

Case No. S260209

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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**MICHAEL GOMEZ DALY and INLAND EMPIRE UNITED,**  
*Plaintiffs and Respondents,*

v.

**BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY;  
ROBERT A. LOVINGOOD; JANICE RUTHERFORD;  
CURT HAGMAN; and JOSIE GONZALES,**  
*Defendants and Appellants,*

**DAWN ROWE,**  
*Real Party in Interest and Appellant.*

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After an Order by the Court of Appeal of the State of California,  
Fourth Appellate District, Division Two  
Case No. E073730

Appeal from the Superior Court of the State of California,  
County of San Bernardino, Department 29, Honorable Janet M. Frangie  
Case No. CIVDS1833846

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**RESPONDENTS' MOTION TO TAKE JUDICIAL NOTICE**

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Michael Gomez Daly and Inland Empire United*



Respondents' Motion is based on the instant motion, the attached Memorandum of Points and Authorities, the attached Declaration of Juhyung Harold Lee, and all other papers and proceedings in the above-entitled action.

DATED: July 20, 2020

STACEY LEYTON  
HUNTER B. THOMSON  
ALTSHULER BERZON LLP

GLENN ROTHNER  
JUHYUNG HAROLD LEE  
ROTHNER, SEGALL & GREENSTONE

/s/ Stacey Leyton  
STACEY LEYTON

*Attorneys for Plaintiffs and Respondents  
Michael Gomez Daly and Inland Empire  
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## MEMORANDUM OF POINTS AND AUTHORITIES

Respondents ask the Court to take judicial notice of the documents contained in Exhibits B, C, E, F, and H as authenticated legislative history documents that are relevant to the instant case and otherwise the proper subject of judicial notice. (See *East Bay Asian Local Development Corp. v. State of California* (2000) 24 Cal.4th 693, 710, fn. 5 [taking judicial notice of “authenticated” legislative history documents]; Declaration of Juhyung Harold Lee, Exhs. A, D, G [declarations from Legislative Intent Service authenticating the legislative history documents contained in Exhibits B, C, E, F, and H].)

The documents contained in Exhibits B, C, E, and H reflect “[o]fficial acts” of the Legislature that bear on the Court’s interpretation of the Ralph M. Brown Act (Brown Act or Act; Gov. Code, § 54960 et seq.). (Evid. Code, § 452, subd. (c); see, e.g., *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1046 [“[W]e ... look to legislative history to confirm our plain-meaning construction of statutory language.”]; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9 (*Quelimane*) [“[C]ommittee reports and analyses or digests of the Legislative Counsel are [relevant to the interpretation of a statute] because it is reasonable to infer that all members of the Legislature considered them when voting on the proposed statute.”]; *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5 [taking judicial notice of “various versions of [a] bill”].) Although Exhibit H contains a legislative history document pertaining to a different statute, that statute is analogous to and contains near-identical language to the Brown Act, and is therefore relevant to the Court’s inquiry in this case. (See *Musaelian v. Adams* (2009) 45 Cal.4th 512, 517 [“[U]nless there is evidence the Legislature had a contrary intent, logic and consistency suggest the same language in analogous statutes

should be construed the same way.”]; see also, e.g., *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 799.)

The documents contained in Exhibits B and C were cited by Respondents during proceedings in the superior court and the Court of Appeal, and the superior court addressed similar legislative history documents in its statement of decision. (See Exhibits to Petition for Writ of Supersedeas, Exh. 12, pp. 311-312.) Respondents did not seek judicial notice of these documents in the superior court or the Court of Appeal because “[a] request for judicial notice of [such] published material is unnecessary. Citation to the material is sufficient.” (*Quelimane, supra*, 19 Cal.4th at p. 45, fn. 9.) Respondents nevertheless ask this Court to take judicial notice of these documents, as well as the documents contained in Exhibits E and H, out of an abundance of caution.

Appellants also ask the Court to take judicial notice of Exhibit F as evidence of “ ‘contemporary opinion.’ ” (*Galanty v. Paul Revere Life Ins. Co.* (2000) 23 Cal.4th 368, 381, fn. 24 [taking judicial notice of “letters recommending approval of [a] bill”], citing Cal. Law. Revision Com. com., 29B West’s Ann. Evid. Code (1995 ed.) foll. § 450, p. 420 [“Under the Evidence Code, as under existing law, courts may consider whatever materials are appropriate in construing statutes, determining constitutional issues, and formulating rules of law. That a court may consider legislative history ... , materials that ... indicate contemporary opinion, and similar materials is inherent in the requirement that it take judicial notice of the law.”].) The document contained in Exhibit F reflects the opinion held by the League of California Cities—which submitted an amicus letter in support of review in this case—at the time that the Legislature considered the use of quo warranto as a means of enforcing the Act, and is relevant to the Court’s consideration of appellants’ public policy arguments. (See Opening Brief on the Merits at pp. 51-53, 56.)

For the foregoing reasons, Respondents ask this Court to take judicial notice of the documents set forth in Exhibits B, C, E, F, and H.

DATED: July 20, 2020

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ROTHNER, SEGALL & GREENSTONE

/s/ Stacey Leyton  
STACEY LEYTON

*Attorneys for Plaintiffs and Respondents  
Michael Gomez Daly and Inland Empire  
United*

**[PROPOSED ORDER]**

Court of Appeal, Fourth Appellate District, Division Two - No. E073730

**S260209**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

MICHAEL GOMEZ DALY et al., Plaintiffs and Respondents,

v.

BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY et al.,  
Defendants and Appellants.

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Good cause appearing, respondents' motion to take judicial notice of is granted.

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*Chief Justice*

## **DECLARATION OF JUHYUNG HAROLD LEE**

I, Juhyung Harold Lee, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California, and an associate of the law firm Rothner, Segall & Greenstone, one of the counsel of record for plaintiffs and respondents Michael Gomez Daly and Inland Empire United in the above-entitled action. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could and would testify competently to them.

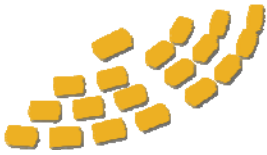
2. On July 27, 2019, our legal team purchased documents reflecting the enactment history of Assembly Bill 2674 (1985-1986 Regular Session) from Legislative Intent Service, Inc. (LIS). A true and correct copy of a declaration from LIS attorney Jenny S. Lillge describing and authenticating these documents is attached hereto as **Exhibit A**. A true and correct copy of a “version[] of Assembly Bill 2674,” as amended June 4, 1986, is attached hereto as **Exhibit B**. A true and correct copy of the “Third Reading analysis of Assembly Bill 2674 prepared by the Office of Senator Floor Analyses” is attached hereto as **Exhibit C**.

3. On June 4, 2020, our legal team purchased documents regarding the enactment history of Assembly Bill 2297 (1969 Regular Session) from LIS. A true and correct copy of a declaration from LIS attorney Jenny S. Lillge describing and authenticating these documents is attached hereto as **Exhibit D**. A true and correct copy of a “version[] of Assembly Bill 2297,” as introduced on April 8, 1969, is attached hereto as **Exhibit E**. A true and correct copy of a letter contained in the “legislative bill file of Assemblymember William T. Bagley on Assembly Bill 2297” is attached hereto as **Exhibit F**.

4. On June 24, 2020, our legal team purchased documents regarding the enactment history of Assembly Bill 214 (1985-1986 Regular







# LEGISLATIVE INTENT SERVICE, INC.

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## DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain documents relevant to the enactment of Assembly Bill 2674 of 1986. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Assembly Bill 2674 was approved by the Legislature and was enacted as Chapter 641 of the Statutes of 1986.

The following list identifies all documents purchased on July 27, 2019, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Assembly Bill 2674 of 1986. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

### **ASSEMBLY BILL 2674 OF 1986:**

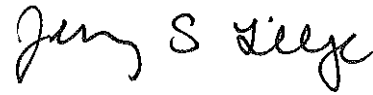
1. All versions of Assembly Bill 2674 (Connelly-1986);
  2. Procedural history of Assembly Bill 2674 from the 1985-86 *Assembly Final History*;
  3. Two analyses of Assembly Bill 2674 prepared for the Assembly Committee on Local Government;
  4. Material from the legislative bill file of the Assembly Committee on Local Government on Assembly Bill 2674 as follows:
    - a. Previously Obtained Material,
    - b. Updated Collection of Material;
- +

5. Analysis of Assembly Bill 2674 prepared for the Assembly Committee on Ways and Means;
6. Material from the legislative bill file of the Assembly Committee on Ways and Means on Assembly Bill 2674 as follows:
  - a. Previously Obtained Material,
  - b. Updated Collection of Material;
- + 7. Material from the legislative bill file of the Assembly Committee on Ways and Means Minority on Assembly Bill 2674;
8. Third Reading analysis of Assembly Bill 2674 prepared by the Assembly Committee on Local Government;
9. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 2674 as follows:
  - a. Previously Obtained Material,
  - b. Updated Collection of Material;
- + 10. Two analyses of Assembly Bill 2674 prepared for the Senate Committee on Local Government;
11. Material from the legislative bill file of the Senate Committee on Local Government on Assembly Bill 2674 as follows:
  - a. Previously Obtained Material,
  - b. Updated Collection of Material;
- + 12. Two analyses of Assembly Bill 2674 prepared by the Legislative Analyst;
13. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 2674 as follows:
  - a. Previously Obtained Material,
  - b. Updated Collection of Material;
- + 14. Third Reading analysis of Assembly Bill 2674 prepared by the Office of Senate Floor Analyses;
15. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 2674;
16. Legislative Counsel's Rule 26.5 analysis of Assembly Bill 2674;
17. Two Concurrence in Senate Amendments analyses of Assembly Bill 2674 prepared by the Assembly Committee on Local Government;
18. Material from the legislative bill file of Assemblymember Lloyd Connelly on Assembly Bill 2674 as follows:
  - a. Previously Obtained Material,
  - b. Updated Collection of Material;
- + 19. Excerpt regarding Assembly Bill 2674 from the *Journal of the Senate*, July 3, 1986;

- 20. Post-enrollment documents regarding Assembly Bill 2674 as follows:
  - a. Previously Obtained Material,
  - b. Updated Collection of Material;
- + 21. Press Release #691 issued by the Office of the Governor on September 2, 1986, to announce that Assembly Bill 2674 had been signed;
- 22. Material from the legislative bill file of the Department of Justice on Assembly Bill 2674;
- 23. "Open Meeting Laws," a publication prepared by the California Department of Justice, December 1984.

+ Because it is not unusual for more materials to become publicly available after our earlier research of legislation, we re-gathered these file materials, denoting them as "updated collection of material."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30<sup>th</sup> day of June, 2020 at Woodland, California.



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JENNY S. LILLGE

AMENDED IN SENATE JUNE 4, 1986

AMENDED IN SENATE MAY 22, 1986

AMENDED IN ASSEMBLY MARCH 18, 1986

AMENDED IN ASSEMBLY MARCH 10, 1986

AMENDED IN ASSEMBLY MARCH 3, 1986

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2674**

Introduced by Assembly Member Connelly

(Principal coauthor: Assembly Member Johnson)

(Coauthor: ~~Senator Marks~~) (Coauthors: *Senators Ayala, Bergeson, Craven, and Marks*)

January 15, 1986

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.

LEGISLATIVE COUNSEL'S DIGEST

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

(1) 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 or discussed at a regular meeting. Additionally, existing law



does not prohibit any action to be taken, as defined, on any item not appearing on the posted agenda.

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

(2) The Ralph M. Brown Act does not require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body 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. These new requirements would impose a state-mandated local program.

(3) 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 and 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.

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

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

This bill would authorize any interested person to commence an action by mandamus, injunction, or declaratory relief to determine if certain actions taken by the 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.

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

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

(6) 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.

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

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

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

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

- 1 SECTION 1. Section 35144 of the Education Code is
- 2 amended to read:
- 3 35144. A special meeting of the governing board of a

1 school district may be called at any time by the presiding  
 2 officer of the board, or by a majority of the members  
 3 thereof, by delivering personally or by mail written  
 4 notice to each member of the board, and to each local  
 5 newspaper of general circulation, radio, or television  
 6 station requesting notice in writing. The notice shall be  
 7 delivered personally or by mail at least 24 hours before  
 8 the time of the meeting as specified in the notice. The call  
 9 and notice shall specify the time and place of the special  
 10 meeting and the business to be transacted. No other  
 11 business shall be considered at those meetings by the  
 12 governing board. The written notice may be dispensed  
 13 with as to any member who at or prior to the time the  
 14 meeting convenes files with the clerk or secretary of the  
 15 board a written waiver of notice. The waiver may be  
 16 given by telegram. The written notice may also be  
 17 dispensed with as to any member who is actually present  
 18 at the meeting at the time it convenes.

19 The call and notice shall be posted at least 24 hours  
 20 prior to the special meeting ~~and shall specify the time and~~  
 21 ~~location of the meeting and be posted~~ in a location that  
 22 is freely accessible to members of the public and district  
 23 employees.

24 SEC. 2. Section 35145 of the Education Code is  
 25 amended to read:  
 26 35145. Except as provided in Sections 54957 and  
 27 54957.6 of the Government Code and in Section 35146 of,  
 28 and subdivision (c) of Section 48918 of, this code, all  
 29 meetings of the governing board of any school district  
 30 shall be open to the public, and all actions authorized or  
 31 required by law of the governing board shall be taken at  
 32 the meetings and shall be subject to the following  
 33 requirements:

34 (a) Minutes shall be taken at all of those meetings,  
 35 recording all actions taken by the governing board. The  
 36 minutes are public records and shall be available to the  
 37 public.

38 (b) An agenda shall be posted by the governing board,  
 39 or its designee, in accordance with the requirements of  
 40 Section 54954.2 of the Government Code. Any interested

1 person may commence an action by mandamus or  
 2 injunction pursuant to Section 54960.1 of the  
 3 Government Code for the purpose of obtaining a judicial  
 4 determination that any action taken by the governing  
 5 board in violation of this subdivision or Section 35144 is  
 6 null and void.

7 SEC. 3. Section 72121 of the Education Code is  
 8 amended to read:

9 72121. Except as provided in Sections 54957 and  
 10 54957.6 of the Government Code and in Section 72122 of,  
 11 and subdivision (c) of Section 48914 of, this code, all  
 12 meetings of the governing board of any community  
 13 college district shall be open to the public, and all actions  
 14 authorized or required by law of the governing board  
 15 shall be taken at the meetings and shall be subject to the  
 16 following requirements:

17 (a) Minutes shall be taken at all of those meetings,  
 18 recording all actions taken by the governing board. The  
 19 minutes are public records and shall be available to the  
 20 public.

21 (b) An agenda shall be posted by the governing board,  
 22 or its designee, in accordance with the requirements of  
 23 Section 54954.2 of the Government Code. Any interested  
 24 person may commence an action by mandamus or  
 25 injunction pursuant to Section 54960.1 of the  
 26 Government Code for the purpose of obtaining a judicial  
 27 determination that any action taken by the governing  
 28 board in violation of this subdivision or subdivision (b) of  
 29 Section 72129 is null and void.

30 SEC. 4. Section 72129 of the Education Code is  
 31 amended to read:

32 72129. (a) Special meetings may be held at the call of  
 33 the president of the board or upon a call issued in writing  
 34 and signed by a majority of the members of the board.

35 (b) A notice of the meeting shall be posted at least 24  
 36 hours prior to the special meeting and shall specify the  
 37 time and location of the meeting and shall specify the  
 38 *transacted and shall* be posted in a location that is freely  
 39 accessible to members of the public and district  
 40 employees.

1 SEC. 5. Section 54954.2 is added to the Government  
2 Code, to read:

3 54954.2. (a) At least 72 hours before a regular  
4 meeting, the legislative body of the local agency, or its  
5 designee, shall post an agenda containing a brief general  
6 description of each item of business to be transacted or  
7 discussed at the meeting. The agenda shall specify the  
8 time and location of the regular meeting and shall be  
9 posted in a location that is freely accessible to members  
10 of the public. No action shall be taken on any item not  
11 appearing on the posted agenda.

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

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

19 (2) Upon a determination by a two-thirds vote of the  
20 legislative body, or, if less than two-thirds of the members  
21 are present, a unanimous vote of those members present,  
22 that the need to take action arose subsequent to the  
23 agenda being posted as specified in subdivision (a).

24 (3) The item was posted pursuant to subdivision (a)  
25 for a prior meeting of the legislative body occurring not  
26 more than five calendar days prior to the date action is  
27 taken on the item, and at the prior meeting the item was  
28 continued to the meeting at which action is being taken.

29 SEC. 6. Section 54954.3 is added to the Government  
30 Code, to read:

31 54954.3. (a) Every agenda for regular meetings shall  
32 provide an opportunity for members of the public to  
33 directly address the legislative body on items of interest  
34 to the public that are within the subject matter  
35 jurisdiction of the legislative body, provided that no  
36 action shall be taken on any item not appearing on the  
37 agenda unless the action is otherwise authorized by  
38 subdivision (b) of Section 54954.2. *However, in the case*  
39 *of a meeting of a city council in a city or a board of*  
40 *supervisors in a city and county, the agenda need not*

1 provide an opportunity for members of the public to  
2 address the council or board on any item that has already  
3 been considered by a committee, composed exclusively  
4 of members of the council or board, at a public meeting  
5 wherein all interested members of the public were  
6 afforded the opportunity to address the committee on the  
7 item, unless the item has been substantially changed  
8 since the committee heard the item, as determined by  
9 the council or board.

10 (b) The legislative body of a local agency may adopt  
11 reasonable regulations to ensure that the intent of  
12 subdivision (a) is carried out, including, but not limited  
13 to, regulations limiting the total amount of time allocated  
14 for public testimony on particular issues and for each  
15 individual speaker.

16 SEC. 7. Section 54956 of the Government Code is  
17 amended to read:

18 54956. A special meeting may be called at any time by  
19 the presiding officer of the legislative body of a local  
20 agency, or by a majority of the members of the legislative  
21 body, by delivering personally or by mail written notice  
22 to each member of the legislative body and to each local  
23 newspaper of general circulation, radio or television  
24 station requesting notice in writing. The notice shall be  
25 delivered personally or by mail and shall be received at  
26 least 24 hours before the time of the meeting as specified  
27 in the notice. The call and notice shall specify the time  
28 and place of the special meeting and the business to be  
29 transacted. No other business shall be considered at these  
30 meetings by the legislative body. The written notice may  
31 be dispensed with as to any member who at or prior to  
32 the time the meeting convenes files with the clerk or  
33 secretary of the legislative body a written waiver of  
34 notice. The waiver may be given by telegram. The  
35 written notice may also be dispensed with as to any  
36 member who is actually present at the meeting at the  
37 time it convenes. Notice shall be required pursuant to this  
38 section regardless of whether any action is taken at the  
39 special meeting.

40 The call and notice shall be posted at least 24 hours



1 prior to the special meeting and shall specify the time and  
 2 location of the meeting and be posted in a location that  
 3 is freely accessible to members of the public.

4 SEC. 8. Section 54956.5 of the Government Code is  
 5 amended to read:

6 54956.5. In the case of an emergency situation  
 7 involving matters upon which prompt action is necessary  
 8 due to the disruption or threatened disruption of public  
 9 facilities, a legislative body may hold an emergency  
 10 meeting without complying with either the 24-hour  
 11 notice requirement or the 24-hour posting requirement  
 12 of Section 54956 or both of the notice and posting  
 13 requirements.

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

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

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

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

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

1 All special meeting requirements, as prescribed in  
 2 Section 54956 shall be applicable to a meeting called  
 3 pursuant to this section, with the exception of the 24-hour  
 4 notice requirement.

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

12 SEC. 9. Section 54960.1 is added to the Government  
 13 Code, to read:

14 54960.1. (a) Any interested person may commence  
 15 an action by mandamus or injunction for the purpose of  
 16 obtaining a judicial determination that an action taken by  
 17 a legislative body of a local agency in violation of Section  
 18 54953, 54954.2, or 54956 is null and void under this section.  
 19 Nothing in this chapter shall be construed to prevent a  
 20 legislative body from curing or correcting an action  
 21 challenged pursuant to this section.

22 (b) Prior to any action being commenced pursuant to  
 23 subdivision (a), the interested person shall make a  
 24 demand of the legislative body to cure or correct the  
 25 action alleged to have been taken in violation of Section  
 26 54953, 54954.2, or 54956. The demand shall be in writing  
 27 and clearly describe the challenged action of the  
 28 legislative body and nature of the alleged violation. The  
 29 written demand shall be made within 30 days from the  
 30 date the action was taken. Within 30 days of receipt of the  
 31 demand, the legislative body shall cure or correct the  
 32 challenged action and inform the demanding party in  
 33 writing of its actions to cure or correct or inform the  
 34 demanding party in writing of its decision not to cure or  
 35 correct the challenged action. If the legislative body takes  
 36 no action within the 30-day period, the inaction shall be  
 37 deemed a decision not to cure or correct the challenged  
 38 action, and the 15-day period to commence the action  
 39 described in subdivision (a) shall commence to run the  
 40 day after the 30-day period to cure or correct expires.

1 Within 15 days of receipt of the written information  
 2 notice of the legislative body's decision to cure or correct,  
 3 the expiration of the 30-day period to cure or correct, or  
 4 75 days from the date the challenged action was taken,  
 5 whichever is earlier, the demanding party shall be  
 6 required to commence the action pursuant to subdivision  
 7 (a) or thereafter be barred from commencing the action.  
 8 (c) An action taken shall not be determined to be null  
 9 and void if any of the following conditions exist:  
 10 (1) The action taken was in substantial compliance  
 11 with Sections 54953, 54954.2, and 54956.  
 12 (2) The action taken was in connection with the sale  
 13 or issuance of notes, bonds, or other evidences of  
 14 indebtedness or any contract, instrument, or agreement  
 15 thereto.  
 16 (3) The action taken gave rise to a contractual  
 17 obligation, including a contract let by competitive bid,  
 18 upon which a party has, in good faith, detrimentally  
 19 relied.

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

22 (d) During any action seeking a judicial  
 23 determination pursuant to subdivision (a) if the court  
 24 determines, pursuant to a showing by the legislative body  
 25 that an action alleged to have been taken in violation of  
 26 Section 54953, 54954.2, or 54956 has been cured or  
 27 corrected by a subsequent action of the legislative body,  
 28 the action filed pursuant to subdivision (a) shall be  
 29 dismissed with prejudice.

30 (e) The fact that a legislative body takes a subsequent  
 31 action to cure or correct an action taken pursuant to this  
 32 section shall not be construed or admissible as evidence  
 33 of a violation of this chapter.

34 SEC. 10. Section 54960.5 of the Government Code is  
 35 amended to read:

36 54960.5. A court may award court costs and  
 37 reasonable attorney fees to the plaintiff in an action  
 38 brought pursuant to Section 54960 or 54960.1 where it is  
 39 found that a legislative body of the local agency has  
 40 violated this chapter. The costs and fees shall be paid by

1 the local agency and shall not become a personal liability  
 2 of any public officer or employee of the local agency.

3 A court may award court costs and reasonable attorney  
 4 fees to a defendant in any action brought pursuant to  
 5 Section 54960 or 54960.1 where the defendant has  
 6 prevailed in a final determination of such action and the  
 7 court finds that the action was clearly frivolous and totally  
 8 lacking in merit.

9 SEC. 11. The Legislature does not intend, by  
 10 including an express reference to Sections 54954.2 and  
 11 54960.1 of the Government Code in Sections 35145 and  
 12 72121 of the Education Code, as amended by this act, to  
 13 imply that other sections of the Ralph M. Brown Act  
 14 which have been construed as applying to meetings of  
 15 the governing boards of school and community college  
 16 districts shall not continue to apply to those meetings.

17 SEC. 12. Reimbursement to local agencies and school  
 18 districts for costs mandated by the state pursuant to this  
 19 act shall be made pursuant to Part 7 (commencing with  
 20 Section 17500) of Division 4 of Title 2 of the Government  
 21 Code and, if the statewide cost of the claim for  
 22 reimbursement does not exceed five hundred thousand  
 23 dollars (\$500,000), shall be made from the State Mandates  
 24 Claims Fund.

O

THIRD READING

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

Committee Votes:

Senate Floor Vote:

COMMITTEE: LOCAL GOVERNMENT		
BILL NO.:		
DATE OF HEARING:		
SENATORS:	AYE	NO
Ayala	✓	
Campbell		
Craven	✓	
Marks	✓	
Russell	✓	
Vuich (VC)		
Bergeson (Ch)	✓	
TOTAL:	5	0

COMMITTEE: APPROPRIATIONS		
BILL NO.:		
DATE OF HEARING:		
SENATORS:	AYE	NO
Aiquist	✓	
Ayala	✓	
Campbell		
Deddeh		
Dills	✓	
Foran		
Maddy	✓	
Beverly (VC)	✓	
Boatwright (Ch)	✓	
TOTAL:	6	0

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

**SUBJECT:** Open meetings: local agencies

**SOURCE:** Author

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

**ANALYSIS:** Existing law:

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

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

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

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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



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



**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 indicates 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:

<b>AYES—69</b>			
Agnos	Duffy	Johnson	Peace
Allen	Eaves	Jones	Robinson
Arelas	Elder	Katz	Rogers
Baker	Farr	Kelley	Roos
Bane	Felando	Killea	Seastrand
Bates	Ferguson	Klehs	Sebastiani
Bradley	Filante	Kohnyu	Statham
Bronzan	Floyd	La Follette	Stirling
Brown, Dennis	Frazee	Leonard	Tanner
Calderon	Frizzelle	Lewis	Tucker
Campbell	Grisham	Margolin	Vicencia
Chacon	Hannigan	McAlister	Waters, Maxine
Clute	Harris	McClintock	Waters, Norman
Cordit	Hauser	Molina	Wyman
Connelly	Hayden	Moore	Mr. Speaker
Cortese	Herger	Nolan	
Costa	Hill	O'Connell	
Davis	Hughes	Papan	
		<b>NOES—4</b>	
Itenberg	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.



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### DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain documents relevant to the enactment of Assembly Bill 2297 of 1969. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Assembly Bill 2297 was approved by the Legislature and was enacted as Chapter 494 of the Statutes of 1969.

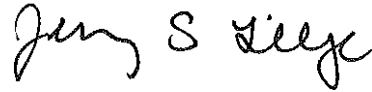
The following list identifies all documents purchased on June 4, 2020, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Assembly Bill 2297 of 1969. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

#### **ASSEMBLY BILL 2297 OF 1969:**

1. All versions of Assembly Bill 2297 (Bagley-1969);
2. Procedural history of Assembly Bill 2297 from the 1969 *Assembly Final History*;
3. Analysis of Assembly Bill 2297 prepared for the Assembly Committee on Judiciary;
4. Material from the legislative bill file of Assemblymember William T. Bagley on Assembly Bill 2297;

5. Post-enrollment documents regarding Assembly Bill 2297;
6. Excerpt regarding Assembly Bill 2297 from the *Legislative Report*, prepared by the California State Employees' Association, June 10, 1969;

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of June, 2020 at Woodland, California.



---

JENNY S. LILLGE



ASSEMBLY BILL

No. 2297

Introduced by Assemblyman Bagley

April 8, 1969

REFERRED TO COMMITTEE ON JUDICIARY

*An act to amend and renumber Section 54960, to add Sections 11131, 11132, to repeal Section 54959 of, and to add Section 54960 to, the Government Code, relating to open meetings.*

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

- 1 SECTION 1. Section 11131 is added to the Government Code,
- 2 to read:
- 3 11131. Any interested person may commence an action by
- 4 mandamus, or injunction or declaratory relief for the purpose
- 5 of stopping or preventing violations or threatened violations of
- 6 this article or to determine the applicability of this article
- 7 to the past or threatened future action or actions of the legis-
- 8 lative body.
- 9 SEC. 2. Section 11132 is added to the Government Code, to
- 10 read:
- 11 11132. The attendance at a meeting at which action is taken
- 12 in violation of this article, with knowledge that the meeting is
- 13 in violation of this article, shall constitute misconduct in office
- 14 on the part of any member of a state agency so attending.
- 15 An action in quo warranto pursuant to Chapter 5 (com-
- 16 mencing with Section 803) Title 10, Part 2 of the Code of Civil

LEGISLATIVE COUNSEL'S DIGEST

AB 2297, as introduced, Bagley (Jud.). Open meetings.

Amends; adds, repeals various secs., Gov.C.

Provides that under laws relating to open meetings of state and local agencies knowing violation thereof is misconduct in office. Authorizes use of declaratory relief to determine their applicability, mandamus or injunction to prevent violations, and quo warranto to remove violators from office. Provides that court may set aside actions taken in violation thereof.

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1 Procedure may be commenced for the removal from office of  
 2 such person, and the court may set aside any action taken at a  
 3 meeting in violation of this article.

4 SEC. 3. Section 54959 of the Government Code is repealed.  
 5 ~~54959. Each member of a legislative body who attends a~~  
 6 ~~meetings of such legislative body where action is taken in viola-~~  
 7 ~~tion of any provision of this chapter, with knowledge of the~~  
 8 ~~fact that the meeting is in violation thereof, is guilty of a mis-~~  
 9 ~~demeanor.~~

10 SEC. 4. Section 54960 of the Government Code is amended  
 11 and renumbered to read:

12 ~~54960 54959.~~ Any interested person may commence an ac-  
 13 ~~tion either by mandamus or, injunction or declaratory relief~~  
 14 ~~for the purpose of stopping or preventing violations or~~  
 15 ~~threatened violations of this chapter by members of the legis-~~  
 16 ~~lative body of a local agency or to determine the applicability~~  
 17 ~~of this chapter to the past or threatened future action or ac-~~  
 18 ~~tions of the legislative body.~~

19 SEC. 5. Section 54960 is added to the Government Code, to  
 20 read:

21 ~~54960.~~ The attendance at a meeting at which action is taken  
 22 in violation of this chapter, with knowledge that the meeting is  
 23 in violation of this chapter, shall constitute misconduct in office  
 24 on the part of any member of a legislative body so attending.

25 An action in quo warranto pursuant to Chapter 5 (com-  
 26 mencing with Section 803) of the Code of Civil Procedure may  
 27 be commenced for the removal from office of such person, and  
 28 the court may set aside any action taken at a meeting in viola-  
 29 tion of this chapter.

O



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1108 "O" Street  
Sacramento, California 95814  
May 15, 1969

Mr. Judd Clark  
1108 "O" Street  
Sacramento, California 95814

Dear Judd:

In reviewing AB 2297 and after having discussed it very briefly with Bill Bagley, I would like to make the following observations:

- 1) I don't see any particular advantage to deleting Section 54959, but have no strong position on its retention.
- 2) We are not opposed in any way and would support the addition of declaratory relief to Section 54960 (renumbered 54959).
- 3) We are completely opposed to proposed Section 54960 as it relates to an action in quo warranto. While I would prefer to see the entire section eliminated, if it is to be retained, I would add after the period on line 24 "as provided in Section 3060" and delete lines 25 to 29 inclusive.

It is my official view, and not personal view, that the Attorney General has evidenced complete bias in connection with opinions under the Brown Act and we would much prefer to rely on the courts rather than the Attorney General to determine whether there has been a violation of the law. My reference is not to any particular Attorney General inasmuch as I can demonstrate this view in connection with opinions written during the term of the last two persons holding this office.

In summary therefore, it seems to me that if Bill is primarily interested in the use of declaratory relief, that you need only amend Section 54960 and leave the rest of the act alone and see how this change in the law works out for a period of two years. The other changes could be made even though they appear to be unnecessary.

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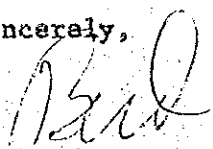
Mr. Judd Clark

- 2 -

May 15, 1969

We will oppose any attempt to apply quo warranto to such proceedings.

Sincerely,

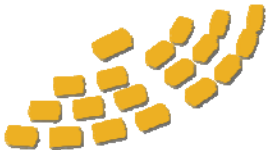
  
Richard Carpenter  
Executive Director  
and General Counsel

RC:nvb

cc: Assemblyman William T. Bagley

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## DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain documents relevant to the enactment of Assembly Bill 214 of 1985. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Assembly Bill 214 was approved by the Legislature and was enacted as Chapter 936 of the Statutes of 1985.

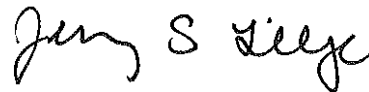
The following list identifies all documents purchased on June 24, 2020, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Assembly Bill 214 of 1985. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

### **ASSEMBLY BILL 214 OF 1985:**

1. All versions of Assembly Bill 214 (Connelly-1985);
2. Procedural history of Assembly Bill 214 from the 1985-86 *Assembly Final History*;
3. Analysis of Assembly Bill 214 prepared for the Assembly Committee on Governmental Organization;
4. Material from the legislative bill file of the Assembly Committee on Governmental Organization on Assembly Bill 214;
5. Analysis of Assembly Bill 214 prepared for the Assembly Committee on Ways and Means;
6. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 214;

7. Analysis of Assembly Bill 214 prepared for the Senate Committee on Judiciary;
8. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 214;
9. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 214;
10. Analysis of Assembly Bill 214 prepared by the Legislative Analyst;
11. Two Third Reading analyses of Assembly Bill 214 prepared by the Office of Senate Floor Analyses;
12. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 214;
13. Concurrence in Senate Amendments analysis of Assembly Bill 214 prepared by the Assembly Committee on Governmental Organization;
14. Legislative Counsel's Rule 26.5 analysis of Assembly Bill 214;
15. Material from the legislative bill file of Assemblymember Lloyd Connelly on Assembly Bill 214 as follows:
  - a. General Material,
  - b. State Agency Materials,
  - c. Press Clippings;
16. Post-enrollment documents regarding Assembly Bill 214.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of June, 2020 at Woodland, California.



---

JENNY S. LILLGE

THIRD READING

<b>SENATE RULES COMMITTEE</b>  Office of Senate Floor Analyses 1100 J Street, Suite 305 445-6614	Bill No.	AB 214
	Author:	Connelly (D), et al
	Amended:	6/19/85 in Senate
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote: Page 2818, 7/18/85

COMMITTEE: JUDICIARY		
BILL NO.: AB 214		
DATE OF HEARING: 5-28-85		
SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	✓
Richardson	✓	
Roberti	✓	
Torres	✓	
Watson	✓	
Davis (VC)		✓
Lockyer (Ch)	✓	
TOTAL:	9	2

PLACED  
ON FILE  
PURSUANT  
TO SENATE  
RULE 28.8

**Assembly Bill 214**—An act to amend Section 11130.5 of, and to add Section 11130.3 to, the Government Code, relating to meetings of state bodies.

Roll Call

The names of the absentees were called and AB 214 was passed by the following vote:

**AYES (21)**—Senators Alquist, Carpenter, Craven, Deddeh, Garamendi, Bill Greene, Leroy Greene, Hart, Keene, Lockyer,

Marks, McCorquodale, Mello, Montoya, Petris, Robbins, Roberti, Rosenthal, Stiern, Torres, and Watson.

**NOES (15)**—Senators Bergeson, Beverly, Boatwright, Campbell, Davis, Dills, Foran, Maddy, Morgan, Nielsen, Presley, Royce, Russell, Seymour, and Vuich.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 71-0; p. 1032; 3/28/85

**SUBJECT:** Open meetings

**SOURCE:** Center for Public Interest Law

**DIGEST:** This bill, relative to the Open Meetings Act, would authorize an interested person to take specified action to determine if proceedings of a state body are null and void following violation of the Act, as specified.

**ANALYSIS:** According to the Senate Judiciary Committee analysis, the Bagley-Keene Open Meetings Act requires state boards and commissions to conduct open meetings and to provide specific agendas in advance. The proponents of this bill claim that agencies can violate this law with impunity because it does not invalidate actions that are taken illegally. They cite the following example:

The state Board of Food and Agriculture included a vague, misleading item in its agenda for a 1983 meeting when it adopted a resolution opposing inclusion of the Tuolumne River in federal wilderness legislation. Most environmentalists felt that the river should have been included. But because the board intentionally mislabeled the agenda item, no one was there to speak against the proposal.

An attorney general's investigation last year concluded that the board clearly violated the Open Meetings Act. But it also ruled that, because the act was "directory" and not "mandatory," the resolution was valid even though adopted in violation of the law.

b

00432

CONTINUED

Reason For Bill

This bill would attempt to meet these concerns. 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.

Exceptions

This bill would provide four exceptions to the null and void provisions if:

- The action was taken in connection with the sale of bonds, notes, or other evidences of public debt;
- The action gave rise to a contractual obligation and a party has detrimentally relied; or
- The action taken was pursuant to a nonsubstantive or de minimus violation of the Open Meetings Act.
- The action taken was in connection with the collection of any tax.

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 related 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.

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

**SUPPORT:** (Verified 7/9/85)

Center for Public Interest Law (source)  
Peace officers Research Association of California  
Attorney General  
Sierra Club  
Cal-PIRG  
Board of Registered Nursing  
Central California Newspaper Guild

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**OPPOSITION:** (Verified 7/9/85)

State Water Resources Control Board  
State and Consumer Services Agency  
California Waste Management Board  
Department of Forestry  
California Parole Board

**ARGUMENTS IN SUPPORT:** The Attorney General contends this measure will put realistic teeth into the Open Meeting Act. Under existing law, actions taken in violation of open meeting requirements are nevertheless valid. AB 214 will now void such actions. The bill provides an exception for de minimus errors and thus should not threaten state agencies with frivolous litigation. Any unintended violations can be easily cured by simply rescheduling the item for the next meeting and emergency procedures are still available when necessary.

**ARGUMENTS IN OPPOSITION:** The State Water Resources Control Board argues that the criminal penalties of the existing Open Meeting Act generally provide a sufficient incentive to board members to make every effort to comply with statutory requirements. This bill would seriously undermine the efficiency of public agencies by casting a cloud of doubt over the validity of many actions. The board is aware of neither widespread nor serious violations of the Open Meeting Act. As such, the board believes that a need for corrective action such as that contained in this bill should be established before pursuing this measure.

VW:ctl 7/9/85 Senate Floor Analyses



**PROOF OF SERVICE**

COURT NAME: Supreme Court of California  
CASE NUMBER: S260209  
CASE NAME: *Daly, et al. v. Board of Supervisors of San Bernardino County, et al.*

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On July 20, 2020, I served the following document:

**RESPONDENTS’ MOTION TO TAKE JUDICIAL NOTICE**

on the interested parties in this action in the manner described below:

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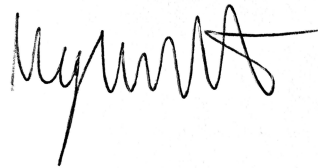
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**By TrueFiling**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 20, 2020, in Oakland, California.



---

Meghan Herbert

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **DALY v. BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY**

Case Number: **S260209**

Lower Court Case Number: **E073730**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
BRIEF	Answer Brief on the Merits
MOTION	Respondents' Motion to Augment Record on Review
MOTION	Respondents' Motion to Take Judicial Notice

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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.

7/20/2020

Date

/s/Stacey Leyton

Signature

Leyton, Stacey (203827)

Last Name, First Name (PNum)

Altshuler Berzon LLP

Law Firm