 2674 relates to the invalidation of actions taken in violation of the Brown Act. As you know, and as described in the

PE-18

enclosed booklet, the Brown Act is only directory and not mandatory. This means that actions taken in violation of the Act are, in spite of their illegality, valid; they are immune from challenge.

This provision of AB 2674 is essentially identical to my legislation from last year, AB 214, which you signed into law (Chapter 936 of the Statutes of 1985). AB 214 added a "null and void" clause to the Bagley-Keene Open Meeting Act, the law governing the meetings of state entities.

AB 2674 permits private citizens and organizations to go to court and have actions taken in violation of the Brown Act declared "null and void." In recognition of the need for finality of government action and in order to discourage frivolous lawsuits, the bill contains a number of safeguards. First, before a lawsuit may be filed, an administrative demand to "cure or correct" the alleged violation must be made of the local entity. Only if the local entity ignores the demand or declines to cure or correct the alleged violation may a lawsuit then be filed.

Second, AB 2674 contains very brief 30-day statutes of limitation in which both the administrative demand and lawsuit must be filed. Lastly, some actions are exempt from being declared "null and void," regardless if taken illegally. Actions cannot be declared "null and void" if:

a) The action taken was in substantial compliance with the requirements of the Brown Act.

b) The action taken was in connection with the issuance of notes and bonds.

c) The action taken gave rise to a contractual obligation, including competitively bid contracts, upon which a party has, in good faith, detrimentally relied.

d) The action taken was in connection with the collection of any tax.

This bill is the product of long and intensive negotiations between all interested parties. As enrolled, AB 2674 fairly balances the need of local government to act with the right of citizens to remain informed of the actions of government and to participate in such actions, if they so desire.

AB 2674 is supported by numerous organizations, including the Attorney General, California District Attorneys Association, Los Angeles County District Attorney, Alameda County District Attorney, San Joaquin County District Attorney, California Taxpayers Association, California Parent-Teachers Association, California Grocers Association, Schools Legal Services, California Newspaper Publishers Association, and numerous newspapers. (I have enclosed editorials supporting enactment of AB 2674.)

The League of California Cities, County Supervisors Association of California, Los Angeles City Council, and County Clerks Association were all originally opposed to AB 2674. As the result of various amendments to the bill, these organizations are all now officially neutral on the bill.

PE-19

The enclosed materials amply demonstrate the need for AB 2674. In particular, the ruling in Green v. City of Los Angeles vividly illustrates the necessity for this bill.

In conclusion, the Brown Act presently gives the people the right to witness their government in action. AB 2674 grants them the right to know beforehand what is going to happen at meetings and the right to challenge afterward illegal actions.

I respectfully request your signature of AB 2674.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

LGC:grs

Enclosures

PE:20

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Assembly
California Legislature

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

August 18, 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

AE-21

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.

PE 22

HE UNION, Grass Valley-Nevada City, Ca.—Wednesday, August 6, 1986—7

Protect the public

Within the next few weeks, Gov. George Deukmejian is scheduled to receive Assembly Bill 2674 which will make two major changes in the Ralph M. Brown Act, the state's anti-secrecy law.

The bill, introduced earlier this year by Assemblymen Lloyd G. Connelly (D-Sacramento) and Ross Johnson (R-Fullerton), requires local entities to post agendas of their regular meetings 72 hours in advance of each meeting.

Secondly, AB 2674 authorizes private citizens and organizations to go to court and have actions taken in violation of the Brown Act declared "null and void."

AB 2674 also makes one other fairly important change in the Act. It states that each agenda shall "provide an opportunity for members of the public to directly address the legislative body on items of interest to the public."

The bill has maintained its bipartisan support with both Democrat and Republican co-authors. It was approved by the Assembly 69-4 and by the Senate 32-0. It will be brought up on the Assembly floor for a concurrence vote in Senate amendments next week before going to Deukmejian who, to date, has not given any indication of his position on the measure. No significant opposition to the bill remains.

The Brown Act is a very important bill that gives citizens the right to publicly witness the decisions of local officials. AB 2674 gives citizens two more rights, namely the right to know beforehand what is going to happen at meetings and the right to afterward challenge and have invalidated illegal actions.

With all three "rights" in place, the Brown Act will be a more meaningful, tough and enforceable law. We urge Gov. Deukmejian give his immediate approval to AB 2674.

PE-23

Salinas, CA
(Monterey Co.)
Californian
(Circ. 6xW. 23,602)

APR 15 1986

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.

PE-24

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

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.

Up on a stump

Keep business public

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

Garberville, CA
(Humboldt Co.)
Redwood Record
(Cir. W. 1,247)

MAR 20 1986
Allen's P. C. B Est. 1888

Mobile Homes Courier
(Cir. W.)

MAR 1 4 1986

Allen's P. C. S. 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

PE 28

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.

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.

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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.

LAKE ELSINORE VALLEY
Sun-Tribune
C-10
Wednesday, March 19, 1986

PE-29

Palo Alto, CA
(Santa Clara Co.)
Peninsula Times Tribune
(Clr. D. 60,288)
(Clr. 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.

PE-30

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.

PE-31

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.

PE-32

San Francisco Chronicle
THE VOICE OF THE WEST

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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.

PE-33

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.

PE-34

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.

PE-35

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.

PE-36

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.

PE-37

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.

PE-38

JANUARY 30, 1986

PRESS-TELEGRAM

604 Pine Avenue, Long Beach, California 90844 / Telephone 435-1161

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.

PE-39

THE TRIBUNE

An independent newspaper serving the Greater Bay Area from Oakland since 1874

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.

PE-40

Salinas, CA
(Monterey Co.)
Californian
(Clr. 6xW. 23,602)

JAN 1 7 1986

Allen's P. C. B Est. 1888

A remedy to secrecy

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.

PE-41

Van Nuys, CA
(Los Angeles Co.)
Daily News
(Clr. D. 135,010)
(Clr. Sat. 145,767)
(Clr. Sun. 122,031)

JAN 2 0 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.

PE-42

Fresno, CA
(Fresno Co.)
Bee
(Clr. D. 129,955)
(Clr. S. 152,301)

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.

PE-43

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 Fuller assemblyman learned of the unorthodox manner in wh Los Angeles City Council members voted themselves percent pay raise last summer. The pay increase known only as "item 53" on the consent caledar and did appear on the council's agenda and was not discussed in open meeting prior the vote.

The increase was later voided because it exceeded ceiling imposed in the Los Angeles City Charter. Howe the council's vote was legal under the Brown Act, w certainly reveals a major flaw in the current Brown A

This is just one example of the arrogant manner in w goverments sometimes handle what is euphemisti called the "public's business."

It's unfortunate that government officials seem to constant reminding, but in order for our free society t main free it is essential that people be fully aware o tions supposedly taken on their behalf. We must also the power to nullify actions of which they were not i aware.

There is no foolproof way to ensure that gover business is conducted in the "open."

But if governments continue to arrogate powe themselves, they should at least have some incentiv so in public rather than behind closed doors. An necessary, their actions should be nullified by the cour illegal. The Johnson-Connelly bill is long overdue an certainly needed.

PE-44

The Sacramento Bee

Locally owned and edited for 128 years
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Volume 258—No. 42,836
Monday, January 27, 1986

C.K. McCLATCHY, *editor*
GREGORY E. FAVRE, *executive editor*
PETER SCHRAG, *editorial page editor*
FRANK R. J. WHITTAKER, *general manager*

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.

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 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.

PE-45

Support for reform

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."

PE-46

The Sacramento Union
THE OLDEST DAILY IN THE WEST
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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.

PE-47

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.

PE-48

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.

PE-49

The Times

SAN MATEO TIMES AND DAILY NEWS LEADER
THE ADVANCE STAR

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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.

PE-50

Editorials

Times-Advocate

Founded 1886

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201 E. Pennsylvania Ave., Escondido, Calif. 92025 (619) 745-6611

March 7, 1986

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 editorials, and you get the whole state after you.

PE-51

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.

OCEANSIDE BLADE TRIBUNE - SAN DIEGO COUNTY

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.

PE-53

Ontario, CA
(San Bernardino Co.)
Ontario Daily Report
(Clr. D. 37,230)
(Clr. S. 38,494)

FEB 2 7 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.

PE-54

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).)

PE-55

* 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.

AE-56

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

PE-57

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."

PE-58

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 or 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.

PE-59

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 after 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.

DISCUSSION

The City Council's action did not violate the Ralph M. Brown Act (California Government Code §54950, et seq.).

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

PE-60

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.

PE-61

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 the 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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PE-102

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

Salary Ordinance No. 159926, increasing salaries by 10% violates Article V, Section 65.6 of the Charter of the City of Los Angeles.

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, 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.

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AE-63

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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PE-64

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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PE-65

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

PE-66

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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
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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

PE-67

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 Attorneys 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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PE-68

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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PE-69

(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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ASSEMBLY BILL NO. 2674 1986 REGULAR SESSION CHAPTER 641

AUTHOR CONNELLY

DATE RECEIVED 8-18 1986

LAST DAY TO ACT 8-30 1986

LC	✓	IR		PUC	
BTH		LEGAL		DPA	
EQ	✓	OLGA		ED	
FIN	✓	RES			
F&A		SCS	✓		
H&W		YAC	✓		

ACTION OF GOVERNOR 8-29 1986

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Assembly
California Legislature

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

August 18, 1986

Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, California 95814

Re: AB 2674 (Connelly)

Dear Governor Deukmejian:

AB 2674, relating to the Ralph M. Brown Act which generally requires the meetings of local governmental entities to be open to the public, has been enrolled and awaits your signature. AB 2674 is sponsored by California Common Cause and the League of Women Voters and has received strong bipartisan support throughout its legislative history.

The purpose of the bill is to correct two major deficiencies in the Act. The enclosed booklet, "Open Meeting Laws," prepared by the Attorney General concisely describes these deficiencies at pages 10 and 26, respectively.)

First, the bill requires local entities to post an agenda of the business to be conducted at regular meetings 72 hours before each regular meeting. The agenda must be posted in a place that is "freely accessible" to members of the public. Existing law does not require the preparation of an agenda. No action may be taken on an item not appearing on the posted agenda. However, items may be added to an agenda and action taken on such added items in three instances:

a) If the local entity determines that an emergency exists, as presently defined in the Brown Act.

b) If the local entity determines by a two-thirds vote that the need to take action on an item "arose subsequent to the agenda being posted."

c) If the item previously appeared on a properly posted agenda and was continued to a subsequent meeting, not more than five days later.

The second major provision of AB 2674 relates to the invalidation of actions taken in violation of the Brown Act. As you know, and as described in the

enclosed booklet, the Brown Act is only directory and not mandatory. This means that actions taken in violation of the Act are, in spite of their illegality, valid; they are immune from challenge.

This provision of AB 2674 is essentially identical to my legislation from last year, AB 214, which you signed into law (Chapter 936 of the Statutes of 1985). AB 214 added a "null and void" clause to the Bagley-Keene Open Meeting Act, the law governing the meetings of state entities.

AB 2674 permits private citizens and organizations to go to court and have actions taken in violation of the Brown Act declared "null and void." In recognition of the need for finality of government action and in order to discourage frivolous lawsuits, the bill contains a number of safeguards. First, before a lawsuit may be filed, an administrative demand to "cure or correct" the alleged violation must be made of the local entity. Only if the local entity ignores the demand or declines to cure or correct the alleged violation may a lawsuit then be filed.

Second, AB 2674 contains very brief 30-day statutes of limitation in which both the administrative demand and lawsuit must be filed. Lastly, some actions are exempt from being declared "null and void," regardless if taken illegally. Actions cannot be declared "null and void" if:

a) The action taken was in substantial compliance with the requirements of the Brown Act.

b) The action taken was in connection with the issuance of notes and bonds.

c) The action taken gave rise to a contractual obligation, including competitively bid contracts, upon which a party has, in good faith, detrimentally relied.

d) The action taken was in connection with the collection of any tax.

This bill is the product of long and intensive negotiations between all interested parties. As enrolled, AB 2674 fairly balances the need of local government to act with the right of citizens to remain informed of the actions of government and to participate in such actions, if they so desire.

AB 2674 is supported by numerous organizations, including the Attorney General, California District Attorneys Association, Los Angeles County District Attorney, Alameda County District Attorney, San Joaquin County District Attorney, California Taxpayers Association, California Parent-Teachers Association, California Grocers Association, Schools Legal Services, California Newspaper Publishers Association, and numerous newspapers. (I have enclosed editorials supporting enactment of AB 2674.)

The League of California Cities, County Supervisors Association of California, Los Angeles City Council, and County Clerks Association were all originally opposed to AB 2674. As the result of various amendments to the bill, these organizations are all now officially neutral on the bill.

The enclosed materials amply demonstrate the need for AB 2674. In particular, the ruling in Green v. City of Los Angeles vividly illustrates the necessity for this bill.

In conclusion, the Brown Act presently gives the people the right to witness their government in action. AB 2674 grants them the right to know beforehand what is going to happen at meetings and the right to challenge afterward illegal actions.

I respectfully request your signature of AB 2674.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

LGC:grs

Enclosures

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Assembly
California Legislature

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

August 18, 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

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*
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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.

UNION, Grass Valley-Nevada City, Ca.—Wednesday, August 6, 1986—7

Protect the public

Within the next few weeks, Gov. George Deukmejian is scheduled to receive Assembly Bill 2674 which will make two major changes in the Ralph M. Brown Act, the state's anti-secrecy law.

The bill, introduced earlier this year by Assemblymen Lloyd G. Connelly (D-Sacramento) and Ross Johnson (R-Fullerton), requires local entities to post agendas of their regular meetings 72 hours in advance of each meeting.

Secondly, AB 2674 authorizes private citizens and organizations to go to court and have actions taken in violation of the Brown Act declared "null and void."

AB 2674 also makes one other fairly important change in the Act. It states that each agenda shall "provide an opportunity for members of the public to directly address the legislative body on items of interest to the public."

The bill has maintained its bipartisan support with both Democrat and Republican co-authors. It was approved by the Assembly 69-4 and by the Senate 32-0. It will be brought up on the Assembly floor for a concurrence vote in Senate amendments next week before going to Deukmejian who, to date, has not given any indication of his position on the measure. No significant opposition to the bill remains.

The Brown Act is a very important bill that gives citizens the right to publicly witness the decisions of local officials. AB 2674 gives citizens two more rights, namely the right to know beforehand what is going to happen at meetings and the right to afterward challenge and have invalidated illegal actions.

With all three "rights" in place, the Brown Act will be a more meaningful, tough and enforceable law. We urge Gov. Deukmejian give his immediate approval to AB 2674.

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.

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

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.

PE - 9b

Up on a stump

Keep business public

60

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

Garberville, CA
(Humboldt Co.)
Redwood Record
(Cir. W. 1,247)

MAR 20 1986

Allen's P. C. B Est. 1888

(San Diego Co.)
Mobile Homes Courier
(Cir. W.)

MAR 1 4 1986

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 coun on to support it.

Rancho News
A-10
Wednesday, March 19, 1986

Our Opinion

It's time to make acts of illegal meets illegal

Sun-Tribune Opinion

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LAKE ELSINORE VALLEY
Sun-Tribune
C-10
Wednesday, March 19, 1986

Palo Alto, CA
(Santa Clara Co.)
Peninsula Times Tribune
(Clr. D. 60,288)
(Clr. 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.

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.

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.

Tuesday, March 18, 1986

San Francisco Chronicle

THE VOICE OF THE WEST

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.

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.

Palos Verdes Estates CA
(Los Angeles Co.)
Peninsula News and
Rolling Hills Herald
(Cir. 2XW 6.766)

FEB 13 1986

Letting Some Light In

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.

Visalia, CA
(Tulare Co.)
Times Delta
(Cir. 6xW. 20,137)

FEB 3 - 1986

Allen's P.C. B Est. 1886

Open meeting bill a must

60

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.

San Jose Mercury News

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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.

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.

JANUARY 30, 1986

PRESS-TELEGRAM

604 Pine Avenue, Long Beach, California 90844 / Telephone 435-1161

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. Tneir 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.

PE - 23b

THE TRIBUNE

An independent newspaper serving the Greater Bay Area from Oakland since 1874

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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.

Salinas, CA
(Monterey Co.)
Californian
(Circ. 6xW. 23,602)

JAN 17 1986

Allen's P. C. B Lit. 1882

A remedy to secrecy

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.

Van Nuys, CA
(Los Angeles Co.)
Daily News
(Cir. D. 136,010)
(Cir. Sat. 145,787)
(Cir. Sun. 122,031)

JAN 20 1986

Allen's PCB Ex. 1858

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.

Fresno, CA
(Fresno Co.)
See
(Clr. D. 125,955)
(Clr. S. 152,301)

FEB 1 - 1986

Allen's P C B

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, t 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.

Oakdale, CA
(Stanislaus Co)
Leader
(Cir. W 4,717)

FEB 5 - 1986

Allen's P.C.B.

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 need constant reminding, but in order for our free society to remain free it is essential that people be fully aware of actions supposedly taken on their behalf. We must also have the power to nullify actions of which they were not made aware.

There is no foolproof way to ensure that government business is conducted in the "open."

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. And, if necessary, their actions should be nullified by the courts as illegal. The Johnson-Connelly bill is long overdue and certainly needed.

PE - 28b

The Sacramento Bee

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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.

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 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.

Support for reform

Bakersfield, CA
(Kern Co.)
Californian
(Cir. D. 66,867)
(Cir. S. 74,643)

FEB 9 - 1996

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, community 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."

The Sacramento Union

THE OLDEST DAILY IN THE WEST
FOUNDED • MARCH 19, 1851

Richard M. Scaife Publisher
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Bruce Winte[illegible] Editor

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.

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.

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.

Editorials

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March 7, 1986

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 [illegible] and you get the whole state after you.

The Times

SAN MATEO TIMES AND DAILY NEWS LEADER
THE ADVANCE STAR

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To give our readers the widest scope of information The Times prints the editorial and column 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 egenda 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 perteins 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.

Unsigned columns are the opinion of The Union. Signed columns and cartoons are the opinions of the authors.

PE - 36b

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 ageney'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.

1479

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 orgenizations 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 exemple 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 outragaous exampie 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 e 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 Votars, 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.

Ontario, CA
(San Bernardino Co.)
Ontario Daily Report
(Cir. D 37,230)
(Cir. S 38,484)

FEB 27 1986

Allen's P C B

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.

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).)

ORIGINAL FILED

NOV0 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. 159976, increasing by 10 percent the salaries of the Mayor, the City

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."

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 on 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.

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 after 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.

DISCUSSION

The City Council's action did not violate the Ralph M. Brown Act (California Government Code §54950, et seq.).

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.

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 the 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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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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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

Salary Ordinance No. 159926, increasing salaries by 10% violates Article V, Section 65.6 of the Charter of the City of Los Angeles.

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, 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.

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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

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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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 Attorneys 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
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 267[illegible] 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

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:

(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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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
August 22, 1986

Honorable George Deukmejian
Governor of California
Sacramento, CA

Assembly Bill No. 2674

Dear Governor Deukmejian:

Pursuant to your request we have reviewed the above-numbered bill authored by Assembly Member Connelly and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Sherwin C. MacKenzie, Jr.
Sherwin C. MacKenzie, Jr.
Principal Deputy

SCM: wld

Two copies to Honorable Lloyd G. Connelly pursuant to Joint Rule 34.

PE - 55b

NO ENROLLED BILL REPORT REQUIRED

YOUTH AND ADULT CORRECTIONAL AGENCY

DEPARTMENT	AUTHOR	BILL NUMBER
Youthful Offender Parole Board	Lloyd Connley	AB 2674

[X] Technical bill—no program or fiscal changes to existing program. No analysis required. No recommendation on signature.

[ ] Bill as enrolled no longer within scope of responsibility or program of this Department.

Comments:

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 closed session.

This bill has no impact on the Youthful Offender Parole Board. The Board is covered by the Bagley-Keene Open Meeting Act.

DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
Kelly A. Gram	8/19/86		8-20-86

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

SUBJECT

This bill revises local agency open meeting requirements.

SUMMARY OF REASON FOR SIGNATURE

The bill will assist local government.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1986-87	FC 1987-88	FC 1983-89	Code Fund
8885--Commission on State Mandates	LA	S $1	S $2	S $2	360

FISCAL SUMMARY--LOCAL LEVEL

	1986-87	1987-88	1983-89
Reimbursable Expenditures	$1	$2	$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)

RECOMMENDATION: Department Director Date

Sign the bill. AUG 21 1986

Principal Analyst (621)	Date	Program Budget Manager	Date	Governor's Office
				Position noted
				Position approved
				Position disapproved
				by: date:

LR:0413A-1

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

BILL ANALYSIS/ENROLLED BILL REPORT--(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.

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 operations costs in this bill. There will be additional minor costs to local government which could be reimbursed from the State Mandates Claims Fund. Although the language in Section 12 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 failure to include the proper language should not be a serious problem because the information provided in this analysis could also be provided to the Commission on State Mandates if any local agency submits a claim for reimbursement to that Commission.

LR:0413A-3

ENROLLED BILL REPORT

Analyst: Sharon Stevenson SS
Bus. Ph: 322-4292
Home Ph:

AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 2674 (Amended 6-4-86)
DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS	AUTHOR: Connelly

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
13 Budget
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 Other Fiscal
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

BILL SUMMARY

Current law provides for mandatory open and public meetings of state agencies and establishes specific notice and agenda requirements. The failure to comply with the specific agenda requirements could result in the invalidation of any state agency action taken at an improperly noticed meeting.

While current law establishes that all actions and deliberations of local legislative bodies shall be held in public session (Ralph M. Brown Act), it 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," or upon a finding by two-thirds of a local legislative body that the need to take action on the items arose after the posting of the agenda.

2. Existing law provides no civil remedy for a violation of the open meeting requirements of the Brown Act. This bill would permit a local agency to cure upon request any violation of the Brown Act by proper notice and subsequent meeting. Failure to correct the deficiency would permit the aggrieved party to seek judicial action to invalidate the action.

VOTE:	Assembly	Partisan R D		Senate	Partisan R D
Concurrence:	76 - 0				
Floor:	69 - 4		Floor:	37 - 0	
Policy Committee:			Policy Committee:		
Fiscal Committee:			Fiscal Committee:		

RECOMMENDATION TO GOVERNOR: SIGN X VETO ____ NO POSITION ____ DEFER TO OTHER AGENCY ____

DEPARTMENT DIRECTOR:	DATE:	AGENCY SECRETARY:	DATE:
Claudia Goin	8/19/86		8/

PE - 60b

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

4. 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 violations of the Brown Act.

ANALYSIS

Background

Enacted in 1985, AB 214 authorized 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 a violation of the State Open Meetings Act was criminal misdemeanor sanctions.

AB 214 did not address violations of the open meetings provisions of the Ralph M. Brown Act as that law affected meetings of local legislative bodies (e.g., city councils, boards of supervisors, and other bodies).

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

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.

Apparently, without prior notice to the public of the ordinance, the twelve members of the Los Angeles City Council voted unanimously on a item of business simply referred to as "Item 53." Upon review by 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.)

However, the court went on to conclude that these city officials "failed to comply with the spirit of the law" and had violated provisions of the City Charter. Although the violations were not based on the Brown Act, the court found the salary increase ordinance to be void and enjoined the city from disbursing the salaries.

Specific Findings

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 regard to 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 precendent to any suit. This provision of the bill will permit local agencies to cure any real deficiency without engaging in needless and costly litigation.

Further, 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, but 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 law has occurred may issue a written demand within 30 days of the action to the local legislative body to cure the deficiency (e.g., renotice and convene a subsequent meeting within 15 days to reconsider the action). 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 two-thirds 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, it was included in the bill to meet arguments that the measure unreasonably restricted the activities of local legislative bodies.

Fiscal Impact

Since this bill will affect only local legislative bodies, there ie no fiscal impact on our department.

Socio-economic Impact

See Specific Findings, above.

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
- California Newspaper Publishers Association

Opponents:
- 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 League of California Cities are neutral on the bill as amended.

Arguments

See Background and Specific Findings, above.

Recommendation

The Department of Consumer Affairs recommends that this bill be SIGNED.

ENROLLED BILL REPORT — Form DF-44R (Rev. 1/86 W 500)

	NO.	ISSUE DATE	BILL NUMBER
Local Cost	3	AUG 2 0 1986	AB 2674
E S T I M A T E	AUTHOR		DATE LAST AMENDED
Department of Finance	Connelly		June 4, 1986

I. SUMMARY OF LOCAL IMPACT:

Revises local agency open meeting requirements.

II. FISCAL SUMMARY--LOCAL LEVEL

	1986-87	1987-88	1988-89
		(Dollars in Thousands)	
Reimbursable Expenditures:	$1	$2	$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)

LIST VIII

PREPARED	Date	* REVIEWED	Date	* APPROVED	Date
LR:0422x		*		*	

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.

LR:0421A-2

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 12 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 failure to include the proper language should not be a serious problem because the information provided in this analysis could also be provided to the Commission on State Mandates if any local agency submits a claim for reimbursement to that Commission.

LR:0421A-3

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 12 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 failure to include the proper language should not be a serious problem because the information provided in this analysis could also be provided to the Commission on State Mandates if any local agency submits a claim for reimbursement to that Commission.

LR:0421A-3

OFFICE OF LOCAL GOVERNMENT AFFAIRS

ENROLLED BILL REPORT

BILL NUMBER	AUTHOR
AB 2674 (As Amended 6/4/86)	CONNELLY

SUBJECT
OPEN MEETINGS: LOCAL AGENCIES

SUMMARY

Would amend the Ralph M. Brown Act and the Education Code regarding the conduct of open meetings of local agencies, and school and community college district boards.

ANALYSIS

A. Detailed

Currently, the Ralph M. Brown Act and the Education Code require, with specified exceptions, that meetings of legislative bodies of local agencies, and governing boards of school and community college districts be conducted openly and publicly.

Under these existing laws, local agencies are not required to post an agenda of business to be transacted at a regular meeting. However, school and college districts must post an agenda 48 hours in advance. Currently, local agencies and school and college districts are not prohibited from taking action on an item which is not listed on an agenda.

AB 2674 would require legislative bodies of local agencies, and governing boards of school and community college districts to post an agenda containing a brief general description of each item of business to be transacted or discussed at a regular meeting. The agenda must be posted 72 hours prior to such meeting, and must be posted in a location that is freely accessible to the public. The bill would also prohibit such bodies from taking action on any item which does not appear on the agenda. However, such bodies could take action on items not listed on the agenda if:

1. A majority of the legislative body finds that an emergency situation exists, as defined in Government Code Section 54956.5.

2. The legislative body determines, by a 2/3 vote, that the need to take action arose subsequent to the posting of the agenda.

3. The item was continued from a prior meeting.

RECOMMENDATION	
SIGN	
BY	DATE
PB	August 18, 1986
TITLE	Huston T. Carlyle, Jr.
	Director

PB

The Ralph M. Brown Act does not require that an agenda for a regular meeting for local agencies provide an opportunity for the public to directly address the legislative body on items of interest.

AB 2674 would require legislative bodies of local agencies to provide on every agenda, an opportunity for the public to directly address the legislative body on items of interest that are within the subject matter of jurisdiction, provided that no action shall be taken on any item not appearing on the agenda, excluding the exceptions noted above. The bill would authorize the local legislative body to adopt reasonable regulations for this purpose, including a limitation on the total amount of time allocated to each speaker for public testimony, and the total time alloted for public testimony at each meeting.

However, AB 2674 would not require allocated time for public testimony if an agenda item of a city council or county board of supervisors meeting has already been considered by a committee which is composed exclusively of council or board members; and such committee meeting was conducted openly, with the opportunity for public testimony at that time.

This provision relating to public testimony would not apply to school and community college districts.

The Brown Act and the Education Code authorize legislative bodies of local agencies, and school and community college districts to call a special meeting if they notify the legislative body members and the media, in writing, 24 hours prior to the meeting. The notice must contain the time and place of the meeting, and the business to be transacted.

This bill would further require these agencies and districts to post their special meeting notices 24 hours in advance in a location that is freely accessible to the public.

The Bagley-Keene Act, which governs open meetings for state legislative bodies, permits an individual to file an action by mandamus or injunction declaring a state body's decision null and void because it did not comply with open meeting requirements. A suit must be filed within 30 days of the state body's decision.

AB 2674 would authorize an individual to file an action by mandamus or injunction to determine if actions taken by a local legislative body or governing board of a school or community college district are null and void because these bodies did not comply with open meeting requirements.

Within 30 days of the body's decision, the individual must demand that the legislative body correct its action. The legislative body then has 30 days to either correct the action, or inform the individual that the action will not be corrected. If the action is not corrected, the individual has 15 days to file a lawsuit. However, if the legislative body later corrects the action, the court must dismiss the suit.

Exceptions to this null and void provision 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 open meeting requirements.

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

AB 2674 would authorize the award of reasonable attorneys' fees in suits to determine the null and void premises noted above.

B. Cost

No appropriation. The bill would create a state-mandated local program by requiring local legislative bodies and school and community college district boards to post agendas, and by requiring local legislative bodies to provide opportunity for public testimony.

AB 2674 would provide that reimbursement shall be provided through the State Mandates Claim Fund.

LEGISLATIVE HISTORY

AB 2674 is sponsored by Common Cause.

The Ralph M. Brown Act generally requires that meetings of legislative bodies of local agencies be open to the public. The Education Code contains similar provisions for school and community college districts.

The sponsor indicates that AB 2674 was introduced in response to a vote of the Los Angeles City Council on an agenda item, recognized only as item #53, which was later revealed as a salary increase for city council members, and other city officials.

AB 2674 would strengthen current open meeting requirements for local agencies, as well as school and community college districts, by requiring such agencies to post agendas which briefly describe each item, and by posting these agendas 72 hours prior to each meeting.

In addition, individuals would be authorized to file lawsuits to determine if actions taken by a local or school legislative body are null and void because the body did not comply with open meeting requirements. Reasonable attorneys' fees could be awarded in such cases.

This bill would also require legislative bodies of local agencies to provide the opportunity for public testimony at each meeting. This provision does not apply to school and community college districts.

Proponents contend that AB 2674 will afford a more efficient government operation, and would prohibit local officials from violating the Brown Act.

AB 2674 is supported by Cal-Tax, Attorney General, California District Attorneys Association, District Attorneys of Los Angeles, Alameda, San Joaquin, Police Officers Research Association of California, Sierra Club, Schools of Legal Services, League of Women Voters, California State PTA,

California State Freedom of Information Committee, California Grocers Association, California Society of Newspaper Editors, Department of Consumer Affairs, ACLU, and the Sonoma County Taxpayers Association.

This bill is opposed by the Association of California Water Agencies (ACWA), California Association of Sanitation Agencies, County Clerks Association, Amador County Water Agency, Jackson Valley Irrigation District, Barron Park Association, City of Los Angeles, and the San Mateo County Council of Mayors. The League of California Cities has withdrawn their opposition due to amendments which were introduced at the League's request.

Opponents argue that the 30 day null and void provision would delay all actions taken by a governing board. They are also concerned that AB 2674 would allow the public to add items to the agenda, after the agenda has been set, thereby placing a burden on legislative body staff.

There is no other known opposition.

VOTE: Assembly - 14 April 1986 Senate - 3 July 1986
Ayes - 69 Ayes - 37
Noes - 4 Noes - 0

Concurrence - 14 August 1986
Ayes - 76
Noes - 0

REASONS FOR RECOMMENDED POSITION

The Office of Local Government Affairs recommends the Governor SIGN AB 2674.

This measure will amend the open meeting requirements for legislative bodies of local agencies and governing boards of school and community college districts, in an effort to strengthen the Legislature's intent that the public has the right to be informed about local government decisions.

(Analysis prepared by Nancy Patton.)

AB 2674 (Connelly)
8/12/86

ASSEMBLY LOCAL GOVERNMENT COMMITTEE
REPUBLICAN ANALYSIS

AB 2674 (Connelly) -- OPEN MEETINGS:LOCAL AGENCIES
Version: 6/4/86 Vice-Chairman: Bill Lancaster
Recommendation: Support Vote: Majority

Summary: Amends the Ralph M. Brown Open Meeting Act and the Education Code to strengthen the laws requiring open meetings. The most significant change is allowing interested citizens to commence an action within 30 days to have any government action in violation of the open meeting laws declared "null and void". Authorizes the award of reasonable attorneys fees in "null and void" law suits. Makes numerous other less controversial changes. Fiscal effect: Unknown, possibly significant, state costs for reimbursement of "reasonable attorneys fees" and for required mailed and published notices.

Supported by: Common Cause (sponsor); Cal-Tax, Attorney General, CA District Attorneys Assn. , Counties of L.A., Alameda, San Joaquin, PORAC, Sierra Club, Schools Legal Services (80 school agencies), League of Women Voters, CA State PTA, CA State Freedom of Information Committee, CA Grocers Assn., CA Society of Newspaper Editors, Dept of Consumer Affairs, CA School Boards Assn, Community College Facility Assn. Opposed by: CA Assn. of Sanitation Agencies, San Mateo County Council of Mayors, City of San Diego. Neutral: Cities of L.A. and 33 others, Assoc. of CA Water Agencies, Dept of Finance, Youthful Offender Parole Board, Dept of Mental Health. Governor's position: None.

Comments: Introduced in response to a vote of the Los Angeles City Council on an agenda item #53, later revealed as a salary increase for the council and other city officers. Proponents state that, although the Brown Act has enforcement/penalties related to behind-the-scenes meetings, the Act has no teeth regarding (unannounced) special agenda items.

Opponents claim that the 30 day "null and void" period would create a cloud over all actions taken by local agencies and would delay enacting these actions for 30 days. They also stress that the public would be able to add agenda items after the agenda has been set which could cause a council's/staff's workload to be greatly burdened.

Assembly Republican Floor Vote
Floor (69-4) Ayes: All other Reps present
Noes: Lancaster, Wright
Senate Republican Floor Vote -- 7/3/86
(37-0) Ayes: All Republicans present
Consultant: Tracy Morgan

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:

COMMITTEE: LOCAL GOVERNMENT		
BILL NO.: AB 2674		
DATE OF HEARING: 5-28-86		
SENATORS:	AYE	NO
Ayala	✓	
Campbell		
Craven	✓	
Marks	✓	
Russell	✓	
Vuich (VC)		
Torgeson (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

Senate Floor Vote:

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:

CONTINUED

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.

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. 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

CONTINUED

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

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—80

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	Watson, Norman
Condit	Hauser	Mojonnier	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

EXHIBIT V

OFFICE OF THE GOVERNOR
Sacramento, CA 95814
Kevin Brett, Deputy Press Secretary
Donna Lipper, Assistant Press Secretary
916/445-4571 9/2/86

RELEASE: Immediate

#691

Governor George Deukmejian signed the following bills:

AB 1945 - Wright, R-Simi Valley. Corrects two Insurance Code provisions of erroneous cross references.

AB 1995 - M. Waters, D-Los Angeles. Prohibits discrimination against an owner or occupant of a residential development or shelter.

AB 2645 - Grisham, R-Norwalk. Requires that, when appropriate, children be placed with relatives after being removed from parental custody.

AB 2674 - Connelly, D-Sacramento. Revises provisions of the Ralph M. brown Act, relating to deliberations and actions of local legislative bodies.

AB 3184 - O'Connell, D-Carpinteria. Revises procedures used by the Industrial Welfare Commission regarding petitions.

AB 3566 - Connelly, D-Sacramento. Permits increased punishment for prison inmates committing felonies at work furlough centers.

SB 1533 - Montoya, D-Whittier. Continues California Interscholastic Federation regulation of interscholastic athletes.

SB 1730 - McCorquodale, D-San Jose. Modifies the retirement process of Career Executive Assignment employees.

SB 1769 - Craven, R-Oceanside. Provides timely notice to mobilehome resident organizations that their park is for sale.

SB 1802 - Presley, D-Riverside. Returns federal waste water treatment facility operators to the State Water Resources Control Board's operator certification program.

SB 1874 - Royce, R-Anaheim. Modifies criminal provisions regarding forfeiture of assets after pleading guilty in court.

SB 1879 - Montoya, D-Whittier. Changes the name of the Podiatry Examining Committee to the Board of Podiatric Medicine.

SB 1895 - Watson, D-Los Angeles. Modifies the authority of the Fair Employment and Housing Commission.

SB 2172 - Roberti, D-Los Angeles. Modifies the Political Reform Act of 1974.

SB 2280 - Campbell, R-Hacienda Heights. Provides statutory authority for an annual leave program for State Traffic Sergeants in the California Highway Patrol and for all state managerial employees.

#####

Governor George Deukmejian has allowed the following bill become law without his signature:

AB 1487 - Papan, D-Millbrae. Clarifies the framework under which the anti-rebate-statutes will ultimately be tested by the court.

[OVER]

EXHIBIT W

AB 2674

Assembly
California Legislature

Subcommittee on the Administration of Justice

1100 J STREET, FIFTH FLOOR
SACRAMENTO 95814
TELEPHONE (916) 324-7593

GENE ERBIN
COUNSEL

ROSEMARY SANCHEZ
SECRETARY

LLOYD G. CONNELLY
CHAIRPERSON

September 9, 1986

Allen Sumner
Attorney General
1515 K Street, Suite 511
Sacramento, California 95814

Dear Mr. Sumner:

Just a brief note to thank you for your support of my Brown Act legislation, AB 2674.

As you may know, the Governor has signed the bill into law (Chapter 641).

I appreciate your interest in this bill and look forward to working with you in the future.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

LGC:grs

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

FOR AB 2674

September 8, 1986

Lew Griswold
Editorial Page Editor
Visalia Times-Delta
P.O. Box 31
330 N. West St.
Visalia, CA 93279

Dear Lew:

Thanks very much for sending me a copy of your excellent editorial on the Connelly bill. I will see that the Attorney General and his legislative staff receive copies as well.

If we can be of any assistance in the future, please don't hesitate to call me at (916) 324-5440.

Sincerely,

Sigrid Bathen
Press Secretary

Visalia Times-Delta

P.O. BOX 31
330 N. WEST ST.
VISALIA, CA 93279
(209) 734-5821

Sept. 2, 1986

Sigrid Bathen
Press Secretary
Department of Justice

Sigrid,

Thanks for sending the letter John wrote to the Governor. We're glad he supports Connelly's bill.

We wrote an editorial on the subject. Thought you might wnat to see it.

Regards,

Lew Griswold
Editorial Page Editor

Opinion

Janet C. Sanford/President-Publisher
Bill Steinauer/Managing Editor

Brown Act needs more, sharper teeth

For a state as progressive as California, it is surprising how full of holes its open meeting law is. The Brown Act contains no meaningful posted agenda requirement and the law contains no meaningful remedy for open meeting law violations.

A bill now before the governor would repair these shortcomings. The governor has until Aug. 30 to sign it, veto it or let it become law.

AB 2674, introduced by Assemblyman Lloyd Connelly, D-Sacramento, would put teeth in the Brown Act and make it easier for the public to know what is going on in government.

Hard as it is to believe, city councils and boards of supervisors are not required to post agendas. Most do, of course. Both the Visalia City Council and the Tulare County Board of Supervisors routinely post their agendas. But it is not required.

SCHOOL DISTRICTS AND community college districts are required to post agendas 48 hours in advance of regular meetings and 24 hours in advance of special meetings.

Under the bill, agendas would have to be posted 72 hours before meetings. The agendas would have to contain a brief, general description of each item of business to be transacted or discussed. Also, the time and place of the meeting must be listed. This is how it should be.

This is important is because it helps the "little guy."

Let's say an alley is to be abandoned or trees along a street are to be cut down. This is not the sort of thing likely to be in the newspaper before the meeting, and not the sort of thing the average person who might be affected is likely to be looking out for. But if it is listed on an agenda a good three days before the meeting, there's a far greater chance the average person is going to hear about it and have time to react.

More annoying is that under current law, public bodies can vote on items that aren't even on the agenda. This doesn't appear to happen often around here, but it is not still not right. Under the bill, only items listed on the agenda can be voted on. This is as it should be.

OCCASIONALLY SOMETHING comes up that must be dealt with right away that isn't a natural disaster. If two-thirds of the public body agree (that's four votes on a five-person board, for instance) an item can be added to an agenda at the last minute. Emergency meetings to handle natural disasters are already permitted under the Brown Act.

And if an item properly appeared on a previous agenda, it can be taken up at a later meeting held within five days of the first meeting without being noticed again.

The proposed law makes significant changes in another area. It would permit actions taken in violation of the Brown Act to be declared null and void by a court. As it stands now, actions illegally arrived at are still valid. Before suit can be filed the local body must be given a chance to cure or correct an action alleged to be in violation of the Brown Act.

The bill also makes one other fairly important change in the Brown Act. It states that each agenda shall "provide an opportunity for members of the public to directly address the legislative body on items of interest to the public." Nothing in current law presently requires local entities to listen to citizens.

THE BROWN ACT is a very important law. It gives citizens the right to publicly witness local officials make decisions.

The bill now before the governor adds two more rights, namely the right to know beforehand what is going to happen at meetings and the right to afterward have illegal actions invalidated.

The Senate approved the bill 32-0 and the Assembly approved it 68-0. No significant opposition to the bill remains. The League of California Cities and the County Supervisors of Association of California are both officially neutral.

We urge Gov. George Deukmejian to sign the bill into law.

AUG 30, 1986

AE

Routine/Informational

TO: Exec. Staff Leg. August 14, 1986

FROM: Legislative Unit

SUBJECT: Legislative Update August 14, 1986

The following actions occurred on August 14, 1986:

AB 441 (M. Waters) - this bill was amended to include our proposal from last year to eliminate the current case law presumption that bail shall be granted pending appeal. The bill passed the Assembly (74-0). This has been one of the most difficult bills to push through. Cliff Thompson in San Francisco provided expert assistance without which we would not have succeeded. Next action: To the Governor. (George)

AB 2674 (Connelly) - extends the requirements and enforcement provisions of the open meeting act to local governmental bodies passed the Assembly (68-0). We were in support. Next action: To the Governor. (Jeff)

SB 2288 (Campbell) - permits a defendant in a capital case to plead guilty, if he is found to be competent, even if his attorney does not approve the plea, passed the Senate (25-7). Senator Campbell argued that a mentally competent defendant should have the right to make his own decision; that he should have this control over his own destiny. Since this bill can be viewed as a civil liberties bill, it is of some small surprise that the ACLU opposes it. We have no position on the bill. Next action: Assembly Public Safety Committee. (George)

SB 2530 (Petris) - our "children's court" bill passed the Assembly (57-19). Next action: Senate floor for concurrence. (George)

From Inactive File

AB 2674

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.

- 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.

Lyle Defenbaugh
445-6034
8/14/86:algov

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

August 19, 1986

Honorable George Deukmejian
Governor, State of California
State Capitol, First Floor
Sacramento, California 95814

Dear Governor Deukmejian:

AB 2674 (Connelly) - Open Meetings

The Attorney General's office urges you to sign AB 2674.

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.

Before a party may commence litigation to have an action declared void, the legislative body must be presented with a written demand filed within 30 days of the action in question, to cure or correct the violation. If the local body fails to take corrective action, the complaining party may then commence an action in mandamus or for injunctive relief in superior court. 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 teeth in the requirement that the public be given notice of proceedings conducted by state agencies. We support 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 ultimately passed the Legislature without a dissenting vote.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

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

AS:lb

August 19, 1986

Honorable George Deukmejian
Governor, State of California
State Capitol, First Floor
Sacramento, California 95814

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Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

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

AS:lb

bcc: Assemblyman Connelly

The Sacramento Union

THE OLDEST DAILY IN THE WEST
FOUNDED • MARCH 19, 1851

Richard M. Scaife Publisher
John D. Bates General Manager
Bruce Winters Editor

Editorials

Public's right to know is under siege again

Californians can be proud of the Ralph M. Brown Open Meeting Act, approved in 1953 to prevent secrecy in city council, school board, and other local government deliberations. For the most part it has succeeded in safeguarding the public's right to know, but not without frequent efforts by local officials to avoid its strictures and conduct business behind closed doors.

Once again the Brown Act is under siege, and this time local officials have the support of state Attorney General John Van de Kamp. He says local government officials may discuss anything they want with their attorneys if the objective is "the avoidance of potential litigation." This privilege would come within the attorney-client relationship, he said.

The California Newspaper Publishers Association (CNPA) was quick to point out that the attorney general's informal opinion, if allowed to stand, would drive a wedge into state open meeting laws.

Lawmakers and the media freely acknowledge that there are valid exceptions to the Brown Act, such as the need to discuss actual lawsuits and personnel matters. But to give local governments the green light to meet in secret to discuss "potential litigation" as suggested by Mr. Van de Kamp, would cover virtually every public policy issue imaginable. A city council's North Natomas-type zoning decision, a board of supervisors' building fee proposal, a school board's policy regarding students with AIDS — all of these issues would be subject to threats of lawsuits and could be discussed behind closed doors.

To clarify the limited exceptions to the Brown Act, Senate President Pro Tem David Roberti, D-Los Angeles, has introduced a measure (SB 2173) that is supported by the CNPA. It strengthens wording in an amendment by Sen. Barry Keene, D-Benicia, enacted two years ago to limit closed meetings with an agency's legal counsel to "pending legislation."

The measure would also apply to the Bagley-Keene Act, an open meeting law applying to state boards and commissions. Since Mr. Van de Kamp is often called upon to act on behalf of these agencies in his capacity as chief state legal officer, he is not a disinterested observer in questions of secret meetings.

The Roberti bill, passed 34-0 by the Senate and pending in the Assembly, would restrict the "lawyer-client privilege" to court cases that were actually underway; to cases in which the public body in question intends to sue someone, or if circumstances suggest a real threat of a lawsuit against the public body.

One can understand why the League of California Cities and the County Supervisors Association oppose the Roberti legislation. Local governments want a free hand to conduct their business in private with counsel, particularly if there is any hint of law suits.

But it is well to remind these officials of the Brown Act's declaration of intent: "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 they may retain control over the instruments they have created."

Californians who believe with us that there is merit in this statement should let their Assembly members know so they can oppose attempts to undercut the state's open meeting laws.

The Orange County Register
7-16-86

Keeping the doors open

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.

San Jose Mercury News

ROBERT D. INGLE, *Senior Vice President and Executive Editor*
JEROME M. CEPPOS, *Managing Editor*
JENNIE BUCKNER, *Managing Editor/Afternoon*

ROB ELDER, *Editor*

DEAN R. BARTEE, *Senior Vice President*
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Editorials Thursday, July 10, 1986 6B

Public's business, publicly

A state bill would limit secret sessions of boards and commissions

CITIES, counties, school districts, even state boards and commissions, have a right to confer privately with their lawyers now and then.

But too much of a good thing, when the good thing is attorney-client privilege, can be a bad thing for the people. With rare exceptions, government must conduct the public's business in public.

That's why the Legislature should enact Senate Bill 2173 by Senate President Pro Tempore David Roberti, D-Los Angeles. It clarifies — and limits — the circumstances under which a city council or a state commission may go into secret session under the guise of conferring with legal counsel.

In a recent informal opinion, Attorney General John Van de Kamp suggests that state and local governing bodies may meet secretly on any subject that involves "potential litigation." In a society as litigious as this one, that means virtually any subject. What *can't* a city council be sued for doing, or not doing, these days?

Van de Kamp's interpretation of the law effectively invalidates California's two open-meeting statutes and invites an expansion of secret government.

Roberti's bill reinforces the existing open meeting laws by providing that, in general, state and local governing bodies may meet privately with their lawyers only when 1) they're being sued, 2) when they're planning to sue, 3) when there's a good chance they will be sued or 4) when they want their attorney's advice as to whether the chance they'll be sued is great enough to justify a secret session.

These are reasonable exceptions to the general rule that the people have a right to know what their public officials are doing in their name. In our view, there is no justification for going beyond these exceptions in the name of lawyer-client privilege.

p. 1 of 2

Open Mtgs.

Copy to DOJ in cc: Maitland/Hill/Prem

THE SAN FRANCISCO BAY GUARDIAN, JUNE 18, 1986

Curtains for the Brown Act?

A quiet move by the attorney general could wipe out California's pioneering open meetings law

California Attorney General John Van de Kamp has issued an informal opinion that could turn the state's landmark open meeting and public records laws into little more than a joke.

In a letter this spring to State Sen. Barry Keene, (D-Benicia), Van de Kamp argued that local agencies are free to hold secret meetings to discuss with legal advisors anything that potentially could be the subject of litigation. Since virtually anything a public agency does potentially could be the subject of a lawsuit, the opinion amounts to a blanket exemption from the open meeting requirements of the Ralph M. Brown Act for any local governmental body that wants to do business behind closed doors.

Van de Kamp's statement is not a formal legal opinion, so it lacks any binding authority. A formal attorney general's opinion on the matter, however, would have almost the same legal ramifications as a precedent-setting decision by the state Supreme Court or the Court of Appeal. And supporters of the Brown Act say it may just be a matter of time before Van de Kamp issues such an opinion.

"The attorney general only issues formal opinions when he receives a formal request," explained Joseph T. Francke, legal counsel to the California Newspaper Publishers Association. "But now that Van de Kamp has made his position on this issue perfectly clear, a request for a formal opinion could come at any time."

A boost to Agnost

Van de Kamp's position flies in the face of existing case law, and undercuts the stated goals of a Keene bill that took effect in January, 1985. The bill, SB 2216, was sponsored by the CNPA in an effort to close the loophole in the Brown Act that allows agencies to hide a broad range of closed-door activities under the mantle of "attorney-client privilege."

The Van de Kamp opinion also gives legal credibility to the practice of City Attorney George Agnost, who for years has used the claim of "attorney client privilege" to keep from public scrutiny his opinions, memoranda, notes, correspondence and other records addressing important — and controversial — public policy issues. In many cases, critics have charged that Agnost had no right to keep the information secret, since it had no relevance to pending litigation. On numerous occasions, the Bay Guardian has demanded access to records in the city attorney's office — and Agnost has refused to release the records, citing attorney-client privilege (see "The curious case of the secret bus shelter documents," Bay Guardian, April 16th, 1986).

Van de Kamp's arguments could also help Agnost and his deputies continue to defend their practice of meeting in closed session with city boards and commissions for discussions that participants say are not always limited to legal issues. In some cases, members of the Board of Supervisors and city commissions have charged privately that Agnost or his deputies have used the closed sessions to threaten that the supervisors or commissioners could be personally liable for millions of dollars in damages if they take actions contrary to the city attorney's recommendations.

Such warnings have angered a number of city officials, especially those who are also lawyers. These officials charge that the warnings of individual liability are based on very shaky legal analyses — in the overwhelming majority of cases, they say, city officials acting in their role as legislators or policy-makers cannot be held personally liable for their actions in a civil lawsuit. Agnost issues the warnings, critics suggest, in an effort to intimidate or frighten reluctant officials into following his advice — advice that virtually always advances the interests of major downtown developers and other powerful special interests. Agnost and his deputies argue that there are, in fact, cases in which courts have found city officials individually liable for actions they took as members of an elected or appointed governmental agency. They claim they never have issued any advice or warnings that were not properly grounded in law.

Under Keene's law, the public would have at least some opportunity to examine the specifics of those warnings and determine independently whether Agnost, an elected official, had overstepped his authority. Keene's law specifies that local agencies who meet with attorneys in closed session to discuss pending litigation must specify publicly whether the discussion involved an existing lawsuit (and if so, to identify it). The law also requires that the agency's attorney write a memo describing why the closed session is neccesary and outlining the facts and issues to be discussed. That memo must be made public if and when the specific case is litigated or settled.

According to Francke, Keene's bill was an attempt to codify a large body of case law that upheld the responsibility of public agencies to hold deliberations and make decisions in public, except for very specific, limited instances in which public disclosure of legal strategies or contract negotiations could hurt the agency's ability to prevail in court or at the bargaining table.

That philosophy was expressed as far back as 1960, in an opinion by then-Attorney General Stanley Mosk, who is now on the Supreme Court. "City councils," Mosk wrote, "are engag regularly in delib or acting upon or

SOS!

What you can do to help save open government in California: The state legislature must act soon to prevent the demolition of the Brown Act. The Bay Guardian urges everyone who wants to see the public's business done in public to:

1. Write or call your state Assembly representative and senator and demand their support for amendments to SB 2173 (Roberti) that would affirm strict controls on closed meetings as well as AB 2674 (Connelly), which puts some teeth back in the Brown Act.
2. Write or call Gov. Deukmejian and urge him to sign both bills.
3. Write or call Attorney General John Van de Kamp and let him know you oppose any attempts to weaken the public's right to see policy issues discussed and decided in the open.

regulations etc., where the legal implications of the subject matter are as important for a proper decision as factual or other information. . . . Thus, the city attorney may be called on to explain the legality or legal implications 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."

However, despite the stated intent of Keene and the CNPA, Van de Kamp wrote that "it is unclear" whether the language in the legislation actually prevents closed meetings for attorney-client discussions unrelated to specific pending litigation. "We think the interests of the public are served," the opinion states, "when candid legal advice dissuades a public agency from taking questionable action which might otherwise lead to litigation."

Other implications

Although the Van de Kamp opinion does not apply directly to the Public Records Act, Francke suggested that it could be used by city officials to justify withholding documents that otherwise would be subject to public disclosure. "The Brown Act [which covers public meetings] and the Public Records Act are similar in many areas," Francke said. "I think, by implication, the [Van de Kamp] opinion would tend to fortify the position of a city attorney who argued that any, but any communication between a city official or agency and the city attorney was inherently confidential."

Van de Kamp's statements further appear to undercut the effectiveness of a pending bill by Assemblyman Lloyd Connelly (D-Sacramento), which would allow a court to invalidate the actions taken by a city agency in a closed session that violated the Brown Act. Connelly's bill is still before the Assembly, but were it to pass, Francke said, local agencies could use the "attorney-client privilege" claim to defend virtually any closed session, making it all but impossible to argue that an action taken in private was improper.

State Senate President Pro Tem David Roberti (D-L.A.) has agreed to amend into an existing bill language that would affirm the strict controls on closed meetings and render Van de Kamp's opinion moot. The Roberti Bill, SB 2173, has passed the Senate and is now before the Assembly.

Van de Kamp's opinion is just the latest in a series of assaults that have chipped away at the Brown Act. The bills by Keene and Connelly sought to put some teeth back into the act — but the attorney general's action means the legislature will have to take additional steps, at once, to prevent the complete erosion of California's pioneering open meetings law.

—Tim Redmond

ON GUARD

continued from page 5

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.

- 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.

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

San Diego Union
7-02-86

File
AB 2674

Still the public's business

The City Council missed an opportunity to improve its credibility Monday, by refusing to reconsider a series of budget decisions made in private meetings that violated the spirit, and probably the letter, of the state's open-meeting law.

Instead, the council majority tried to defend its actions by attacking the open-meeting law and news accounts of the private budget maneuvers. The only members of the council voting to reopen the budget hearing were Judy McCarty, Ed Struiksma, and William Jones.

Clearly, reopening the budget hearing would not have absolved the council of its earlier violation. But by conducting a new hearing on the 147-item budget "wish list" adopted June 20, council members would have acknowledged that the taxpaying public has a right to know how these spending decisions are made.

That is precisely what the Ralph M. Brown Act was designed to do: Require local governments to conduct the public's business in public. The Brown Act is not a "stupid" law, as City Councilman Bill Cleator said Monday. Nor is it so complex that the average council member should have difficulty comprehending it. The law merely requires local governments to hold regularly scheduled public meetings and make its decisions at those meetings, not behind closed doors.

Indeed, some sections of the Brown Act should be made stronger. For example, the law does not negate actions taken in an illegal closed-door session. But that may soon change. The Assembly has passed and the Senate could vote tomorrow on Assembly Bill 2674, which would eliminate this deficiency and strengthen other sections of the act. Not suprisingly, the city of San Diego opposes AB 2674.

Council members should remember that it is the public's business they are conducting and the public's money they are spending. We would never contend that it is easier for public officials to do the public's business in public. But the purpose of the Brown Act is not to make public officials' lives easier. It is to ensure that they are accountable for the actions they take on the public's behalf.

San Diego Tribune
6-24-86

RB2674

Did the council violate Brown Act?

CITY ATTORNEY John Witt should be commended for launching an inquiry into whether city council members violated the state anti-secrecy law by discussing the city budget behind closed doors.

The secret conduct of the city's business, as revealed in a Tribune article, is intolerable and probably illegal under the Ralph M. Brown Act of 1953. The law must be followed in spirit as well as letter. That's why we don't buy the limp excuses council members offer to get themselves off the Brown Act hook. For instance, some noted that no more than four of the eight council members met last week to discuss a priority list of programs to be funded for the fiscal year starting July 1, while the Brown Act forbids a majority to meet outside public view. Others said the closed-door session before their public meeting Thursday was spontaneous and unplanned. They didn't actually vote in secret.

These arguments are going to backfire. The council members, it appears, were trying to sneak around the law. While they wheeled and dealed, they forgot about the law and the well-being of the entire city. If they made no closed-door decisions, how did $31,000 for a Quality of Life Board, a program not even considered by City Manager Sylvester Murray, suddenly become a high priority when the council finally went public? How did the council decide a complex question about funding for the financially-troubled San Diego Symphony with hardly any public debate? Even Witt appeared to be the victim of their behind-the-scenes maneuvers. He asked for a senior chief deputy for his criminal division in fiscal 1987 and instead got more money for zoning code enforcement, an idea favored by at least one councilman.

And, what about the programs that were left out? What ever happened to the $500,000 that Mayor-elect Maureen O'Connor wanted for an after-school recreation program? What about a proposal for more books for our city library? Apparently these suggestions died before the council members ever entered the chamber.

Since Witt is only empowered to pursue civil violations of the Brown Act, we applaud his quick action in consulting the district attorney about a possible criminal investigation. If there is evidence the council actually made decisions secretly, the district attorney should act.

Meanwhile, we offer these simple suggestions:

— Each council member should get a copy of the Brown Act and read it periodically.

— During the crucial debates on the annual city budget, the council should use the city manager's master list as the basis for discussion. The council members don't have to follow it religiously, but they would have to propose changes in public. They should also consider public testimony.

Council members must quit thinking about what's most convenient for them and start thinking about what's best for the public. Witt and the district attorney should help persuade them.

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

June 19, 1986

Honorable Daniel Boatwright
Chairman, Senate Appropriations
State Capitol, Room 3086
Sacramento, California 95814

Dear Senator Boatwright:

AB 2674 (Connelly) - Open Meetings

The Attorney General's office urges you to support AB 2674, which will be heard by the Appropriations Committee on June 23.

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

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 and the Local Government Committee without a dissenting vote.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

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

AS:lb

June 19, 1986

¶1

Dear ¶2:

AB 2674 (Connelly) - Open Meetings

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Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

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

AS:lb
p
bcc: Assemblyman Connelly

Assembly
California Legislature

Subcommittee on the Administration of Justice

LLOYD G. CONNELLY
CHAIRPERSON

1100 J STREET, FIFTH FLOOR
SACRAMENTO 95814
TELEPHONE (916) 324-7593

GENE ERBIN
COUNSEL

ROSEMARY SANCHEZ
SECRETARY

May 30, 1986

Allen Sumner
Senior Assistant Attorney General
Department of Justice
1515 K Street, Suite 511
Sacramento, California 95814

Dear Mr. Sumner:

Thank you for your letter of support on my Brown Act legislation, AB 2674, that you recently sent to the Senate Local Government Committee.

As you may know, the Committee approved the bill by a vote of 5-0. Senators Ayala, Bergeson, and Craven requested to be added as co-authors.

Your continued support of this measure is much appreciated.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

LGC:grs

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.

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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.

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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

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

May 22, 1986

v1

Dear v2:

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Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

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

AS:lb
p

bcc: Assemblyman Connelly

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Assembly
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COMMITTEES
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SUBCOMMITTEES
CHAIR, ADMINISTRATION OF JUSTICE
STATE ADMINISTRATION
HEALTH & WELFARE

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

AB 2674

October 24, 1985

Mr. Allen Sumner
Senior Assistant Attorney General
Office of the Attorney General
1515 K Street, Suite 511
Sacramento, CA 95814

Dear Allen:

As you know, I am considering carrying legislation to make changes in the Ralph M. Brown Act similar to those contained in AB 214 (Chapter 936). In addition to a "null and void" provision, we are also considering the inclusion of more rigorous notice and agenda requirements.

I have received the booklet prepared by your office that summarizes the state's open meeting laws. It is obvious that your office possesses considerable expertise in this area.

I would like to request that you, or a member of your staff, meet with members of my staff and Mr. Gene Erbin of the Center for Public Interest Law in order to identify preliminary issues relating to this proposed legislation. Your expertise in this matter will be extremely helpful to us.

Please contact my office or Mr. Erbin directly (454-5364) when you have reviewed my request.

Thank you for your cooperation.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

LGC/ptc

ASSEMBLY THIRD READING

AB 2674 (Connelly) - As Amended: March 18, 1986

ASSEMBLY ACTIONS:

COMMITTEE	L. GOV.	VOTE	8-0	COMMITTEE	W. & M.	VOTE	20-1
Ayes:				Ayes:	Vasconcellos, Baker, Agnos, Bader, Bronzan, D. Brown, Campbell, Connelly, Eaves, Herger, Hill, Johnson, Leonard, Lewis, Margolin, McClintock, O'Connell, Peace, Roos, M. Waters		
Nays:				Nays:	Isenberg		

DIGEST

Current law, the Ralph M. Brown Act, requires all meetings of a legislative body of a local agency to be conducted open and public. 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.

This bill:

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.

- continued -

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.

FISCAL EFFECT

State mandated local program. Unknown but, probably minor costs for required written, mailed and published notice requirements; potentially state reimbursable.

COMMENTS

1) Opponents of this bill contend that the measure unnecessarily ties local agency hands. It is argued that the "no action" provision would prohibit the council from acting promptly on matters which may be in response to public requests on noncontroversial items like street closings for parades, release of developer's bonds, repair requests, or resolutions honoring citizens.

   In addition, opponents believe that the "null and void" provision would have a chilling effect for 30 days on all council actions.

2) Supporters of the bill 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. The bill would, by requiring the posting of a specific agenda, give the public more advance notice and increased 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. This bill renders these action null and void, thus putting "teeth" into the Brown Act.

3) The Bagley-Keene Open Meeting Act requires state boards and commissions to conduct open meetings and to provide specific agendas in advance. In addition, the Legislature operates under specific rules regulating its

- continued -

meeting notices and agendas. The legislative rules are allowed to be waived without prior public notice when a Member desires to move his or her legislation, by 2/3 approval of both houses, regardless of the urgency of the issue.

Mary McMillan
445-6034
4/14/86:algov

DEPARTMENT OF JUSTICE

BILL ANALYSIS

DATE March 18, 1986

BILL NO. AB 2674
AUTHOR: Connelly
DATE LAST AMENDED 3/10/86

ANALYST: Ted Prim
SECTION: Government
TELEPHONE: (916) 324-5481
ATSS 454-5481

I. Summary of Bill and Existing Law

Recent amendments altered two provisions of the original bill:

1. Instead of providing that the public had a right to speak in situations in which items were not placed on the agenda, the current bill requires that each agenda contain a specific item for comments from the general public on matters not otherwise specifically placed on the agenda.

2. The proposed legislation contains an escape clause from the agenda requirement "[U]pon a finding by a two-thirds vote of the legislative body that failure to take action will result in serious harm to the public and that the need to take action arose suddenly and unexpectedly and subsequent to the agenda posted...."

II. Background Information

Nothing to add.

III. Impact of the Bill

The amendments have no direct impact on this office.

IV. Recommendation

None.

Approved: [signature]

TO: Jeff DATE: 4/10

FROM: Julie Acuna

Subject: ADDITIONAL ANALYSIS

I have received the attached analysis on a bill which has already been before our legislative committee and on which a position has been taken.

BILL NO. AB2674 POSITION A-

Please review the attached and check the appropriate disposition box below:

- [X] File in bill file folder
- [ ] Place on next scheduled agenda for reevaluation by the legislative committee.
- [ ] _____

_____

_____

S

DJ - 35

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

AB 2674 (Connelly) - Brown Act: Description of Substantive and Technical Issues and Possible Solutions

SUBSTANTIVE ISSUES -

(1) The bill provides in Section 1, at page 3, line 22, that items that arise "suddenly and unexpectedly" may be added to the agenda. This provision is too inflexible to let councils and commissions add on routine matters, and matters that may have arisen after the agenda was prepared. The language should be stricken.

> Alternative: Allow the item to be added if (a) a member of the legislative body, the city manager or the city attorney, believes it is an emergency or urgent matter and explains the item and the emergency or urgent nature of the item, and two-thirds of the legislative body concurs; or (b) the legislative body determines by a two-thirds vote that the matter is an administrative matter brought to the attention of the legislative body after the agenda was prepared and that immediate action is in the best interest of the public.

(2) The agenda notice requirements proposed by Section 1, at page 3, could be misused by opponents of a development approval. They may attack the adequacy of the agenda notice, in hopes of stopping the project, much as CEQA and the general plan law are now used.

> Alternative: Since land use approvals have independent notice requirements. The bill should exempt from the agenda notice requirements actions for which notice must be sent pursuant to other requirements of statute or case law.

(3) Charters sometimes require posting or publication of agendas and provide procedures for adding on to agendas, and could conflict with this bill's provisions.

> Alternative: Provide that where a charter provides for publication or posting of agendas, or for agenda add-on procedures, the charter governs.

(4) Section 2, at page 3, lines 27-30, of the bill provides for legislative bodies to provide for public input at their meetings. Los Angeles and San Francisco take their public input at meetings of standing committees. The section should be amended to allow for such processes.

. . . O V E R

TECHNICAL ISSUES

(1) Section 1, page 3, line 5, requires posting of a "specific" agenda. This term could result in challenges to actions claiming that proposed actions were not described in "specific" enough terms, particularly in cases where an item was modified to respond to public input.

> Alternative: Use language such as "generally describe," "fairly describe" or the like.

(2) Section 1, page 3, line 19, requires a "finding" to add on to the agenda. The word "finding" connotes formal legal findings.

> Alternative: Have council formally "determine" that the item arose after the agenda, and enter this in the minutes.

(3) The exemptions from the "null and void" provisions at page 6, lines 24-28, include contractual obligations with good faith reliance by a third party, and actions taken in connection with the "collection" of a tax. Does the bill intend to exempt competitively-bid contracts and levying or imposition of a tax? Cities don't collect many taxes and when they do, it is seldom seen by a legislative body.

(4) The bill will be amended in committee to provide an administrative procedure to seek cures of Brown Act violations prior to a lawsuit being filed. (a) So that cities and the public will know when a cure has been affected, the bill should spell out how alleged violations may be cured, such as by noticing the agenda item and reconsidering the action at an open meeting. (b) The bill allows a council to cure an action or refuse to change its original action. The bill needs to provide that if a city does neither following receipt of the demand, that the nonaction is deemed to be a refusal to act.

Legislative Agenda
Sierra Club Legislative Office
1228 N Street, Suite 31
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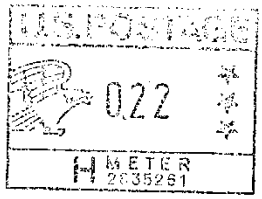

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Editor.....Joy Oakes
Contributors.....David Bouquin,
Mark Edelman, Joy Oakes.

AMENDMENTS PROPOSED FOR OPEN MEETING LAW: THE BROWN ACT - support needed!

AB 2674 by Assembly Members Lloyd Connelly (D-Sacramento) and Ross Johnson (R-Fullerton) would significantly amend the Brown Act. The Sierra Club supports this bill, now set for a March 11 hearing before the Assembly Local Government Commitee.

At present, the Brown Act requires, with certain exceptions, that all meetings of local legislative bodies be open and public. Entities subject to the Act include: city councils, county boards of supervisors, and planning commissions. But, the Brown Act does not:

* require local legislative bodies to post specific agenda prior to their meetings; or

* provide citizens of interested organizations a mechanism to remedy violations of the Act. If, for instance, a local entity violates the open meeting requirements, citizens currently have no judicial recourse to hold the government officials accountable.

Connelly describes the Brown Act as it presently stands as "toothless." AB 2674 would respond to these lacks by:

* requiring local legislative bodies to post a specific agenda of all items of business to be transacted or discussed at regular and specific meetings no later than 72 hours prior to regular meeting, and 24 hours prior to special meetings. No action may be taken on items of business not appearing on the posted agenda, and no item may be added to the agenda subsequent to its having been posted.

* authorizing private citizens and organizations to challenge actions of local bodies that violate the open meeting and proposed posted agenda amendment described above. AB 2674 would allow private citizens and organizations to go to

(See Brown, p.5)

RECYCLING, cont.

80% return rates are set in the bill, nothing in the bill now would enforce that goal. Why not raise the redemption rate until we reach this goal?

* State 19-member industry dominated commission -- while this proposed commission came under fire in the hearing, the governor's office has indicated that it would not support the creation of a new commission. Questions now focus on to which extent state entity this responsibility should go, and how can duties be more clearly delineated.

Technical concerns about the day-to-day administration of the program and "real world" effects on recycling centers were also raised. (For more background, see 2/14/86 and 1/31/86 Legislative Agenda issues.)

WHAT YOU CAN DO: Write your state senator and assembly members, NOW, particularly if s/he serves on the Natural Resources Committee. Urge support for higher initial redemption values, convenient returns, and a committment to 80% return rates.

LEASE SALE #91: The question of protecting fish hatcheries on land may become moot if the Department of the Interior proceeds with Lease Sale #91, which would open up virtually all of the federal outer continental shelf off the California coast to oil and gas exploration and drilling.

Eugenia Laychak, commercial fishing specialist with the California Coastal Commission, stated that although there is improved communication between offshore drillers and commercial fishermen, problems still arise. Offshore drilling, said Laychak, causes a physical displacement of fishing. Fishing can also be adversely affected by the dumping of drilling muds and geoseismic studies which accompany drilling and exploration.

Richard Charter, local government coordinator for California Coastal Counties, and Bingham recounted the chain of events which led to the House Appropriations Committee's 27-26 vote last November to end the federal drilling moratorium off the California coast. Committee Chairman Barry Keene (D-Benicia) likened oil leasing off the Mendocino coast to "an attack on Yosemite Valley," and called Governor Deukmejian's 11th hour letter of opposition to continuance of the moratorium to the members of the House Committee a "disgrace."

Citing drilling industry claims, Assembly Member Bill Filante (R-Greenbrae) asked if fish aren't actually attracted by drilling platforms. Bingham answered that this may be true, as fish are attracted to stationary physical objects and shellfish are known to form communities on the legs of the drilling platforms. However, the anchor lines which are used to secure the platforms extend out at a very shallow depth. If there are more fish near the platforms, the fishermen are unable to get their boats close enough to the platforms to catch any of the fish. Said Bingham, "more platforms equal more exclusion from fisheries."

-Mark Edelman, intern

OIL CONFERENCE ANNOUNCED

Shaping California's Oil Development: A Statewide Citizen Activist Conference on Post-Moratorium Strategies will begin at 9:00 am on Saturday, March 8 in the Administration Building of Santa Barbara City College. Following a keynote talk by Gary Patton, member of the Santa Cruz County Board of Supervisors, will be regionally-focused summaries of the current battle against oil development. Richard Charter, Local Government Coordinator for California Coastal Counties, will give an issue overview and update.

The afternoon agenda includes workshops on:

* litigation: Robert Sulnick of No Oil, Inc. and Mel Nutter, past chair of the California Coastal Commission will speak.
* local campaigns and initiatives;
* other political action; and
* a case study of last November's ill-fated Santa Barbara County Ballot Measure A, which sought to limit the impact of the expected "oil boom" in the Santa Barbara Channel on coastal areas of Santa Barbara County.

Conference sponsors California Public Interest Research Group requests a $10 (lunch included) registration fee, but emphasizes that anyone interested should not be deterred from attending for lack of $10. For more information, contact Lee Cridland at (415) 642-9952.

- Mark Edelman, Intern

BROWN, cont.

court to have actions by local legislative bodies declared "null and void" if they are found to have violated the Brown Act. The entities will be subject to judicial challenge for a period of 30 days from the date action was taken. According to Johnson, AB 2674 would enable citizens to "retain some degree of control over their government."

WHAT YOU CAN DO: Write your member of the Assembly Local Government Committee, urging supp

- David Bouquin, i

Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2674

Amendment 1

In line 1 of the title, strike out "54956.5, 54957.7," and insert:

54956, 54956.5,

Amendment 2

On page 3, strike out lines 3 to 20, inclusive, and insert:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post a specific agenda of the items 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 and employees of the local agency. No action shall be taken on any item not appearing on the posted agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under either of the following conditions:

(1) Upon a formal written finding by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a formal written finding by a two-thirds vote of the legislative body that failure to take action will result in serious harm to the public and that the need to take action arose suddenly and unexpectedly and subsequent to the agenda being posted as specified in subdivision (a).

Amendment 3

On page 3, strike out lines 23 to 25, inclusive, on page 4, strike out lines 1 to 18, inclusive, and insert:

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on items of interest to the public, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2.

(b) The legislative body of a local agency shall adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out.

SEC. 2.5. Section 54956 of the Government Code is amended to read:

54956. A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. ~~Such~~ The notice shall be delivered personally or by mail and shall be received at least 24 hours before the time of ~~such~~ the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at ~~such~~ these meetings by the legislative body. ~~Such~~ The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. ~~Such~~ The waiver may be given by telegram. ~~Such~~ The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

The call and notice shall be posted at least 24 hours prior to the special meeting and shall specify the time and location of the meeting and be posted in a location that is freely accessible to members of the public and employees of the local agency.

Amendment 4

On page 4, line 25, strike out "the 24-hour notice" strike out lines 26 and 27 and insert:

either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

Amendment 5

On page 5, strike out lines 26 to 40, inclusive, on page 6, strike out lines 1 to 23, inclusive, in line 24, strike out "SEC. 6." and insert:

SEC. 4. Section 54960.1 is added to the Government Code, to read:

54960.1. (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 legislative body of a local agency in violation of Section 54953, 54954.2, or 54956 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 chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) An action taken shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, and 54956.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

SEC. 5.

Amendment 6

On page 6, line 40, strike out "SEC. 7." and insert:

SEC. 6.

- 0 -

San Diego Union 5-03-86

AB 26

Pg. 1 of 2 AS

As secrecy loopholes open up, meeting doors close

By Daniel C. Carson
Staff Writer

SACRAMENTO — Eighteenth-century poet David Everett noted that tall oaks from little acorns grow.

If Everett were observing the 1986 session of the California Legislature, he probably would observe that major holes in the public's right-to-know laws from little exemptions grow.

Once again, proposals to curb public access to meetings and records of government agencies, and to chill publication of damaging information, are sprouting in the Capitol.

One example is SB 1914 by Sen. Nicholas Petris, D-Oakland. The Petris bill, introduced last month, would provide for a huge new shroud of secrecy over the operations of the state's 67 public hospital districts.

The district boards are elected. Most of them run hospitals built with public money. A good chunk of their operating funds — like almost all medical institutions these days — ultimately comes from the taxpayers.

SB 1914 would exempt from the California Public Records Act, and therefore from public review for up to a year, any local hospital-district records that "relate to any contract for inpatient or outpatient services." Not only would the contract itself be off limits, it should be noted, but any documents that "relate" to it.

Furthermore, the bill provides for closed meetings by district boards, which ordinarily must be open to the public, of "hospital trade secrets."

The language probably will be narrowed later. However, it now defines those secrets as "information (that) in the opinion of the board has commercial value and would, if prematurely disclosed, deprive the hospital of a business advantage."

The measure is being sponsored by the Association of California Hospital Districts. Felice Tanenbaum, a Petris aide who herself is a former district board member, also helped craft it.

Tanenbaum said the bill is intended to fix "inequities" in requiring public hospitals to act openly while in competition with private, for-profit firms that can play their cards close to their vest.

California Watch

"Because you're a district hospital, they (for-profit competitors) have the right to hear everything that's going on. This is the only kind of hospital where that happens," she said.

Ron Youngren, the hospital association's Sacramento lobbyist, said the restrictions are being sought because openness is costing them competitive opportunities. When word got out that a district hospital in Palm Springs was planning to go into the heart-surgery business in competition with another medical center, he said, it triggered an uproar and a campaign to block the move.

While the California Newspaper Publishers Association has yet to take a formal position on SB 1914, CNPA spokesman Terry Francke said: "Our people would not find the bill attractive and would be disposed to oppose it.

"It's part of a pattern that you find not just on these things but with almost everything having to do with the interface between the health-care industry and government," Francke said "It's increasingly difficult to get meaningful analytical information if you're a reporter or a member of the public."

That pattern emerged in 1982 when the Legislature overhauled the taxpayer-funded Medi-Cal health-care program for the poor. Instead of paying after-the-fact claims for medical services provided by hospitals, the state began to write advance contracts with each hospital limiting what they could charge the state.

There was scant discussion of a provision of the bill allowing the state's chief negotiator to keep secret any or all meetings and records. The stated purpose was to keep the state in a strong bargaining position and keep the hospitals in the dark as they bid for Medi-Cal contracts.

A flap ensued when the secrecy provisions were revealed. Lawmakers amended the law to say the contracts must be made public within a year.

Medi-Cal administrators won the next round. They got a bill passed last year saying that the all-important information in the $1 billion worth of contracts — the rate of payments to a hospital — could be held confidential for four years.

Now the hospital districts want the same kind of secrecy, said Youngren, because they also want to enter into lucrative new contracting ventures and don't want to lose out to private competitors.

The problem is that the new era of medical competition also increases on a grand scale the opportunities for favoritism, conflicts of interest and corruption in the awarding of con-

DJ - 43

tracts. "They are talking hundreds of millions of dollars here," acknowledged Youngren.

A scandal erupted in 1984 over allegations that a Palomar-Pomerado Hospital District board member tried to bribe a legislator to support a bill giving their medical center a lucrative trauma-care center. The board member denied the charge, however, and the district attorney has never acted on the matter.

Last year in Contra Costa County, a public furor followed an effort by directors of the Mount Diablo Hospital District to transfer $55 million worth of public assets to a non-profit corporation controlled by some of those same board members. The deal was done before angry voters and state lawmakers rebelled and overturned the transfer.

Everett offered another solution he considers politically unrealistic but meritorious: require every hospital — public, private and non-profit — to operate openly.

He makes a striking point. Some of the privately held medical centers are spending more public money than the public hospitals are.

Maybe a small move in favor of openness would help.

March 7, 1986

Honorable Lloyd G. Connelly
Assemblyman, 6th District
State Capitol, Room 2179
Sacramento, California 95814

Dear Assemblyman Connelly:

AB 2674 - OPEN MEETINGS

The Attorney General's office supports AB 2674.

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

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.

If we can be of further assistance in supporting the measure, please let me know.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

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

AS:lb

bcc: Assembly Local Government Committee Consultant
Civil Distribution

[redacted]

DJ - 47

JOHN K. VAN DE KAMP
Attorney General

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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.

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JOHN K. VAN DE KAMP
Attorney General

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

AS:lb

DEPARTMENT OF JUSTICE

BILL ANALYSIS

DATE February 5, 1986

BILL NO. AB 2674
AUTHOR Connelly
DATE LAST INTRODUCED 3/8/85

ANALYST Ted Prim
SECTION Government
TELEPHONE (916) 324-5481
ATSS 454-5481

I. SUMMARY OF BILL AND EXISTING LAW

Under current law, local legislative bodies are not required to provide binding agendas for regular meetings. Such agendas are required for special or emergency meetings. The bill adds Section 54954.2 to require local legislative bodies to provide binding agendas at least 72 hours prior to regular meetings. Because of drafting complexities, the bill restates the agenda requirements for special meetings in Section 54954.2. The bill includes specific measures concerning the public'c right to place new material on the agenda and provide testimony.

Under current law, any interested person can commence a mandate, injunctive or declaratory relief action to stop or prevent violations or the threat of violations of the open meeting requirements of the Brown Act. However, under current law, the action taken by a board or commission in violation of the Act cannot be overturned. This legislation provides a new remedy in Government Code Section 54960.1 by permitting any interested person to seek a judicial determination to have an action taken in violation of Section 54954 or 54954.2 adjudged null and void. Suits brought under this section must be commenced within 30 days of the date of the challenged action. Once an action is challenged, an agency nevertheless may cure or correct that action. Successful plaintiffs and defendants in frivolous suits are entitled to attorney fees pursuant to Section 54960.5.

The legislation expressly exempts from being null and void actions which are in substantial compliance with the requirements of Sections 54953 and 54954.2.

The bill would require the state to reimburse the local agencies for state mandated costs.

II. BACKGROUND INFORMATION

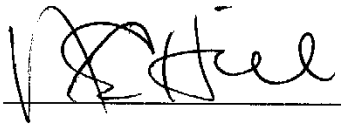
Last year Assemblyman Connelly authored AB 214, Chapter 936, authorizing the courts to declare the action of state boards and commissions null and void when the Bagley-Keene Open Meeting Act is violated/ The Attorney General's office supported this legislation.

III. IMPACT OF BILL

The bill would impact local agencies in two major ways. First, the bill establishes binding agenda requirements for regular meetings. Second, the bill gives the public a powerful new tool to enforce the Brown Act's open meeting requirements.

IV. RECOMMENDATION

I recommend we support the bill.

APPROVED: 

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.

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 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.

DJ - 52

- bill file

The Sacramento Union, Thursday, January 16, 1986

Bill pushed to put teeth in state'

/ ED MENDEL
CRAMENTO UNION CAPITOL BUREAU

Citing a stealthy move by Los ıgeles City Council members to ıise their own salaries, two legisla- rs unveiled a bill Wednesday that ɔuld strengthen the state open- eeting law for local agencies.

Assemblymen Lloyd G. Connelly, Sacramento, and Ross Johnson, Fullerton, were joined at a Capitol ews conference by representatives of Common Cause and the League of Women Voters.

AB2674 would allow private citizens and organizations to go to court and have actions by local legislative bodies declared "null and void" if they are found to have violated the open-meeting Brown Act.

Currently, said the legislators, the Brown Act is toothless because there is no penalty for violating open-meeting requirements.

Another provision of the bill would require local legislative bodies to post a specific agenda 72 hours prior to regular meetings and 24 hours before special meetings.

The penalty overturning secret actions violating open-meeting requirements was applied to state agencies by AB214, a Connelly bill signed last year by Gov. Deukmejian despite opposition from some of his own department heads.

"We are ducking for cover," Johnson said when asked whether local government groups are likely to oppose the bill.

Larry E. Naake, executive director of the County Supervisors Association of California, said his group generally supports the concept of open meetings.

"We would also like to see it applied to the Legislature once in a while," said Naake. "Legislative bodies are great about telling other people what to do while not applying it to themselves."

On a 1-5 vote Wednesday, a Senate committee rejected SB1356 by Sen. Barry D. Keene, D-Benicia, that would have extended the Brown Act to taxpayer-funded nonprofit corporations such as economic development corporations.

In Los Angeles, said Johnson, the City Council voted itself a 10 percent pay raise by a vote with no discussion on an unidentified item taken up out of order.

He said the salary increase was later overturned in court because it violated a city charter provision limiting salary increases, not the Brown Act.

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

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March 7, 1986

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

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We urge your support for the measure.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

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(916) 324-5477

AS:lb

Open Meeting Laws

California Department of Justice

John K. Van de Kamp
Attorney General

State of California

Office of the Attorney General

John K. Van de Kamp
Attorney General

The enclosed publication - "Open Meeting Laws" - is a compilation and discussion of the laws, court decisions and Attorney General opinions concerning the requirement for open meetings of governmental bodies in California.

Public agencies generally are required by law to conduct their business in an open forum. However, the Legislature and the courts have recognized the legitimate need on occasions for public agencies to meet in private forum in order to carry out their responsibilities in the best interests of the public. For example, certain matters concerning the personal privacy of public employees or the litigation strategy of a public agency are more appropriately discussed in closed, rather than open, session.

The purpose of this pamphlet is the resolution of issues through the systematic discussion of open meeting laws as interpreted by the courts and this office. I hope that this pamphlet will be a useful tool in the hands of public officials and those who monitor government agencies with respect to minimizing potential disputes concerning the appropriateness of closed sessions in various situations. Although the general concept of open meetings is a simple one, the application of this principle, as illustrated in this pamphlet, can be quite complex.

When disputes over open meetings cannot be amicably resolved, the pamphlet contains a discussion of the available enforcement remedies (pp. 24-27). Criminal enforcement may be pursued by a district attorney, provided that it can be shown that those responsible knew in advance that a meeting was in violation of the law. Private parties may initiate litigation and under some circumstances be entitled to attorney fees. However, the law does not authorize public attorneys to enter into civil enforcement actions.

As this pamphlet goes to publication, I have directed the editor to begin preparation of a brand new publication on this subject for distribution by the end of 1985. Ideas and suggestions regarding coverage and format are welcome and should be addressed to the editor.

Lastly, it is my hope that this pamphlet will assist the public and public officials in better understanding and carrying out the requirements of California's open meeting laws.

Sincerely,

JOHN K. VAN DE KAMP
Attorney General

EXHIBIT X

Open Meeting Laws

California Department of Justice

John K. Van de Kamp
Attorney General

State of California

Office of the Attorney General

John K. Van de Kamp
Attorney General

The enclosed publication - "Open Meeting Laws" - is a compilation and discussion of the laws, court decisions and Attorney General opinions concerning the requirement for open meetings of governmental bodies in California.

Public agencies generally are required by law to conduct their business in an open forum. However, the Legislature and the courts have recognized the legitimate need on occasions for public agencies to meet in private forum in order to carry out their responsibilities in the best interests of the public. For example, certain matters concerning the personal privacy of public employees or the litigation strategy of a public agency are more appropriately discussed in closed, rather than open, session.

The purpose of this pamphlet is the resolution of issues through the systematic discussion of open meeting laws as interpreted by the courts and this office. I hope that this pamphlet will be a useful tool in the hands of public officials and those who monitor government agencies with respect to minimizing potential disputes concerning the appropriateness of closed sessions in various situations. Although the general concept of open meetings is a simple one, the application of this principle, as illustrated in this pamphlet, can be quite complex.

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Sincerely,

JOHN K. VAN DE KAMP
Attorney General

Open Meeting Laws

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PREFACE

This pamphlet, previously entitled "Secret Meeting Laws and Public Agencies," was first published in 1972 from a draft developed by Deputy Attorney General Clayton P. Roche and subsequently has been revised three times. Each revision attempts to incorporate recent legislative amendments, court opinions and Attorney General opinions. The most significant changes in this edition are set forth below.

1. We have retitled the publication "Open Meeting Laws" out of recognition that, subject to exception, the Legislature has mandated that meetings of public bodies be open and public.

2. New legislation expressly authorizes closed sessions to consider "pending litigation." It is unclear what effect this legislation will have on the use of the attorney-client privilege to authorize closed sessions in situations not involving pending litigation. (See pp. 19-20.)

3. New legislation permits legislative bodies to meet with their negotiators in closed session to discuss the price and terms of payment in connection with the purchase, sale, exchange or lease of real property. (See pp. 18-19.)

4. The less than a quorum exception does not apply to members of different legislative bodies when they act as a unitary committee. (See pp. 7-8.)

5. The determination of an employee's salary may not be made in closed session. (See p. 16.)

6. The personnel exception now includes evaluation of performance. (See p. 14.)

7. Independent contractors generally are not covered by the personnel exception. (See p. 15.)

8. Court decisions have clarified the circumstances where attorney fees may be awarded and the criteria for their calculation. (See p. 26.)

This edition includes opinions of the Attorney General through volume 67, page 177; court decisions through 36 Cal.3d 475 and 157 Cal.App.3d 805; and Legislation through the 1983-84 Legislative Session.

The Attorney General welcomes comments on this publication and also will consider for future editions any

interpretations that may be made by court decision or written opinions of counsel. Such comments may be sent to the editor.

To order additional copies
of this publication, write to:

Public Inquiry Unit
Office of the Attorney General
1515 K Street, Suite 511
Sacramento, California 95814

December 1984

TABLE OF CONTENTS

I. INTRODUCTION

The Office of the Attorney General receives repeated requests for information about the applicability of state and local laws on open meeting requirements. Our resources do not permit us to individually analyze each case to determine the facts, research legal issues and provide specific advice on the requirements of the law. However, we have prepared this pamphlet to assist citizens, public officials and the media in understanding the general requirements of the Ralph M. Brown Act and other open meeting laws.

Although the discussion set forth in this pamphlet is necessarily general, we have attempted to draw from a number of appellate court decisions and Attorney General opinions to provide specific applications of open meeting laws. It should be noted that Attorney General opinions, unlike appellate court decisions, are advisory only and do not constitute the law of the state.

If you have specific questions or problems, the statute, cases and opinions should be consulted. You also may wish to refer the matter to the attorney for the agency in question, a private attorney for consultation on specific requirements of the law, or if criminal activity is suspected, the district attorney.

The laws discussed in the pamphlet are:

1. The Ralph M. Brown Act
   Government Code Sections 54950-54961

2. Education Code Sections 35145-35146
   regarding school districts

3. State Agency Open Meeting Act (hereinafter "State Act"), Government Code Sections 11120-11131, regarding state government

For easy reference, a copy of these sections, incorporating all legislative enactments through the 1983-84 Legislative Session, is attached. As these laws may be amended by the Legislature at any time, a current copy of the statutes in question should be consulted if a specific question arises.

Also included in the appendix of this pamphlet, but without discussion, are the open meeting laws specifically applicable to the state Legislature, the Regents of the University of California, and auxiliary and student body

organizations of the California State University. Though not of the same general interest as the Ralph M. Brown Act, these revisions may be of interest to some persons receiving this pamphlet. (See Gov. Code Sections 9027-9033 regarding the Legislature; Ed. Code, Sections 92030, 92032 and 92033 regarding the Regents of the University of California; and Ed. Code, Sections 89920-89928 regarding auxiliary and student body organizations of the California State University.)

Section citations are to the Government Code unless otherwise noted. Cases are cited by name, and published opinions of this office are cited by volume, page and year (e.g., 32 Ops.Cal.Atty.Gen. 240 (1958); vol. 32, p. 240). Unpublished letter opinions are cited as index letters by year and number (e.g., I.L. 67-147). Published opinions are available through law libraries and many attorneys' offices. For the most part, letter opinions are indexed and found only in the offices of the Attorney General. Copies will be furnished on request for a fee.

II. THE RALPH M. BROWN ACT

A. Purpose and scope of the act

The purpose of the Act can be briefly stated. It is to insure that the deliberations as well as the actions of local agencies are performed at meetings open to the public and as to which the public has been given adequate notice. It is to prevent government from being conducted in secret. (Section 54950.)

In furtherance of this purpose, the Act requires, with certain exceptions, that all meetings of legislative bodies of local agencies be open and public. (Section 54953.) Meetings must be conducted in such a manner as to permit full and complete disclosure of the actions taken and the participation of individual members in such action. Thus, secret ballot voting at meetings required to be open and public is prohibited. (59 Ops.Cal.Atty.Gen. 619 (1976).)

B. To whom does the act apply?

The Act applies to the legislative bodies of all local agencies of the state. An understanding of the terms "local agency" and "legislative body," as well as the "less than quorum exception," is important to any determination as to the applicability of the Act.

1. Local agencies

Local agencies include all cities, counties, school districts, municipal corporations, other special districts and all other local public bodies. (Section 54951.) For example, the Act applies to a housing authority (Torres v. Board of Commissioners (1979) 89 Cal.App.3d 545; I.L. 71-103); to an air pollution control district (I.L. 71-198 and I.L. 70-213); and to such other local bodies as voluntary area and local health planning agencies (I.L. 72-29). The Act is a matter of statewide concern, and therefore, applies equally to charter and general law cities. (San Diego Union v. City Council (1983) 146 Cal.App.3d 947.) We, however, have held that it is not applicable to county central committees. (59 Ops.Cal.Atty.Gen. 162 (1976).)

Besides purely public agencies, the Act covers all nonprofit organizations which receive public funds to be expended for purposes of the Economic Opportunity Act of 1964 so far as consistent with federal law. (Section 54951.1.) Likewise, also covered is a nonprofit corporation formed to acquire or operate any public works project if the board of directors is appointed by the forming public agency or agencies. (Section 54951.7.)

Inasmuch as the terms and requirements of the Brown Act differ in certain respects from those of the State Agency Open Meeting Act (Government Code Section 11120 et seq.), a potentially significant question is whether an entity is a local or state agency. This question was addressed and resolved as to housing authorities created pursuant to Health and Safety Code Section 34208 in the case of Torres v. Board of Commissioners, supra, 89 Cal.App.3d 545. The court first concluded that "the Legislature intended that all agencies be included in some open meeting act unless expressly excluded." It then went on to hold that the housing authority was included within the definition of local agency under the Brown Act and, therefore, was not subject to the agenda requirements set forth in the State Agency Act Section 11125. The court reasoned:

"While a housing authority may be a state agency for some purposes . . . if it is within the Brown Act's definition of a local agency, it is simply not included within the State Act. We hold that a housing authority created by Health and Safety Code section 34200 et seq. is included within the statutory definition of a local agency under the Brown Act in that it is either an 'other local public agency' or a 'municipal corporation' or both, as those terms are used in Government Code

section 54951. . . . The term 'municipal corporation' is broader than the term 'city,' particularly when the term 'city' already appears in the applicable statute. . . . In order to give meaning to the term 'municipal corporation' in Government Code section 54951 we hold that such term is not restricted to its technical sense of a 'city,' general law or charter, but rather includes such entities as housing authorities. . . . In addition, a housing authority is local in scope and character, restricted geographically in its area of operation, and does not have statewide power or jurisdiction even though it is created by, and is an agent of, the state rather than of the city or county in which it functions. . . .

"Furthermore, as perceptively noted by the trial court, the placement of Government Code section 11120 and its history is some persuasive indication that the State Act was meant to cover executive departments of the state government and was not meant to cover local agencies merely because they were created by state law. A housing authority is no more a state agency under these acts than is a city or a county. The fact that such entities from time to time administer matters of state concern may make them state agents for such purposes but not state agencies under the open meeting acts." (Citations omitted.) (Torres v. Board of Commissioners, supra, 89 Cal.App.3d at pages 549, 550.)

2. Legislative bodies

The term "legislative body" is not used in its technical sense in the Act. The Act's application is not limited to boards and commissions insofar as they perform "legislative" functions. Actions which are primarily executive or quasi-judicial in nature are also covered. (61 Ops.Cal.Atty.Gen. 220 (1970).)

Besides the actual governing body of a local agency:

a. The Act applies to boards, commissions, or committees of the governing board or on which members of the governing board serve in their official capacity and which are supported in whole or in part by the local agency whether such boards, commissions, or committees are organized and operated by the local agency or a private corporation. Thus, it would apply to a voluntary organization composed jointly of members of boards of supervisors and city councils of cities within the county. (I.L. 70-91.) It, however is not applicable to a county board of parole

commissioners, since such serves as an adjunct of the courts. (I.L. 62-46.)

b. The Act applies to any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body. (Section 54952.2.)

c. The Act applies to permanent boards and commissions of a local body, such as planning commissions, library boards, and recreation commissions. (Section 54952.5.) The Act is not applicable to a meeting of all judges of a superior court of a county. (I.L. 60-16.)

d. The Act applies to advisory boards, commissions, and committees of a local agency if they are formed by some formal action of the governing body, or a member of the governing body of the local agency. The Act, however, specifically excepts from such coverage any such advisory bodies composed solely of less than a quorum of the legislative body. (Section 54952.3.)

A possible example of a covered advisory committee is described in a 1965 letter opinion of this office (rendered before the specific addition of Section 54952.3) wherein a hospital district formed a liaison committee composed of three members of the district board and three members of the medical staff. (See I.L. 65-57.) Another example is the San Francisco Public Schools Commission (the Riles Commission) which was formed to advise the local school board, the local superintendent of schools, and the State Superintendent of Public Instruction on how to improve San Francisco's schools. (I.L. 75-196.)

In Henderson v. Board of Education (1978) 78 Cal.App.3d 875, it was held that an ad hoc committee composed solely of less than a quorum of the members of the Board of Education and created for the purpose of advising the full board as to the qualifications of candidates for appointment to a vacant position was excepted from the requirements of the Act by the terms of Section 54952.3.

In 61 Ops.Cal.Atty.Gen. 1 (1978), this office concluded that a bargaining committee created to "meet and confer" with employee organization representatives pursuant to Section 3505 was not an advisory committee since its function was to negotiate rather than study and recommend. Thus, the meetings of the bargaining

committee were not required to be open and public by Section 54952.3. This office has also held that the Act is not applicable to a county juvenile justice commission since such is in effect a part of the court system. (I.L. 75-109.) Nor is it applicable to a local admissions committee of the county superintendent of schools, since such is an advisor or adjunct to a single county officer. (56 Ops.Cal.Atty.Gen. 14 (1973).)

e. A single individual acting on behalf of a local agency is not a "legislative body" within the meaning of the Act, since all definitions of "legislative body" connote a group of persons. Thus, a hearing officer functioning by himself in an employee disciplinary hearing is not a "legislative body." (Wilson v. San Francisco Mun. Ry. (1973) 29 Cal.App.3d 870.) Similarly, this office has concluded that an individual city council member having the responsibility to screen candidates for vacant city offices is not a "legislative body" and, therefore, not subject to the Act.

3. The less than a quorum exception

Permeating the whole coverage or applicability of the Act is what may be termed the "less than a quorum exception" to the Act. As noted above on the general applicability of the Act, Section 54952.3, relating to advisory bodies of the local agency, now expressly codifies this exception as it relates to such advisory bodies. Section 54952.3 was added to the Act in 1968. However, since the opinion of this office rendered in 32 Ops. Cal.Atty.Gen. 240 (1958), such an exception has been recognized in varying circumstances. In general terms, the concept is that the Act does not apply to meetings of committees of less than a quorum of the legislative body of the local agency. This is because the findings of such a committee have not been deliberated upon by a quorum of the legislative body, and consequently, the opportunity for a full public hearing and consideration of the committee's findings and recommendations by a quorum still remains. Hence the public's rights under the Act are still protected.

In 1969, this office expressed the following view: "The resolution of the quorum problem with respect to other legislative bodies, that is, bodies other than the advisory commissions referred to in section 54952.3, should continue to be governed by our prior interpretation of the law as set forth in . . ." our 1958 opinion, I.L. 69-131. Again in 1972, we reaffirmed

our prior holdings, such as I.L. 69-131, supra, wherein we stated: "There have been no amendments to the Act nor case law since these letter opinions which would change the views of this office as expressed therein." (I.L. 72-49.) Capsulized, these views would appear to mean that at least ad hoc, nonpermanent committees or boards not formed by formal action, such as by charter, ordinance, resolution, or similar formal action, would additionally still fall within the "less than a quorum exception." The distinction between permanent and ad hoc committees arises by virtue of the addition in 1961 of Section 54952.5, making the Act applicable to permanent boards or commissions of a local agency. (I.L. 65-57; I.L. 68-106.)

Some examples from our pre-1968 opinions may be helpful to illustrate this distinction. In 1963, we held that an ad hoc committee appointed by the mayor consisting of less than a quorum of the council to study the possible subsidy of a local bus company by the city would be exempt from the Act. (I.L. 63-97.) In the opinion discussed above, wherein we held that the hospital district liaison committee consisting of three board members and three medical staff members was subject to the Act, we stated that "inasmuch as the Joint Conference Committee is a 'permanent committee'" the Act would be applicable "regardless of whether the governing body is represented by three or two [less than a quorum] members on the committee." (I.L. 65-57.) We also advised in that opinion that if investigative committees were to be formed which included less than a quorum of the board, the applicability of the Act would depend upon whether these committees were permanent, or were formed for a limited duration for a specific problem. (See also Henderson v. Board of Education, supra, 78 Cal.App.3d 875.)

In Joiner v. City of Sebastopol (1981) 125 Cal.App.3d 799, the applicability of the less than a quorum exception was examined in the context of a committee comprised of less than a quorum of the city council and the planning commission. The court concluded that the less than a quorum exception is not applicable because the committee acted as a "unitary" body when it reviewed the qualifications of job applicants and made recommendations to the full city council. Since the less than a quorum exception can only apply to a subcommittee of a single legislative body, the conclusion that members of the council and the planning commission were acting jointly as a "unitary" body meant that the less than a quorum exception was inapplicable. Accordingly, the meetings of the committee were subject to the open meeting requirements

of the Act. Had the members of the council and the planning commission met only for the purposes of exchanging information, they would have qualified as subcommittees of their respective legislative bodies, and the less than a quorum exception would have applied. (See also 64 Ops.Cal.Atty.Gen. 856 (1981).)

For an application of Sections 54952, 54952.3, and 54952.5, defining the term "legislative body," as they interrelate with the "less than quorum exception," see I.L. 76-174, wherein we concluded that a meeting of two subcommittees consisting of less than a quorum of the members of their respective parent boards of supervisors to discuss mutual water problems was not covered by the Act because (1) each subcommittee, although literally within the Section 54952 definition, is excluded therefrom by the traditionally recognized "less than quorum exception"; (2) each subcommittee is further excluded from the Section 54952.3 definition by the "less than quorum exception" explicitly set forth in that section; and (3) the subcommittees meet for the purpose of discussing a particular matter and, therefore, are nonpermanent and not covered by the definition of legislative body set forth in Section 54952.5. (See also 61 Ops.Cal. Atty.Gen. 1 (1978) wherein we concluded that a local agency bargaining committee designated to meet and confer with representatives of employee organizations pursuant to Government Code Section 3505 was not a legislative body within the meaning of Sections 54952, 54952.3, and 54952.5.)

The "less than a quorum exception" does not exempt from the open meeting requirements a series of meetings, each of which technically is comprised of less than a quorum of the agency's membership, but which taken as a whole involves a majority of the agency's members. These rotating or seriatim meetings do not fall within the rationale of the "less than a quorum exception" because they ultimately involve participation of a quorum of members. In 63 Ops.Cal.Atty.Gen. 820 (1980), this office concluded that such seriatim meetings between members of the community redevelopment agency and the planning commission or the city council were prohibited.

C. What is a meeting?

The question as to what constitutes a meeting within the Act sometimes may present a difficult question. Basically, a meeting is any gathering of a quorum of a legislative body, no matter how informal, where business is transacted or discussed. (61 Ops.Cal.Atty.Gen. 220 (1978).) Of course,

no problem exists as to regularly scheduled, duly noticed, regular and special meetings of a legislative body. The problem arises as to informal meetings of a majority of the members of a board. Such a meeting may have varying purposes and characteristics. It is significant to note that the Act itself does not define the term "meeting."

In a published opinion of this office written in 1963, we expressed the view that so-called "informal," "study," "discussion," "informational," "fact finding," or "pre-council" gatherings of a majority of the members of a board probably fell within the scope of the Act as "meetings," whether or not the individual members intended to take, or even took, any action at such gatherings. (42 Ops.Cal.Atty.Gen. 61 (1963).)

In 1964 we held that regularly scheduled luncheon meetings by the members of one or more city councils with representatives of certain civic associations for the purpose of discussing items, such as school and airport problems and other items of public importance, fell within the Act. We pointed out, however, that our opinion was not to be construed to prohibit legislative bodies from mere social attendance at luncheons and dinners, such as are often given by fraternal groups such as the Rotary Club or Kiwanis. (43 Ops.Cal. Atty.Gen. 36 (1964); see also I.L. 71-122.)

The courts have specifically held that the Act now applies to informal meetings. In Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs. (1968) 263 Cal.App.2d 41, the court held that a luncheon gathering which included five county supervisors, the county counsel, county executive, county director of welfare, and certain union officers to discuss a strike which was underway against the county was a meeting within the Act and therefore newspaper reporters were improperly excluded. The court's language at pages 50-51 of the decision is an excellent summary of the reasoning behind its decision. The court stated:

> "In this area of regulation, as well as others, a statute may push beyond debatable limits in order to block evasive techniques. An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to

prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. The Elks Club luncheon, attended by the Sacramento County Board of Supervisors, was such a meeting."

Thus, meetings include informal gatherings where the public's business is discussed, as well as informal meetings.

A meeting, however, requires the presence of two or more persons. Therefore, a hearing conducted by a single hearing officer on an employee disciplinary action was not a meeting within the meaning of the Act. (Wilson v. San Francisco Mun. Ry., supra, 29 Cal.App.3d at page 880.)

D. Notice of meetings

1. Regular meetings

The legislative body of a local agency must provide by ordinance, resolution, bylaw, or rule, as appropriate to that body, for the time of holding regular meetings. (Section 54954.) It may adjourn or continue a meeting to a time and place specified in a notice of adjournment which is to be posted within 24 hours on or near the door of the meeting place. If no time is specified, the meeting is adjourned until the time of the next regular meeting. (Sections 54955, 54955.1.)

The Act itself contains no agenda requirements for regular meetings. (Torres v. Board of Commissioners, supra, 89 Cal.App.3d 545.) Such requirements, however, may be found in the particular act which governs a particular legislative body, e.g., Section 25151, relating to posting an agenda for meetings of boards of supervisors. (61 Ops.Cal.Atty.Gen. 323 (1978).) Thus, it has been held ". . . That where the subject matter is sufficiently defined to apprise the public of the matter to be considered and notice has been given as required by law, the governing body is not required to give further special notice of what action it might take . . . ." (Phillips v. Seely (1974) 43 Cal.App.3d 104, 120; see also III, infra, re Education Code Section 35145 regarding agenda requirements for school districts, and 67 Ops. Cal.Atty.Gen. 84 (1984) regarding agenda requirements of Government Code Section 11125 of the State Agency Act.)

2. Special meetings

In order to hold a special meeting, a legislative body must provide advance notice of such meeting to each

member of the legislative body and to each local newspaper of general circulation, and radio or television station which has requested notice in writing. The notice shall state the time and place of the special meeting. It shall also state the business to be transacted, and no other business shall be considered at the special meeting. (Section 54956.)

Notice is required even if no action is taken by the legislative body at the special meeting. (Section 54956; 41 Ops.Cal.Atty.Gen. 61 (1963).) It is also required if the special meeting is to be held in closed session (43 Ops.Cal.Atty.Gen. 79 (1964).) If a legislative body holds an informal meeting falling within the scope of the Act, such as a luncheon meeting, notice must be given. For example, if a city council attends a luncheon meeting to discuss area problems with a civic group, the public has a right to know of and attend such discussions. (43 Ops. Cal.Atty.Gen. 36 (1964).)

The notice required by Section 54956 shall be delivered personally or by mail and shall be received at least 24 hours before the time of the meeting. Thus, mailing the notice 24 hours in advance is not sufficient; notice must actually be received 24 hours prior to the special meeting. (Section 54956; 53 Ops.Cal.Atty.Gen. 246 (1970).)

A member of the legislative body may waive failure to receive notice of the meeting by filing a waiver prior to the time of the meeting or by being present at the meeting when it convenes. Moreover, absent a written request therefor, the legislative body is not required by the Act to provide the media with notice of its special meetings. (62 Ops.Cal.Atty.Gen. 658 (1979).)

The detailed provisions of the Act as to time and notice of meetings do not apply to regular or special meetings of advisory commissions, committees, or bodies of a local agency created by formal action of the legislative body or a member thereof. However, such a group may provide for regular meetings, and if it does so, it shall provide for the time and place for holding such regular meetings. (Section 54952.3.)

3. Emergency meetings

In an "emergency situation," the legislative body is not required to deliver written notice to the news media 24 hours in advance of its special meeting. An emergency situation is defined to include a work stoppage or other

activity and a crippling disaster, which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body. In such cases, telephonic notice shall be provided to local newspapers of general circulation and radio or television stations one hour prior to the meeting unless telephonic services are not functioning. In the event that telephonic services are not functioning, notice must be given as soon after the meeting as possible. The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of a roll call vote, and any actions taken shall be posted for a minimum of ten days in a public place as soon after the meeting as possible. The legislative body may not meet in closed session during an emergency meeting. Except for the 24-hour notice requirement, the special meeting requirements set forth in Section 54956 shall apply in emergency meetings. (Section 54956.5.)

4. Special notice provisions - district landowners

The legislative body of a district subject to the Act must mail notice of all regular and special meetings to any district landowner who has filed a written request for such notice. The request must be renewed annually. (Section 54954.1.)

The legislative body may impose a reasonable charge for this service based on estimated costs of providing notice. (Section 54954.1.) Any estimate by the legislative body which has a reasonable cost accounting basis would appear acceptable. (62 Ops.Cal.Atty.Gen. 658 (1979).)

E. Public's rights while attending a meeting

What are the public's rights with regard to attendance at meetings? A member of the public can attend a meeting without having to register or give other information as a condition of attendance. (Section 54953.3; see also 27 Ops.Cal.Atty.Gen. 123 (1956).) If a register, questionnaire or similar document is posted or circulated at a meeting, it must clearly state that completion of the document is voluntary and not a precondition for attendance. (Section 54953.3.) A legislative body may not prohibit any person attending an open meeting from tape-recording the proceedings, absent a reasonable finding that such would constitute a disruption of the proceedings. (Section 54953.5; Nevens v. City of Chino (1965) 233 Cal.App.2d 775; I.L. 66121; cf. 62 Ops.Cal.Atty.Gen. 292 (1979).)

On the other side of the coin, a legislative body may, if necessary, exclude all persons from a meeting where a

disturbance has been created and the meeting cannot continue by merely excluding the disorderly persons. However, in such situations, newspaper personnel not involved in the disturbance must be permitted to attend the session as continued. (Section 54957.9.) Although this office has held that the Act neither explicitly nor implicitly gives radio stations the right to broadcast meetings of legislative bodies (38 Ops.Cal.Atty.Gen. 52 (1961)), Government Code Section 6091, enacted in 1965, conditionally authorizes the broadcasting by radio and television stations of meetings required by law to be open.

Any agenda or other writing distributed to all or a majority of the members of the legislative body of a local agency for the discussion or consideration at a public meeting are public records and shall be made available to members of the public in accordance with the provisions of Section 54957.5 and the Public Records Act (Government Code Section 6250 et seq.). (Section 54957.5; I.L. 77-67.) Pursuant to Government Code Section 6257, a fee or deposit may be charged to any person requesting a copy of a public record. (Section 54957.5.)

In 64 Ops.Cal.Atty.Gen. 317 (1981), we determined that when an agency tape recorded an open meeting, the tapes and a tape recorder must be made available to the public. The opinion reasoned that the tapes were public records open for inspection, and as such, the public had to be afforded the right to review their communicative content. The agency was not required to prepare a transcript, but if one were prepared, the public generally would have the right to receive copies. If the agency wished to destroy the tapes, it was required to do so in accordance with statutory procedures for the destruction of public records.

Except as specifically authorized by the Act, the legislative body of a local agency may not impose fees to defray its costs in carrying out the provisions of the Act. (Section 54956.6.)

A local agency may not conduct any meeting or function where racial or other discrimination is practiced. (Section 54961.)

Local legislative bodies may go beyond the minimal requirements of the Act and provide greater public access to their meetings. (Section 54953.7.) Elected legislative bodies may require such access of agencies for which all or a majority of their members are appointed by or under the authority of those legislative bodies. (Section 54953.7.)

F. Permissible closed sessions

Authority for closed sessions must be found in the explicit terms of the Act or inferred from some other confidentiality provision in the law. (61 Ops.Cal.Atty.Gen. 220 (1978).) The Act itself contains several purposes for which a legislative body may meet in private or in closed session. Additionally, the courts and this office have held several other situations to fall within the closed session exception to the open meeting requirements of the Act.

Prior to or after holding any closed session, the legislative body of the local agency shall state the general reason or reasons for the session. The legislative body may also cite the legal authority under which the closed session is held. The scope of the closed session shall be limited to matters covered by the legislative body's statement of reasons. The legislative body is neither authorized nor required to include in its statement of reasons information which could constitute an invasion of privacy or otherwise unnecessarily divulge particular facts concerning the closed session. (Section 54957.7.)

1. Expressly authorized closed sessions

a. Personnel exception

The Act provides in Section 54957 for closed sessions to consider the appointment, employment, performance, or dismissal of a "public employee" as defined by the Act or to hear complaints and charges against such "public employee." This exception is commonly known as the "personnel exception." An employee may request and require a public hearing where the purpose of the closed session is to discuss specific charges or complaints against him or her. A general discussion of an employee's job performance may, however, be held in closed session irrespective of the employee's desires. (61 Ops.Cal.Atty.Gen. 283 (1978).)

We have held that "public employee" as defined by the Act does not include anyone elected or appointed to an elective office; that the definition contemplates only "nonelective officers" insofar as it may include officers. (59 Ops.Cal.Atty.Gen. 266 (1976).) Moreover, mayors, chairpersons of boards of supervisors, and other presiding officers, although receiving separate appointments to their presiding offices, are not employees within the meaning of Section 54957. Therefore, complaints against such presiding

officers may not be discussed in a closed session. (61 Ops.Cal.Atty.Gen. 10 (1978).)

In Rowen v. Santa Clara Unified School District (1981) 121 Cal.App.3d 231, the court held that discussions regarding the qualifications of an independent contractor to sell surplus land for the district should have been conducted in public. The personnel exception set forth in Section 54957 is specifically applicable to the hiring of employees, but the court refused to apply it to independent contractors in this case. Since special services contracts are not subject to the bid process, the court commented that the need for public consideration of the independent contractor's qualifications was especially important.

The legislative body must report at the public meeting during which the closed session is held or at its next subsequent public meeting any action taken during its closed session, and the roll call vote thereon, to appoint, employ, or dismiss an employee. (Section 54957.1.) This reporting requirement applies to all legislative bodies irrespective of whether they are otherwise required to act by roll call vote. (59 Ops.Cal.Atty.Gen. 619 (1976).) However, the requirement has been construed to apply only to actions to "appoint," "employ," or "dismiss." Accordingly, an action to establish the compensation of a hospital administrator need not be reported at the next subsequent public meeting of the legislative body. (63 Ops.Cal.Atty.Gen. 215 (1980).)

The personnel exception is probably the most widely used permitted closed session device. This office has opined that the primary purpose of the exception is to avoid undue publicity and embarrassment to the affected employee and that an ancillary purpose of the exception is to encourage the free discussion of personnel matters by the legislative body. (63 Ops.Cal.Atty.Gen. 215 (1980); 61 Ops.Cal.Atty.Gen. 283 (1978); 59 Ops.Cal.Atty.Gen. 532 (1976).) Examples of its application may be helpful to demonstrate that in addition to actual hiring and firing, it has a legitimate intermediate scope.

i. In Cozzolino v. City of Fontana (1955) 136 Cal.App.2d 608, the court upheld a closed hearing to consider the propriety of a past firing by the chief of police, and to ratify such action.

ii. In Letsch v. Northern San Diego County Hosp. Dist. (1966) 246 Cal.App.2d 673, the court held that a hospital board could meet in closed session to discuss the qualifications of a radiologist, who was apparently an independent contractor, prior to terminating the radiologist's contract.

iii. In Lucas v. Board of Trustees (1970) 18 Cal.App.3d 990, a decision not to rehire the district superintendent of a high school district was held to be properly made in closed session. Also, in 59 Ops.Cal.Atty.Gen. 532 (1976), this office upheld the use of a closed session by a school district governing board to discuss and evaluate the performance of its superintendent.

iv. In San Diego Union v. City Council (1983) 146 Cal.App.3d 947, the court considered whether the city council could meet in closed session to consider the job performances and salary levels of certain appointed officials. The court concluded that a closed session was appropriate for the purpose of reviewing an appointee's job performance and making the threshold decision of whether any salary increase should be granted. However, all discussions concerning the amount of any salary increase should be held in public session.

The court specifically rejected the argument that the terms "employment" or "performance" as used in Section 54957 should be interpreted to include salary level determinations. The court stated, "Salaries and other terms of compensation constitute municipal budgetary matters of substantial public interest warranting open discussion and eventual electoral public ratification." (San Diego Union v. City Council, supra, at page 955.) The court stated that although an individual's job performance could be considered in closed session, there were a variety of other factors that must be considered in determining the appropriate salary level, e.g., availability of funds; other funding priorities; relative compensation of similar positions elsewhere, both inside and outside of the jurisdiction.

This opinion calls into question the opinions discussed below, which appear to have taken a broader construction of the "employment" and "performance" exceptions.

In 61 Ops.Cal.Atty.Gen. 283 (1978) and in several letter opinions of this office, it was held that the personnel exception could be used to discuss the salaries of individual employees as opposed to discussing salary scales in general. Thus, in I.L. 66-184, we took the view that it was proper under the personnel exception to discuss in private the salary of the manager of a special district, and the discussions could include his work history and his suitability for his position. In I.L. 68-117, we held, however, that it was not permissible for a school board to hold a closed session to consider the salaries of all the teachers of the school district, since there were no individual qualifications to be discussed. Similarly, in Santa Clara Federation of Teachers v. Governing Board (1981) 116 Cal.App.3d 831, the court held that the board's consideration of a hearing officer's decision on teacher layoffs must be held in public. The holding of a closed session by a county board of supervisors for the purpose of discussing salaries of specific employees, although permissible under the Act, may, however, be prohibited by Section 25307, which provides, inter alia, that all meetings of the board pertaining to salaries of county employees shall be open and public. (61 Ops.Cal.Atty.Gen. 282 (1978).)

v. In 63 Ops.Cal.Atty.Gen. 153 (1980), this office held that abstract discussions concerning the creation of a new administrative position and the workload of existing positions are inappropriate for a closed session. However, if the workload discussions involve the performance of specific employees, a closed session may be proper.

vi. In 65 Ops.Cal.Atty.Gen. 412 (1982), we concluded that a county retirement board could review in closed session the medical records of a county employee seeking a disability retirement.

b. National and public security exception

The Act contains an exception as to matters affecting national security. (Section 54957.)

The Act also permits local agencies to meet in closed session with the Attorney General, district attorney, sheriff, or chief of police on matters posing a threat to the security of public buildings and public services or facilities. (Section 54957.)

c. Labor negotiations exception

The Act further provides for closed sessions to enable the legislative body to instruct its representatives concerning discussions with employee organizations and unrepresented employees regarding salaries and fringe benefits. (Section 54957.6.) Similarly, the legislative body of a local agency may meet with a state conciliator who has intervened in the negotiations. (Section 54957.6; 51 Ops.Cal.Atty.Gen. 201 (1968).) The legislative body may appoint from its membership one or more members to act as its designated representative, with whom it may meet and confer in closed session under the provisions of Section 54957.6. However, if the legislative body decides to conduct its meet-and-confer sessions itself without using a designated representative, the legislative body may not meet in closed session to review and decide upon its bargaining position. (57 Ops.Cal.Atty.Gen. 209 (1974).)

The closed session held pursuant to Section 54957.6 may not extend to all normal meet-and-confer topics; the scope of the session must be limited to salary, benefits, and other matters inextricably related thereto. (61 Ops.Cal.Atty.Gen. 323 (1978).)

d. License application exception

The Act establishes special provisions for the consideration of license applications by persons with criminal records. (Section 54956.7.)

e. Real estate negotiation exception

In 1984, the Legislature added Section 54956.8 to the Act authorizing closed sessions to discuss specified real estate negotiations. Effective January 1, 1985, the exemption allows a local

legislative body to meet with its negotiator prior to or during negotiations concerning the purchase, sale, lease or exchange of property by or for the local agency. The legislative body may meet for the purpose of giving instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease. The closed session, however, must be preceded by an open session in which the legislative body identifies both the real property in question and the persons with whom its negotiator may negotiate. Eminent domain proceedings are not subject to the restrictions set forth in Section 54956.8, and that section does not prohibit a local agency from holding closed sessions for discussions regarding eminent domain proceedings.

f. Pending litigation exception

In 1984, the Legislature enacted Section 54956.9 concerning pending litigation. Prior to the enactment of this section, there was no express authorization for closed meetings concerning pending litigation. Effective January 1, 1985, such an exception is expressly authorized.

Section 54956.9 requires the local agency to follow the procedure set forth in the statute. The statute authorizes local legislative bodies to conduct closed sessions with their legal counsel to discuss pending litigation when discussion in open session would prejudice the agency in that litigation. "Litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body, hearing officer or arbitrator. For the purpose of this statute, litigation is pending when any of the following occurs: an adjudicatory proceeding to which the agency is a party has been initiated formally; the agency has decided or is meeting to decide whether to initiate litigation; or in the opinion of the legislative body and its legal counsel, there is a significant exposure to litigation if matters related to specific facts and circumstances are discussed in open session. The agency is also authorized to meet in closed session to consider whether a public discussion of issues related to specific facts and circumstances would subject the agency to significant exposure of litigation.

Prior to conducting a closed session under this section, the legislative body must state which subdivision of the statute authorizes the session,

and if the action has already been initiated, it must state the title of the litigation unless to do so would jeopardize service of process or settlement negotiations. In addition, the legal counsel shall submit to the agency a memorandum stating the specific reasons and legal authority for the closed session including the title of the litigation, if any, or the specific facts and circumstances in question. This memorandum will be protected from disclosure by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

At the time of this pamphlet's publication, this office had not written any opinions or taken any position with respect to an interpretation of this section.

The text of Section 54956.9 is set forth in the appendix.

2. Impliedly authorized closed sessions

a. Attorney-client privilege

Additionally, the courts and this office have recognized an implied exception to the Act to permit a local agency to confer in private with its attorney in matters of litigation, and within the confines of the attorney-client privilege. (Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra, 263 Cal.App.2d 41; 36 Ops.Cal.Atty.Gen. 175 (1960).) The court in Sacramento Newspaper Guild reasoned that the Act was not intended to impliedly repeal preexisting and well established laws relating to privileges and confidentiality.

In 1984, the Legislature added Section 54956.9 to the Brown Act, effective January 1, 1985. That section specifically created an exception for pending litigation. At present, there are no court cases nor Attorney General opinions interpreting this new provision. Accordingly, it is unclear whether this legislation stands as an augmentation to the court created attorney-client exception or whether it represents the exclusive authority under which closed sessions may be conducted.

Under the cases interpreting the implied attorney-client privilege, the courts have found that the privilege is broad enough to permit a legislative body to meet in closed session with its

legal advisor to discuss "potential" litigation so long as it relates to an existent set of concrete facts and circumstances, and thus, litigation need not be pending nor imminent to give rise to the privilege. (Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813; see also I.L. 75-282.) In Sutter, the court stated that the purpose of permitting closed sessions between an agency and its legal advisor was to facilitate candid advice, avoid litigation, promote settlements and prevent the agency from having to fight in a legal forum with one arm tied behind its back. The court found that the board of supervisors had ample justification for a closed session to discuss the possibility of future litigation over an EIR and conditional use permit where similar matters had been the subject of previous litigation. In 67 Ops.Cal.Atty.Gen. 111 (1984), this office opined that an advisory committee created by the Board of Supervisors to advise it on airport matters could meet with counsel in closed session to discuss litigation to which the board is the sole party representing the interests of the county. In I.L. 75-282, it was also held that the Act does not require the legislative body to state who may be involved in such potential litigation before it may meet in closed session. However, a closed session is justified on the basis of the attorney-client privilege only if the statutory prerequisites to the establishing of such a privilege are satisfied. (Register Div. of Freedom Newspapers v. County of Orange (1984) 158 Cal.App.3d 893.) Thus, this office has concluded that discussions between adversary public agencies and their attorneys concerning the settlement of potential litigation are not confidential communications protected by the attorney-client privilege and, therefore, are not properly conducted during closed sessions. (62 Ops.Cal.Atty.Gen. 150 (1979).)

b. Other privilege and confidentiality provisions

Other privilege and confidentiality provisions which may, depending upon the facts of the particular case, justify the holding of a closed session include (1) the "official information privilege" (Evidence Code Section 1040) which protects certain confidential information acquired by public employees and (2) the exceptions to the California Public Records Act found in Sections 6254 and 6255. It would appear appropriate to discuss matters protected by these statutes during

closed session. (62 Ops.Cal.Atty.Gen. 150 (1979); 61 Ops.Cal. Atty.Gen. 220 (1978); 65 Ops.Cal.Atty.Gen. 412 (1982).)

Absent express authority or an independent confidentiality provision from which authority for a closed session may be inferred, meetings of legislative bodies must be open and public. Thus, in 61 Ops.Cal.Atty.Gen. 220 (1978), we concluded that meetings of the Board of Police Commissioners could not, as a general proposition, be held in closed session, even though the matters to be discussed were deemed sensitive by the commission and their disclosure considered contrary to the public interest. This office has also concluded that Evidence Code Section 1152, which renders inadmissible for the purpose of proving liability evidence of the conduct or statements of a litigant during settlement negotiations, does not authorize the holding of a closed session for the purpose of conducting settlement negotiations. Section 1152 has as its purpose the fostering of settlements of disputes rather than the protecting of confidential communications. (62 Ops.Cal.Atty.Gen. 150 (1979).)

This office also has refused to imply an exception to the open meeting requirements of the Act for "quasi-judicial" matters. Thus, we held that county boards of education could not meet in closed session to deliberate when deciding appeals from decisions of local school district boards refusing to enter into interdistrict attendance agreements. (See 57 Ops.Cal.Atty.Gen. 189 (1974); see also I.L. 71-198 and I.L. 70-213, deliberations of county air pollution control district board after public hearing on appeals must also be held in public.)

3. Time for closed sessions and required notice

The Act provides that closed sessions for personnel matters are to be held only during a regular or special meeting. (Section 54957.) Thus, in 43 Ops.Cal.Atty.Gen. 79 (1964), this office held that the requisite special meeting notice was required to hold a closed session as to whether to retain an incumbent school principal. Interesting, however, is the decision in Lucas v. Board of Trustees, supra, 18 Cal.App.3d 990, in which the court held that the school board need not publish a detailed agenda of matters to be considered at closed sessions which were to be held as part of, but apart from, a regular meeting. The rationale was that such would negate the purpose of the closed session in

personnel matters; that is, to avoid undue publicity and embarrassment to the officer or employee. The court relied for such rationale on a prior opinion of this office, 33 Ops.Cal.Atty.Gen. 32 (1959). We note, however, that the employee himself was notified beforehand that his contract would be considered at such sessions.

4. Minute book

The legislative body may designate, by ordinance or resolution, an officer or employee of the local agency who shall attend each closed session and maintain a minute book, which may consist of a recording of the closed session. The minute book is confidential and shall only be available to members of the legislative body and, in litigation involving an alleged violation of the Act during a closed session, to a local court of general jurisdiction. (Section 54957.2.) Neither the closed session minutes nor the information which they memorialize may be released by the legislative body or any of its members. (I.L. 76-201.)

The recording of closed sessions is authorized by Section 54957.2 only to the extent that such recording is done in a manner which does not violate the provisions of Penal Code Section 632. Thus, Section 54957.2 does not constitute a defense to criminal liability for recording confidential communications without the consent, or at least knowledge, of the parties. (62 Ops.Cal.Atty.Gen. 292 (1979).)

5. Miscellaneous considerations regarding closed sessions

Though the Act speaks in terms of "considering" personnel matters, there is no doubt that absent a provision in another code (such as the Education Code to be discussed later), to "consider" in closed session also includes the ability to act in closed session. The legislative body need not return to the open meeting before voting or taking action. (Krausen v. Solano County Junior College Dist. (1974) 42 Cal.App.3d 394, 404; Lucas v. Board of Trustees, supra, 18 Cal.App.3d 990.) Thus, in I.L. 61-85, we held that "consider" included the right to dismiss an officer or employee in closed session, reserving to the officer or employee, however, his statutory right to request a public hearing.

The closed session is precisely what the term indicates and does not include a semi-closed session. Neither members of the press nor any other members of

the public may be admitted as spectators to closed sessions held pursuant to the Act. (46 Ops.Cal.Atty.Gen. 34 (1965).) Nor would it be proper for an investigative committee of a grand jury performing its duties of investigating the county's business to be admitted to a closed session. (I.L. 70-184.) In both the foregoing examples, the proceedings of the closed session would in due course be disclosed by such third parties, thus negating the whole purpose of the closed sessions; that is, required secrecy in limited circumstances. This office, however, has held that a county board of supervisors may attend a closed session of a county grand jury which is held in the exercise of the grand jury's own investigative powers without violating the Act. (58 Ops.Cal.Atty.Gen. 829 (1975).) In 1979 the Act was amended to explicitly authorize members of a legislative body of a local agency to testify in private before a grand jury, either as individuals or as a body. (Section 54953.1.)

Finally, and of importance to an individual who may be the object of disciplinary action at a closed session, failure of the officer or employee to request a public hearing, as permitted by the Act, does not amount to a failure to exhaust his administrative remedies as a condition to attacking such disciplinary action in court. Thus, in Ball v. City Council (1967) 252 Cal.App.2d 136, the court held that a police chief who was fired for engaging in union activities was not foreclosed from appealing such firing in court merely because he failed to request that the matter of his firing be considered publicly rather than in private. The Act itself does not grant a quasi-judicial-type hearing. The police chief was an at-pleasure appointee, and no special administrative hearing was prescribed for such personnel action.

G. Penalties for violation of the act

The Act, in Section 54959, provides that a member of a legislative body who attends a meeting where action is taken in violation of the Act, and with knowledge that the meeting violates the Act, is guilty of a misdemeanor.

The term "action taken" includes a collective decision, commitment, or promise by a majority of the members of a legislative body. (Section 54952.6.) It is the participation of a majority of the members of the legislative body, rather than the outcome of any vote taken or the manner in which members of the majority vote, that gives rise to criminal liability. (I.L. 78-84.) That the collective decision is tentative rather than final does not shield knowing participants from criminal liability. (61

Ops.Cal.Atty.Gen. 283 (1978).) However, if there is deliberation without action, the criminal penalty is not applicable and only civil proceedings are available. (Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra, 263 Cal.App.2d 41.)

There must be not only a volitional act constituting a violation, but also an act which is done with knowledge that it is illegal. Good faith reliance on the opinion of counsel that a nonpublic meeting is proper would normally preclude the finding of a "knowing" violation of the Act. (I.L. 76-173.) The determination as to whether there is sufficient evidence that members of a legislative body who have taken action at an illegal meeting in violation of the Act have done so knowingly must be made, in the first instance, by the district attorney or other local appropriate prosecuting attorney in light of all the facts. (I.L. 67-147.) In this regard, it is of interest that a legislative body of a local agency may require that a copy of the Ralph M. Brown Act be given to each of its members. (Section 54952.7.)

Although the Act itself only provides that a known violation is a misdemeanor if action is taken, under some circumstances a violation may also be a felony. If a conspiracy to commit a misdemeanor occurs, it can be a felony. (Penal Code Section 182.) There are no court decisions or prior opinions on this matter, but because meetings usually require the concurrence of more than one member, it would appear that the possibility that a conspiracy will have occurred will be present in many instances.

H. Enforcement provisions

Even if a criminal penalty is not applicable because action has not been taken, the Act, nevertheless, may be enforced to prevent further or future violations, as the Act can be enforced by civil action for activities beyond those covered by the penal provisions. (Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra, 263 Cal.App.2d at page 48.)

If a member of the public or news media believes that the Act has been, is being, or will be violated, that person's recourse is both informal and formal. Informally the individual may advise the legislative body or the attorney for the legislative body of his or her belief or, if appropriate, a superior governing body of the agency. If such informal action is unavailing, the individual's recourse is in the courts. The Act provides for court proceedings by any interested person to prevent violation of the Act or for determinations as to the applicability of the

Act to both past and future conduct of the legislative body. (Section 54960.) "Interested persons" may include a county or its officers on whose behalf an action may be filed by the county counsel or, in counties not having a county counsel, the district attorney. It was not intended, however, that the county counsel or the district attorney be invested with powers as a civil prosecutor in matters relating to the Act. (62 Ops.Cal.Atty.Gen. 150 (1979).)

Section 54960.5 provides that a plaintiff may receive attorney fees, but the award is against the agency, not the individual member or members who violated the act. The defendant agency also may receive attorney fees when it prevails in a final determination and when the proceeding against the agency is frivolous and without merit. (Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813.)

In Common Cause v. Stirling (1981) 119 Cal.App.3d 658, the trial court measured the petition for attorney fees under Section 54960.5 against the standards established in Code of Civil Procedure Section 1021.5, regarding the enforcement of an important right affecting the public interest. Since the trial court concluded that attorney fees would not have been justified under Section 1021.5, it refused to grant an award under the Act. The appellate court reversed, stating that even though recoveries would be small under normal principles, the damage was to the public integrity, and therefore, the Legislature had determined that public funds should be made available to pay for attorney fees to enforce these laws. Factors, which should be considered in determining whether an award of attorney fees would be "unjust" and therefore should not be made, include the effect of such an award on settlement, the necessity for the lawsuit, the lack of injury to the public, the likelihood that the problem would have been solved by other means, and the likelihood that the problem would reoccur in the absence of the lawsuit.

The case was remanded to the trial court which still concluded that the plaintiff was not entitled to attorney fees. The matter once again was appealed, and the appellate court reversed the trial court a second time. (Common Cause v. Stirling, supra, 147 Cal.App.3d 518.) The court held that the plaintiff was entitled to attorney fees because it had established a legal principle on behalf of the public.

I. Effect of failure to hold open meeting

Though one might believe that the taking of action by a legislative body in secret, when the law requires such action to be taken in an open meeting, should and would void the action, such is not the case. The courts have

consistently stated that the action is still valid. In Stribling v. Mailliard (1970) 6 Cal.App.3d 470, the court was considering an attack on the San Francisco police regulation concerning the carrying of guns by off-duty policemen. As to the plaintiff's contention that the regulation was invalid because adopted in secret, the court stated, at pages 474-475:

> "Appellants allege that the disputed regulation was passed by the Police Commission secretly. Interested members of the public, it is alleged were not permitted to express their views. The Ralph M. Brown Act (Gov. Code § 54950) is cited as stating the public policy of the state. But even if we assume that section 54950 applies to the challenged regulation, the regulation would not be invalidated. (Old Town Dev. Corp. v. Urban Renewal Agency, 249 Cal.App.2d 313 [57 Cal.Rptr. 426]; Claremont Taxpayers Assn. v. City of Claremont, 223 Cal.App.2d 589, 593-594 [35 Cal.Rptr. 907]; Adler v. City Council, 184 Cal.App.2d 763, 774-775 [7 Cal. Rptr. 805].) (Some of the effects of the Adler case were removed by legislation, but the proposal to make void any action taken at nonpublic meetings was objected to by the Governor and was eliminated from the proposed amendment to the statute. See 42 Ops.Cal.Atty.Gen. 61, 66.)"

(See also Santa Clara Federation of Teachers v. Governing Board (1981) 116 Cal.App.3d 831; Morris v. County of Marin (1977) 18 Cal.3d 901, 908-909, note 4; Griswold v. Mt. Diablo Unified Sch. Dist. (1976) 63 Cal.App.3d 648; Greer v. Board of Education (1975) 47 Cal.App.3d 98.) For a similar conclusion regarding the validity of an action taken in violation of the State Agency Act, see American Petroleum Institute v. Knecht (C.D.Cal. 1978) 456 F.Supp. 889, 913-914, affirmed (9th Cir. 1979) 609 F.2d 889.

III. SPECIAL CONSIDERATIONS RELATING TO SCHOOL DISTRICTS

One local agency of great public interest is the governing body of a school district. There are a few special rules which should be pointed out that are applicable to school districts as opposed to local agencies generally. These are additional to the Ralph M. Brown Act.

1. Under the circumstances delineated by statute, school districts may hold closed sessions to consider the suspension of or other disciplinary action as to any pupil, with the right of the pupil or his parent or guardian to

request a public hearing. (Education Code Sections 35146 and 48914(c).)

2. As to such disciplinary action, the board may not take final action in closed sessions, but must do so in a public meeting. (Education Code Sections 35147 and 48914(g); see also 44 Ops.Cal.Atty.Gen. 147 (1964); I.L. 61-93.)

3. A list of all agenda items for all regular meetings must be posted where parents and teachers may see them at least 48 hours in advance of regular meetings and 24 hours in advance of special meetings. (Education Code Section 35145.) Failure to post an agenda item will apparently void the action on such item. In Carlson v. Pasadena Unified Sch. Dist. (1971) 18 Cal.App.3d 196, the court held that an injunction was proper to prevent the closure of a school where the agenda item as to such school said nothing concerning closing it, but merely stated that a proposed school site change would be considered. It should be noted, however, that Government Code Section 54957, which authorizes closed sessions on personnel matters, provides an exception to the open meeting and posted agenda requirements of Education Code Section 35145.5. Thus, a governing board may consider personnel matters in closed session without posting a detailed agenda specifying the matters to be discussed. (Campbell Elementary Teachers Assn., Inc. v. Abbott (1978) 76 Cal.App.3d 796; Lucas v. Board of Trustees, supra, 18 Cal.App.3d 990.)

4. The school district governing board shall adopt reasonable regulations to insure that members of the public are able to (1) place matters directly related to school district business on the agenda of the governing board meetings and (2) address the board regarding items on the agenda. (Education Code Section 35145.5.)

IV. THE STATE AGENCY ACT

The Ralph M. Brown Act is by its terms not applicable to state agencies, but only local agencies. However, in the past the Attorney General has on occasion advised agencies which held regular meetings to follow the outline of the Act as a matter of policy. (See I.L. 66-21; I.L. 64-167; I.L. 64-69.) Since 1967 the state has had an act of general applicability to state boards and commissions which are required by law to conduct official meetings. The State Agency Open Meeting Act also applies to (1) commissions created by executive order, (2) multimember bodies on which a member of a state agency sits in his or her official capacity and which are supported in whole or in part by funds of the state agency or any of its members, and (3)

advisory bodies of three or more persons which are created by formal action of a state agency. (Sections 11121, 11121.7.)

The State Act does not apply to agencies whose meetings are required to be open and public by the Brown Act. (Torres v. Board of Commissioners, supra, 89 Cal.App.3d 545.) Agencies which are adjuncts of the court system, such as the Commission on Judicial Qualifications or the Judicial Council, and also agencies specifically exempted by law are excepted. As already noted, there are special provisions applicable to the Legislature and the Regents of the University of California which are set forth in the Appendix herein.

The state agency law is similar in many respects to the Ralph M. Brown Act, but in other respects is different, necessarily recognizing the difference in functions performed by the state as opposed to local agencies.

Some of the significant differences are:

1. The state law provides several statutory provisions for the holding of closed sessions tailored to the orderly functions of such agencies. For example, it provides:

a) Closed sessions for quasi-judicial determinations made by administrative agencies after an evidentiary hearing,

b) Closed sessions for the Franchise Tax Board to discuss confidential tax returns, as well as matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board,

c) Closed sessions for the selection of sites for state colleges, and

d) Closed sessions for the California Postsecondary Education Commission to consider matters pertaining to the appointment or termination of its director.

For these and other situations, Section 11126 of the Government Code should be consulted.

2. The state law contains specific agenda requirements. (Sections 11125 and 11125.1; see also: American Petroleum Institute v. Knecht, supra, 456 F.Supp. 889, 912-914, affirmed (9th Cir. 1979) 609 F.2d 889.)

3. The state law provides that a state agency shall designate an employee who shall attend its closed sessions and keep in a minute book a record of the topics discussed and decisions made at the meeting. (Section 11126.1.)

4. The state law provides that a state agency shall provide a copy of the State Agency Open Meeting Act to each member of the state agency upon his or her appointment to membership or on assumption of office. (Section 11121.9.)

5. The state law provides that prior to holding a closed session, a state agency shall state the general reason or reasons for the session, as well as the statutory or other legal authority under which such is being held. (Section 11126.3.)

6. The state law provides that attendance by a member of a state agency at a meeting of such agency with knowledge of the fact that the meeting is in violation of the State Agency Open Meeting Act is a misdemeanor. (Section 11130.7.)

V. CONCLUSION

The Office of the Attorney General has attempted herein to outline the provisions of the open meeting laws applicable to public agencies, primarily the Ralph M. Brown Act and, to a lesser degree, the act applicable to state agencies. It is to be again emphasized that this brochure is not to be considered a definitive statement of the law, but is prepared and furnished for informational purposes for members of the public or lay board members who wish to gain a general overview of these laws. Specific situations must be determined on their own facts and circumstances. The officers or attorneys of the local agency or the district attorney or county counsel of a county are the appropriate persons to address inquiries regarding the Ralph M. Brown Act, or a private attorney should be consulted for advice.

APPENDIX

THE RALPH M. BROWN ACT

Government Code Sections 54950 - 54961

§ 54950. Policy declaration

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

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.

§ 54950.5. Title

This chapter shall be known as the Ralph M. Brown Act.

§ 54951. Definition of local agency

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.

§ 54951.1. Certain antipoverty organizations included

For the purposes of this chapter, and to the extent not inconsistent with federal law, the term "local agency" shall include all private nonprofit organizations that receive public money to be expended for public purposes pursuant to the "Economic Opportunity Act of 1964" (PL 88-452; 78 Stats 508) [42 USCS §§ 2701 et seq.].

§ 54951.7. Definition of local agency

"Local agency" includes any nonprofit corporation, created by one or more local agencies, any one of the members of whose board of directors is appointed by such local agencies and which is formed to acquire, construct, reconstruct, maintain or operate any public work project.

§ 54952. Definition of legislative body

As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation.

§ 54952.2. Bodies with delegated authority included

As used in this chapter, "legislative body" also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body.

§ 54952.3. Advisory commissions, committees, and bodies included

As used in this chapter "legislative body" also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency.

Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.

If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings if required.

"Legislative body" as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body.

The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section.

§ 54952.5. Boards or commissions included

As used in this chapter "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency.

§ 54952.6. Definition of action taken

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority 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.

§ 54952.7. Giving copies of law to legislative body members

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

§ 54953. Open meetings

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 of the legislative body of a local agency, except as otherwise provided in this chapter.

§ 54953.1. Right to testify in private

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

§ 54953.3. Registration not mandatory

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to

the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 54953.5. Tape recording

Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the legislative body of the local agency that such recording constitutes, or would constitute, a disruption of the proceedings.

§ 54953.7. Greater access to meetings permitted

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

§ 54954. Conduct of business; time and place for regular meetings

The legislative body of a local agency shall provide, by ordinance, resolution, by-laws, or by whatever other rule is required for the conduct of business by that body, the time for holding regular meetings. Unless otherwise provided for in the act under which the local agency was formed, meetings of the legislative body need not be held within the boundaries of the territory over which the local agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake or other emergency, it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the presiding officer of the legislative body.

§ 54954.1. Notice of meetings upon request

The legislative body of any district which is subject to the provisions of this chapter shall give mailed notice of every regular meeting, and any special meeting which is called at least one week prior to the date set for the meeting, to any owner of property located within the district who has filed a written request for such notice with the legislative body.

Any mailed notice required pursuant to this section shall be mailed at least one week prior to the date set for the meeting to which it applies except that the legislative body may give such notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting.

Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within 90 days after January 1 of each year. Any request for notice, or renewal request, filed pursuant to this section shall contain a description of the property owned by the person filing the request. Such description may be in general terms but shall be sufficient enough to readily identify such property.

The legislative body may establish a reasonable annual charge for sending such notice based on the estimated cost of providing such a service.

§ 54955. Adjournment

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

§ 54955.1. Continuance

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section

54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 54956. Special meeting

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice shall be delivered personally or by mail and shall be received at least 24 hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the legislative body. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

§ 54956.5. Emergency meeting

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 the 24-hour notice requirement of Section 54956.

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. 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 thereof, shall notify such 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 the provisions of 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 notice requirement.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at such meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

§ 54956.6. Fees

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

§ 54956.7. Closed session: Licensing matter

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the

public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

§ 54956.8. Closed session: Real estate negotiations

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For the purpose of this section, the negotiator may be a member of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

§ 54956.9. Closed session: Pending litigation

Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(a) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the local agency is a party, has been initiated formally.

(b)(1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of

its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency; or

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state publicly to which subdivision it is pursuant. If the session is closed pursuant to subdivision (a), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

The legal counsel of the legislative body of the local agency shall prepare and submit to the body a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to subdivision (a), the memorandum shall include the title of the litigation. If the closed session is pursuant to subdivision (b) or (c), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the body prior to the closed session if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.1.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

§ 54957. Closed sessions

Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right to access to public services or public facilties, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of

performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. The legislative body also may exclude from any such public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

For the purpose of this section, the term "employee" shall not include any person elected to office, or appointed to an office by the legislative body of a local agency; provided, however, that nonelective positions of city manager, county administrator, city attorney, county counsel, or a department head or other similar administrative officer of a local agency shall be considered employee positions; and provided, further that nonelective positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer, or tax collector of any governmental district supplying services within limited boundaries shall be deemed employee positions.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding closed sessions to consider (a) matters affecting the national security, or (b) the appointment, employment, evaluation of performance, or dismissal of an employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. Such body also may exclude from any such public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

§ 54957.1. Report of employment determinations

The legislative body of any local agency shall publicly report at the public meeting during which the closed session is held or at its next public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body.

§ 54957.2. Minutes of closed session

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

§ 54957.5. Agendas and other materials: Public records

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by a member, officer, employee, or agent of such body for discussion or consideration at a public meeting of such body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) as soon as distributed, and shall be made available pursuant to Sections 6253 and 6256. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be made available for public inspection prior to commencement of, and during, their discussion at such meeting.

(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) Nothing in this section shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writings described in subdivisions (b), (c), and (d) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1), and subdivisions (b), (c), and (d) shall not be construed to exempt from public inspection any

record covered by that act, or to limit the public's right to inspect any record required to be disclosed by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of the local agency. Nothing in this chapter shall be construed to require a legislative body or a local agency to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

§ 54957.6. Closed sessions: Employee salaries and benefits

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees. Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives. Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

§ 54957.7. Statement of reasons and authority for closed session

Prior to or after holding any closed session, the legislative body of the local agency shall state the general reason or reasons for the closed session, and may cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the legislative body may consider only those matters covered in its statement. In the case of special, adjourned, and continued meetings, the statement shall be made as part of the notice provided for the special, adjourned, or continued meeting. Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

§ 54957.9. Disruption of meeting; clearing room

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly

conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

§ 54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

§ 54959. Violation of chapter: Criminal penalty

Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

§ 54960. Civil action for violation of chapter

Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body.

§ 54960.5. Costs and attorney fees

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 where it is found that a legislative body of the local agency has violated the provisions of this article. Such costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 54961. Discrimination

No local agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. This section shall apply to every local agency as defined in Section 54951, 54951.1, or 54951.7.

* * * *

THE STATE AGENCY ACT

Government Code Sections 11120-11131

§ 11120. Policy statement; requirement for open meetings

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

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.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

§ 11121. State body; defined

As used in this article "state body" means every state board, or commission, or similar multimember 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 Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(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 Grunsky-Burton Open Meeting Act (Sections 9027 to 9032, inclusive).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(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.

§ 11121.2. State body; multimember agency

As used in this article, "state body" also means any board, commission, committee, or similar multimember body which exercises any authority of a state body delegated to it by that state body.

§ 11121.7. Member of state body acting in official capacity as member of other agency

As used in this article, "state body" also means any board, commission, committee, or similar multimember body on which a member of a body which is a state body pursuant to Section 11121, 11121.2, or 11121.5 serves in his or her official capacity as a representative of such state body and which is supported, in whole or in part, by funds provided by the state body, whether such body is organized and operated by the state body or by a private corporation.

§ 11121.8. Applicability to advisory bodies

As used in this article, "state body" also means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

§ 11121.9. Requirement to provide law to members

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

§ 11122. Action taken, defined

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

§ 11123. Requirement for open meeting

All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

§ 11124. No conditions for attending meetings

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 11124.1. Right to record meetings

Any person attending an open and public meeting of the state body shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the state body that such recording constitutes, or would constitute, a disruption of the proceedings.

§ 11125. Required notice

(a) The state body shall provide notice of its meeting to any person who requests such notice in writing. Notice shall be given at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The notice of a meeting of a body which is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7, shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice.

(c) The notice of a meeting of an advisory body, which is a state body as defined in Section 11121.8, shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

(d) Notice of a meeting of a state body which complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

§ 11125.1. Public records

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by a member, officer, employee, or agent of such body for discussion or consideration at a public meeting of such body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) as soon as distributed, and shall be made available pursuant to Sections 6253 and 6256. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be

made available for public inspection prior to commencement of, and during, their discussion at such meeting.

(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writing described in subdivisions (b), (c), and (d) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to exempt from public inspection any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

§ 11125.2. Announcement of personnel action

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

§ 11125.5. Emergency meeting, defined; notice; public report

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 state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125.

For purposes of this section "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(a) Work stoppage or other activity which severely impairs public health, safety, or both.

(b) Crippling disaster which severely impairs public health, safety, or both.

(c) Difficulties with examinations for licensure which require immediate attention.

(d) Administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, which require immediate attention.

(e) Consideration of applications for licensure where a decision must be made in less than 10 days.

(f) Consideration by a licensing agency of proposed legislation which requires immediate attention due to legislative action which may be taken prior to the next regularly scheduled meeting of the agency, or due to time limitations imposed by law.

(g) Action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code if a 10-day delay would detrimentally affect the ability to provide or operate low- or moderate-income housing or seriously affect the fiscal integrity of the program pursuant to which the loan or grant was made or the assisted housing development.

However, newspapers of general circulation and radio or television stations which have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. In the event that telephone services are not functioning the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify such newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at such meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

§ 11126. Closed sessions

(a) Nothing contained in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless such employee requests a

public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any such public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 or similar provision of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent the Trustees of the California State University from holding closed sessions dealing with site selection for the state university.

(j) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board.

(l) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under the provisions of Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body which invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues which could have a material effect on the net income of the corporation.

(o) Nothing in this article shall be construed to prevent a state body, or such boards, commissions, administrative officers, or other representatives as may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body from holding a closed session to confer with legal counsel regarding pending litigation when discussion in open session concerning those matters would adversely affect or be detrimental to the public interest.

(r) Nothing in this article shall be construed to prevent a state body which invests in retirement, pension, or endowment funds from holding closed sessions to confer with legal counsel regarding pending litigation, when discussion in open session concerning these matters would adversely affect, or be detrimental to, those funds. For purposes of subdivision (q) and this subdivision, litigation shall be considered pending when a complaint, claim or petition for writ of mandate has been filed, or the threat of litigation is imminent in the sound opinion of the state body.

(s) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources

Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(t) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountarncy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter which properly could be considered in closed session by the state body whose authority it exercises.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter which properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(w) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8 from conductiong a closed session to consider any matter which properly could be considered in a closed session by the state body it advises.

(x) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions when considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization, or for the purpose of hearing confidential taxpayer appeals or data the public disclosure of which is prohibited by law.

(y) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

§ 11126.1. Minutes; availability

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

§ 11126.3. Public notice and legal authority for closed session

Prior to holding any closed session, the state body shall state the general reason or reasons for the closed session, and cite the specific statutory authority, including the particular section and subdivision, or other legal authority under which the session is being held. In the closed session, the state body may consider only those matters covered in its statement. The statement shall be made as part of the notice provided for the meeting and of any order or notice required by Section 11129. Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

§ 11126.5. Removal of disruptive persons

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a precedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

§ 11126.7. Charging fees prohibited

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

§ 11127. State bodies covered

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

§ 11128. Time restrictions for holding closed sessions

Each closed session of a state body shall be held only during a regular or special meeting of the body.

§ 11129. Continuation of meeting; notice requirement

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body which is noticed pursuant to Section 11125. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 11130. Legal remedies to stop or prohibit violations of act

Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to actions or threatened future action by members of the state body.

§ 11130.5. Court costs; attorney's fees

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 where it is found that a state body has violated the provisions of this article. Such 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 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 11130.7. Violation with knowledge; misdemeanor

Each member of a state body who attends a meeting of such body in violation of any provision of this article, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

§ 11131. Prohibited meeting facilities; discrimination

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

* * *

§ 35145. Except as provided in Sections 54957 and 54957.6 of the Government Code and in Section 35146 of, and subdivision (c) of Section 48914 of, this code, all meetings of the governing board of any school district shall be open to the public, and all actions authorized or required by law of the governing board shall be taken at such meetings and shall be subject to the following requirements:

(a) Minutes must be taken at all such meetings, recording all actions taken by the governing board. Such minutes shall constitute public records, and shall be available to the public.

(b) An agenda shall be posted at a place where members of the public, including district employees, may view the same at least 48 hours prior to the time of regular meetings and at least 24 hours prior to special meetings. This agenda must include, but is not limited to, items on which the governing board may take action at that meeting. (See similar Section 72121 relating to community colleges.)

§ 35145.5. It is the intent of the Legislature that members of the public be able to place matters directly related to school district business on the agenda of school district governing board meetings, and that members of the public be able to address the board regarding items on the agenda as such items are taken up. Governing boards shall adopt reasonable regulations to insure that this intent is carried out. Such regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.

This subdivision shall not preclude the taking of testimony at regularly scheduled meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that no action is taken by the board on such matters at the same meeting at which such testimony is taken. Nothing in this paragraph shall be deemed to limit further discussion on the same subject matter at a subsequent meeting. (See similar Section 72121.5 relating to community colleges.)

§ 35146. Notwithstanding the provisions of Section 35145 of this code and Section 54950 of the Government Code, the governing body of a school district shall, unless a request by the parent has been made pursuant to this section, hold closed sessions if the board is considering the suspension of, or disciplinary action or any other action except

expulsion in connection with any pupil of the school district, if a public hearing upon such question would lead to the giving out of information concerning school pupils which would be in violation of Article 5 (commencing with Section 49073) of Chapter 6.5 of Part 27 of this code.

Before calling such closed session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his or her parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such closed session. Unless the pupil, or his or her parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters shall be conducted by the governing board in closed session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at such meeting that might be in conflict with the right to privacy of any pupil other than the pupil requesting the public meeting or on behalf of whom such meeting is requested, shall be in closed session. Whether the matter is considered at a closed session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

* * *

SPECIAL PROVISIONS

STATE LEGISLATURE

Government Code Sections 9027-9032

§ 9027. All meetings of the Assembly and Senate and the committees and subcommittees thereof, and any conference committee, shall be open and public and all the proceedings shall be conducted openly so that the public may remain informed, except as otherwise provided in this article.

All meetings of any conference committee shall be open to press representatives accredited by the Joint Rules Committee.

§ 9028. Any such meetings at which the discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs, or at which a majority or quorum of the body is in attendance, shall be held only after full and timely notice to the public as provided by the Joint Rules of the Senate and Assembly.

§ 9029. Nothing contained in this article shall be construed to prevent: the Assembly or the Senate or a committee or subcommittee thereof from holding executive sessions to consider the appointment of members to committees or to the chairmanship or vice chairmanship thereof, or to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee, or an elected public official, or to consider matters relating to internal house management, or to consider assignment of bills to committee, or affecting the safety and security of the State Capitol or Members of the Legislature, its staff and employees, or the Members of the Assembly or the Senate from meeting privately in caucus with members of their own political party.

§ 9030. Each Member of the Legislature who attends a meeting of the Assembly, the Senate, or any committee or subcommittee thereof, where action is taken in violation of Section 9027, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

§ 9031. Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of Section 9027 by Members of the Legislature or to determine the applicability of this chapter to actions or threatened future action of the Legislature.

§ 9032. If any provision of this article, or the application thereof, to any person or circumstance is held invalid, the validity of the remainder of such article and the application of such provision to other persons and circumstances shall not be affected thereby.

* * *

SPECIAL PROVISIONS
REGENTS UNIVERSITY OF CALIFORNIA
California Constitution, Article IX,
Section 9, Subdivision (g)
Education Code Sections 92030, 92032, 92033

CALIFORNIA CONSTITUTION

§ 9(g). Meetings of the Regents of the University of California shall be public, with exceptions and notice requirements as may be provided by statute.

EDUCATION CODE

§ 92030. All meetings of the Regents of the University of California shall, except as otherwise provided in this article, be subject to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

§ 92032. Notwithstanding any provision of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code:

(a) The Regents of the University of California may, as occasioned by necessity, hold special meetings. The regents shall give public notice for these meetings. This notice shall be given by means of a notice hand delivered or mailed to any newspaper of general circulation, or any television or radio station, so that the notice may be published or broadcast at least 72 hours before the time of the meeting. The notice shall specify the time, place, and agenda of the special meeting. The regents shall not consider any business not included in the agenda portion of the notice. Failure to satisfy the provisions of this subdivision shall not be excused by the fact that no action was taken at the special meeting.

(b) The Regents of the University of California may conduct closed sessions when it meets to consider or discuss:

(1) Matters affecting the national security.

(2) The conferring of honorary degrees or other honors or commemorations.

(3) Matters involving gifts, devises, and bequests.

(4) Matters involving the purchase or sale of investments for endowment and pension funds.

(5) Matters involving litigation, when discussion in open session concerning those matters would adversely affect, or be detrimental to, the public interest.

(6) The acquisition or disposition of property, if discussion of these matters in open session could adversely affect the regents' ability to acquire or dispose of the property on the terms and conditions it deems to be in the best public interest.

(7) Matters concerning the appointment, employment, performance, compensation, or dismissal of university officers or employees, excluding individual regents other than the president of the university.

(8) Matters relating to complaints or charges brought against university officers or employees, excluding individual regents other than the president of the university, unless the officer or employee requests a public hearing.

(c) While a witness is being examined during any open or closed session, any or all other witnesses in the investigation may be excluded from the proceedings by the regents.

(d) Committees of the regents may conduct closed sessions on Medi-Cal contract negotiations.

(e) The nominating committee of the regents may conduct closed sessions held for the purpose of proposing officers of the board and members of the board's various committees.

(f) Committees of the regents may conduct closed sessions held for the purpose of proposing a student regent.

(g) The regents shall not be required to give public notice of meetings of special search or selection committees held for the purpose of conducting interviews for university officer positions.

§ 92033. The Regents of the University of California shall provide a copy of this article and Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, to each regent upon his or her appointment to the board or assumption of the office of regent.

* * *

SPECIAL PROVISIONS
CALIFORNIA STATE UNIVERSITY
Education Code Sections 89920-89928

Article 2. Meetings, Elections, and Judicial Determinations

§ 89920. Each governing board, or any subboard of the governing board, of an auxiliary organization shall conduct its business in public meetings. All governing board and subboard meetings shall be open and public, and all persons shall be permitted to attend any meeting of the governing board or subboard of an auxiliary organization, except as otherwise provided in this article.

§ 89921. Each governing board and subboard shall annually establish, by resolution, bylaws, or whatever other rule is required for the conduct of business by that body, the time and locations for holding regular meetings. Each governing board and subboard shall, at least one week prior to the date set for the meeting, give written notice of every regular meeting, and any special meeting which is called, at least one week prior to the date set for the meeting, to any individual or medium that has filed a written request for notice. Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed.

§ 89922. A special meeting may be called at any time by the presiding officer of a governing board or subboard, or by a majority of the members of the governing board or subboard, by delivering personally or by mail written notice to each member of the board or subboard, and to any medium or other party to be directly affected by a meeting, or any other person who has requested notice in writing. The call and notice of a special meeting shall be delivered at least 24 hours prior to any meeting and shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at these meetings by the governing board or subboard. Written notice may be dispensed with as to any member who, at or prior to the time the meeting convenes, files with the clerk or the secretary of the governing board or subboard a written waiver of notice. The waiver may be given by telegram. Written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

§ 89923. Any governing board or subboard may hold closed sessions to consider matters relating to litigation, collective bargaining, or the appointment, employment,

evaluation of performance, or dismissal of an employee, or to hear complaints or charges brought against an employee by another person or employee, unless the employee requests a public hearing. For the purposes of this section, "employee" does not include any person elected or appointed to an office. A board or subboard, upon a favorable majority vote of its members, may also hold a closed session to discuss investments where a public discussion could have a negative impact on the auxiliary organization's financial situation. In this case, a final decision shall only be made during public sessions.

§ 89924. No governing board or subboard shall take action on any issue until that issue has been publicly posted for at least one week.

§ 89925. Each auxiliary organization shall establish, by constitution, statute, bylaws, or resolution, provisions for elections of officers and board members. These provisions shall be designed to allow all those eligible to vote complete access to all information on issues and candidates. These provisions shall include, but not be limited to, provisions for sample ballots, numbers of days and hours for voting, polling locations, and notice of elections.

§ 89926. Where the constitution or articles of incorporation of an associated students auxiliary organization provides for a judiciary or judicial council with powers separate from the governing board of the auxiliary organization, decisions rendered by the judiciary or judicial council shall be final.

§ 89927. Each member of a governing board pursuant to this article who attends a meeting of the governing board where action is taken in violation of any provision of this article, with knowledge of the fact that the meeting is in violation of this article, is guilty of a misdemeanor.

§ 89928. This article is applicable to the governing board of any statewide student organization which represents the students of the California State University and student body organizations of the campuses of the California State University.

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ADDITIONAL DOCUMENTS	RFJN Exhs Vol 3
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/15/2020

Date

/s/Kathy Glass

Signature

Fox, Deborah (110929)

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