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CONDUCTING THE PUBLIC'S BUSINESS UNDER THE BROWN ACT



“It is the intent of the law that their actions be taken openly,
and that their deliberations be conducted openly...”

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CONDUCTING THE PUBLIC'S BUSINESS UNDER THE BROWN ACT

16TH Edition

“It is the intent of the law that their actions
be taken openly, and that their deliberations
be conducted openly...”

This Dannis Woliver Kelley document provides general information about current California codes; it does not constitute legal advice. As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. We do not recommend that you act on this information without appropriate counsel. No claim on Original U.S. Government works.

16th Edition

Updated January 2017

INTRODUCTION

The Ralph M. Brown Act Open Meeting Law, Government Code section 54950 et seq, (“Brown Act” or “Act”) is arguably the most important statute in the day to day working life of a local legislator. The Brown Act fulfills two overriding purposes in the cause of transparency in government:

1. To keep the public informed of the actions, debates and views of its locally elected representatives; and
2. To provide the procedural framework for local legislators to meet, debate, act and listen collectively to themselves and their constituents.

School board members are called upon year after year to respond to new, amended or recently interpreted or reinterpreted substantive law by enacting policy, approving programs, overseeing district budgets and adopting curriculum and graduation requirements. Governing boards annually review labor negotiations, pending litigation, real property transactions and personnel actions. Not one of these actions can occur without reference to the statutory framework for properly calling, announcing and conducting Governing Board meetings – the Brown Act.

In 1993 three laws substantially amended the Brown Act.¹ These amendments significantly changed major provisions of the Brown Act related to agenda requirements, closed session deliberations, reporting out requirements, and the conduct of “meetings.” In 1994, urgency cleanup legislation made additional changes to the Act.² Since 1998 the Legislature has continued to amend the Act and case law developments and Attorney General Opinions have clarified or interpreted various provisions of the Brown Act.

This edition of our text provides a comprehensive introduction to and overview of the Brown Act and related statutes governing school board meetings. The book provides governing board members and public school administrators with a description of the major requirements of the Brown Act, beginning with

¹ Assembly Bill No. 1426 (Burton) Stats. 1993, ch.1136, Senate Bill No. 36 (Kopp) Stats. 1993, ch. 1137, Senate Bill No. 1140 (Calderon) Stats. 1993, ch. 1138, all effective April 1, 1994.

² Senate Bill No. 752 (Kopp, Calderon), Stats. 1994, ch.32, effective April 1, 1994.

the election and induction of new board members, proper drafting of open and closed session agendas, the bases for holding open and closed meetings, and penalties for violations of the Brown Act.

The Appendices include the full text of the current Brown Act, along with related statutes from the Education Code and the Educational Employment Relations Act (“EERA”). Reliance upon the text and the sample agendas or other documents should only be exercised in consultation with the District’s legal counsel. This Thirteenth Edition has been revised to reflect amendments to the Brown Act along with judicial and administrative interpretations of the law’s major provisions through March 31, 2013.

We believe this text provides a useful guide for board members and administrators in properly scheduling, agendizing and conducting board meetings. In analyzing board and administrative responsibilities under the Brown Act it is imperative to remind oneself of the law’s primary purpose:

The people, in delegating authority, do not give their public servants the right to decide what is good for the public 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.
(Gov. Code, § 54950; emphasis added.)

We hope this book fulfills its purpose of assisting boards, board members and administrators in their conduct of the public’s business.

I. DEFINITIONS: BOARD MEMBERS, LEGISLATIVE BODIES AND MEETINGS

A. When Does A Board Member Become A Board Member?

The Brown Act defines “member of the legislative body of a local agency” to include any person elected or selected to serve, even if they have not yet assumed public office.³ Once elected, such persons are expected to know the Brown Act and conform their conduct to its requirements, and can be held accountable in an action against the board for enforcement of the Act just as if they had already assumed office. This means such individuals would be counted as board members for purposes of determining whether a quorum of board members is present at a given time. (§ 54952.1.)⁴ One district attorney’s office has opined that the board member is not “elected” for purposes of § 54952.1 until the County Registrar of Voters has certified the election results; there do not appear to be any reported or precedential opinions on such timing. The Act permits governing boards to require that copies of the Act be provided to current and newly elected members who have not yet assumed office. (§ 54952.7.)

B. What Is A Legislative Body?

The Brown Act applies to governing boards of local agencies (e.g., school or community college district governing boards), and the governing board of “any other local body created by state or federal statute” (e.g., special education local planning areas [SELPA]). In addition, the Brown Act requirements apply to any:

- » Commission
- » Committee
- » Or other body
- » Permanent or temporary
- » Decision making or advisory
- » Established by charter, ordinance, resolution or formal action of the Board

³ When a vacancy occurs between elections, the Education Code provides that the Board may choose to fill the vacancy by appointment or by special election, depending upon the timing of the vacancy. During some time frames, the county Board of Education may appoint an interim board member if the governing board fails to act. (Ed. Code, § 5090 et seq.)

⁴ All references are to the Government Code unless otherwise specified.

This includes advisory committees, irrespective of their composition (even if composed of less than a quorum of board members), that are standing committees which have continuing subject matter jurisdiction or fixed meeting schedules. (§ 54952.) The so-called “less than a quorum” exception appears to exist only as to advisory committees composed solely of less than a quorum of the board and which are not “standing” committees (such as “ad hoc” committees).

If a committee falls within the definition of a legislative body, it must meet the same agenda and posting requirements as a governing board unless the committee is exempt from the Brown Act and subject to the requirements of Education Code section 35147.

NOTE: A committee initiated or created solely by the superintendent would not be subject to the Brown Act, even if it is a standing committee and/or contains less than a quorum of board members plus other individuals. The absence of board action in creating the committee is the determining factor here.

A legislative body also includes a board, commission, committee or other multi-member body that governs a private corporation created by an elected legislative body to exercise lawfully delegated authority or that receives funds from a local agency and the membership of whose governing body includes a member of the local agency’s legislative body appointed to that governing body by the local agency’s legislative body. Non-profit corporations formed by school districts to carry out special district programs are typically considered “legislative bodies” under the Brown Act.

When two or more public agencies establish a separate legal entity through a Joint Powers Agreement, such entity is a local public agency subject to the Brown Act. (See *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354.) In *McKee*, under alternate theories, the board of directors and executive council for the task force were held to be legislative bodies subject to the Brown Act. The court held that the board and council were either the governing bodies of a local agency (§ 54952, subd. (a)) or the governing body of an entity created by another elected governing body or bodies to exercise lawfully delegated authority. (§ 54952, subd. (c)(1)(A).)

C. What Is A Meeting?

The definition of a meeting is not determined according to whether “action” is “taken” by the governing body. (§ 54952.6.) Rather, section 54952.2 of the Act defines a “meeting” as the following:

- » Any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate or take action upon any item that is within the subject matter jurisdiction of the legislative body; or
- » A series of communications of any kind, directly or through intermediaries to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the legislative body.⁵

Thus, polling board members on an issue by telephone conferencing or other electronic means, such as computer modems, “E-mail,” or social media such as blogs, Facebook or Twitter constitutes a meeting and violates the Brown Act. (§ 54952.2, subd. (b).) (See also, 84 Ops.Cal.Atty.Gen. 30 (2001).) This may be distinguished from communication to and/or among board members for the purpose of providing information (e.g., a weekly report from the superintendent), or to build the board meeting agenda in a manner which allows sufficient time for the discussion of items. The key criterion is that the communication is procedural or administrative in nature as opposed to substantive discussion. Since 2009, this applies whether or not the communication might lead to development of a “collective concurrence” by board members.

The important factors to consider include:

- » The number of board members involved, and
- » The subject being discussed.

If the subject being discussed is any item that is or could be board business and if a majority of the board is present, in person or via telecommunications, it is a “meeting.” This is true regardless of whether it is a study, discussion, informational, fact-finding, or pre-meeting gathering of a majority of the board, and regardless of whether any action is taken. A series of communications outside of a meeting among a

⁵ Senate Bill No. 1732 (Romero) Stats. 2008, ch. 63, effective January 1, 2009.

majority of the board, directly or through intermediaries, to discuss, deliberate or take action on any matter within the board's jurisdiction is expressly prohibited by the Act. (§ 54952.2, subd. (b)(1).)⁶

The definition of "meeting" specifically excludes certain actions:

- » A phone conversation between a board member and "any other person" (including another board member); so long as one does not communicate the comments or positions of other board member(s).
- » Attendance by a majority of the board at a general conference open to the public that involves a discussion of broad issues and is attended by a broad spectrum of officials from a variety of governmental agencies.
- » Attendance at open and publicized meetings, organized to address a topic of local concern by a person or organization other than the local agency or attendance at social or ceremonial occasions.
- » Attendance at open and noticed meetings of another body of the same local agency (e.g., a district committee which is subject to the Brown Act) or any other local agency.
- » Attendance by a majority of members at an open and noticed meeting of a standing committee of the Board, provided that members of the Board who are not members of the committee attend only as observers.

Attendance is permitted at the above events and occasions as long as discussions by a majority of the board members do not occur, "other than as part of the scheduled program," on business of a "specific nature within the subject matter jurisdiction" of the local agency. (§ 54952.2, subd. (c)(2).) This means a majority of the board may make and/or listen to presentations on topics within the board's jurisdiction and, while not absolutely clear from the statute, might even allow a majority of board members to discuss such matters (e.g., as part of the audience), if the subject is part of the scheduled program.

⁶ In *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533 the court literally construed section 54952.2 to require that an actual "collective concurrence" (decision or course of action) emerge in order for a Brown Act violation to be found where there was a series of meetings between the City Manager and individual Council members; in response, the Legislature has specifically disapproved *Wolfe* and amended section 54952.2 accordingly. See *infra* at pps. 44-45. (SB 1732 (Romero) Stats. 2008, ch.63, effective January 1, 2009.)

II. WHERE AND HOW MEETINGS ARE TO BE CONDUCTED

A. Open and Public Meeting Requirements

Governing boards must hold regular meetings generally at least monthly⁷ and must by rule fix the time and place for such meetings. (§ 54954; Ed. Code, §§ 35140-35142; 72000, subd. (c)(4).) This requirement does not apply to advisory and standing committees. Teleconference locations must be identified and accessible to the public. (§ 54953, subd. (b)(3).) If a meeting is conducted, in part, by teleconference, then at least a quorum of the board must participate from teleconference locations within the district's boundaries. Section 54953 requires all meetings to be open and public, and prohibits the governing board from taking any action by secret ballot, whether the action is preliminary or final in nature. This prohibition applies to closed sessions as well. (§ 54953, subd. (c).)⁸ All votes taken during a teleconferenced meeting must be by roll call votes. (§ 54953, subd. (b)(2).) All meetings that are open and public must comply with the Americans with Disabilities Act and its implementing regulations. (§ 54953.2.)

B. Where May The Governing Board Conduct Its Meetings?

1. Accessibility in General

Section 54961 has long prohibited a board from meeting in any facility that prohibits the admittance of any person based on race, religious creed, color, national origin and ancestry. Amendments added to these prohibitions are the use of facilities which are inaccessible to disabled persons and where members of the public must make a payment or purchase.⁹

2. Meetings Outside the District Boundaries

A legislative body is required to provide by ordinance, resolution, bylaws, or other rule for the conduct of business for the board, the time, and place for holding regular meetings. (§ 54954, subd. (a).)

⁷ Education Code section 35141 requires boards of union or joint union high school districts to hold regular meetings monthly or quarterly; other high school districts must hold regular meetings monthly.

⁸ This provision codifies an Attorney General opinion prohibiting secret ballots. (68 Ops.Cal.Atty.Gen. 65 (1985).)

⁹ The purchase requirement would appear to apply to meetings held in restaurants. While this might not often be of concern to governing boards, it could impact meetings of "committees" which fit the definition of a legislative body and are therefore subject to the Act. (See Section I (B) at pp. 3-5.)

Section 54954 of the Act prohibits local agencies from holding meetings outside the territorial boundaries of the agencies' jurisdiction except in the following specified circumstances.

3. General Exceptions for Meeting Locations

- » To comply with state or federal law or court order or to attend a judicial or administrative proceeding to which the local agency is a party.
- » To inspect real or personal property which cannot be conveniently brought within the boundary of the agency, provided that the topic of the meeting is limited to items directly related to that property.
- » To participate in discussions or meetings of "multiagency" significance as long as the meetings are within the jurisdiction of one of the agencies, are open to the public and all participating agencies provide proper notice of the meetings.
- » To meet in the closest meeting facility to the agency's territory, if the local agency has no meeting place within its territorial boundaries, or if its principal office is located outside the territorial boundaries.
- » To meet with state or federal elected or appointed officials, when a local meeting would be impractical, solely to discuss legislative or regulatory issues over which the state or federal officials have control affecting the local agency.
- » To meet outside the agency's boundaries if the meeting takes place in or near a facility over which the agency has jurisdiction, provided that the topic of the meeting is limited to such facility.
- » To visit with the local agency's legal counsel in closed session on pending litigation when to do so would reduce legal fees or costs.¹⁰

4. Additional Exceptions Applicable to School Boards

There are three additional exceptions allowing school boards to meet outside district boundaries: (1) to attend a conference on non-adversarial collective bargaining techniques,¹¹ (2) to interview members of the public residing in another district concerning the potential employment of an applicant for employment as superintendent of the board's district, (prior to January 1, 2005, the statute provided for interviews with reference to employing the superintendent of the district where the interviews may take place), or (3) to interview a potential employee from another district. (§ 54954, subd. (c).)

¹⁰ (Section 54954, subd. (b)(1)-(7).)

¹¹ We believe this exception, together with the EERA's exemption from the Brown Act of negotiations and related activities, allows boards to meet outside district boundaries for the purpose of actively *participating* in training on non-adversarial or interest-based bargaining.

5. Joint Powers Authorities

Joint Powers Authorities (“JPAs”) must meet within the territory of one of its member agencies unless it has members throughout the state, in which case it may meet at any facility which conforms to the requirements of section 54961 related to accessibility, nondiscrimination and prohibiting locations where a fee is required. (§ 54954, subd. (d).) A meeting of the board of a trust fund for safety and training, jointly administered by members appointed by a city and by a union pursuant to a collectively bargained agreement, is not subject to the Brown Act. (87 Ops.Cal.Atty.Gen. 19 (February 24, 2004).)

6. Emergency Location Designation

When the presiding officer or designee of the legislative body designates a new meeting place because of fire, flood, earthquake or other emergency, the local media who have requested notice of meetings must be notified by the most rapid means of communication available at the time. (§ 54954, subd. (e).)

C. Audio/Video Tape Recordings; Board Meeting Minutes; Broadcasts

Any person attending an open meeting is entitled to record the proceedings via audio or video tape recordings, or still or motion picture photographing unless the board makes a reasonable finding that the recording cannot continue because the noise, illumination, or obstruction of view constitutes or would constitute a persistent disruption of the proceedings. Any tape or film recordings, if made by or at the direction of the agency (not one made by a member of the public), must be kept for 30 days; such tape and film/video recordings are public records subject to inspection under California Public Records Act (“CPRA”). (§ 6250 et seq.) These must be made available by the local agency without charge for public inspection on a tape player made available by the local agency.

(§ 54953.5.)

Must the district provide both the written minutes and the tape recordings of board meetings?

The answer to this question depends on the purpose for which the recordings were made. A district may destroy the recordings at any time (subject to the Brown Act’s 30-day retention requirement

explained above) if the purpose for which they were made and retained was solely to facilitate preparation of official minutes. However, if the tapes were retained or made for the additional purpose of preserving their informational content for public reference, they are public records and may not be destroyed except as authorized by state law.

Education Code section 35145, subdivision (a), requires minutes to be taken at all public school board meetings. These minutes are public records and are available to the public for inspection. The public's right to inspect and receive copies of "records" of public agencies is governed primarily by the California Public Records Act. (§ 6250 et seq.) There is no requirement that school boards tape record their meetings. However, if the board does tape meetings, the public has a right to inspect or listen to such tapes, pursuant to the CPRA. (64 Ops.Cal.Atty.Gen. 317 (1981).) The CPRA does not, however, govern the destruction of records.

Education Code section 35253 and its attendant regulations (Cal. Code of Regs., tit. 5, § 16020 et seq.) govern the destruction of school district records. Revised section 16022 provides generally for a four year retention rule, but such period does not apply to records subject to a retention schedule pursuant to state or federal law. (§ 16022, subd. (c).) Thus, the 30 day Brown Act retention period for tapes arguably still applies.

Section 54953.6 permits broadcasting of meetings unless the board makes a reasonable finding that the noise, illumination or obstruction of view would constitute a persistent disruption of the proceedings.

III. AGENDA REQUIREMENTS

A. Open Session

The agenda must reasonably inform the public of the matters to be considered in sufficient detail to allow the public to determine whether to participate at the meeting. The Act requires agendas to contain a “brief general description” of agenda items which generally need not exceed 20 words. (§ 54954.2, subd. (a).) The Act also covers “items to be discussed in closed session,” an agenda requirement expressly included in the Brown Act for the first time in 1994. As of January 1, 2003, the agenda must also include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability to enable the individual to participate in the public meeting. (§ 54954.2, subd. (a).)

B. The Education Code—School Site Councils and Advisory Committees

Some site councils and advisory committees are exempt from the Brown Act, but are subject to the meeting requirements of Education Code section 35147. (See pp. 82 - 83 for full text of the statute.)

These councils and committees include the following:

Education Code

§ 52012

§ 52065

§ 52176

§ 52852

§ 54425, subd. (b)

§ 54444.2

§ 54724

§ 62002.5

Federal Statute

United States Code,
title 25, § 2604

United States Code,
title 25, § 11503

Subject Matter

School Improvement Programs

American Indian

Bilingual Education

School-Based Coordination Program
(School Site Councils)

Compensatory Education

Migrant Education

Motivation and Maintenance

Economic Impact Aid & Bilingual

Subject Matter

American Indians

Elementary and Secondary Education Act

Councils and committees subject to Education Code section 35147 must adhere to the following requirements:

- » The meetings must be open to the public -- since these meetings are exempt from the Brown Act, and no independent authority is provided in the Education Code, no closed sessions are allowed;
- » A seventy-two-hour notice must be posted at a school site or other appropriate place accessible to the public;
- » The notice must state the date, time, and location of the meeting;
- » An agenda must be prepared describing each item of business to be discussed or acted upon;
- » No action on matters may be taken if the matter is not on the agenda unless there is a need for immediate action, the need to act came to the council's attention after the agenda was posted and the vote to add the matter to the agenda is unanimous;
- » Members of the public shall be permitted during a meeting to address any matter within the subject matter jurisdiction of the council or committee; and
- » Questions or brief statements by members of councils, committees or the public that do not have significant impact on pupils or employees or that can be resolved by providing information need not be on the agenda.

Education Code section 35147 provides that if a council or committee violates these procedural requirements, any person can demand reconsideration of the item at the next meeting and public input must be permitted. Section 35147 specifically states that written materials provided to councils or committees shall be made available pursuant to the Public Records Act.

C. Closed Session

The Brown Act provides specific guidelines for the information which should appear on the closed session agenda. (§ 54954.5.) The guidelines are detailed below. The importance of specificity was emphasized in *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310¹² where the agenda item described "Conference with Real Property Negotiator, Property: Barham Ranch". In reality the board was reviewing the acquisition of an easement to the named property. The court held on remand that the agenda did not accurately describe the issue to be discussed in closed session.

¹² The Court of Appeal decision determined that a resident of one county had standing to sue upon an alleged Brown Act violation occurring in another county. The actual violation was found following remand to the lower court.

“Substantial Compliance” with the guidelines for a closed session agenda will protect the legislative body and/or elected officials from violating section 54954.2 or section 54956. (See § 54960.1, subd. (a).) “Substantial compliance” means actual compliance with respect to the substance essential to every reasonable objective of the statute. (*Castaic Lake Water Agency v. Newhall Cty. Water Dist.* (2015) 238 Cal.App.4th 1196, 1207.)

Section 54954.5 provides the following suggested agenda item descriptions. Compliance with these descriptions creates a safe haven against Brown Act challenges to closed session agenda items:

1. Real Property Transactions (§ 54956.8)

CONFERENCE WITH REAL PROPERTY NEGOTIATORS:¹³

Property: (Specify street address, or if no street address, the parcel number or other unique reference of the property under negotiation)

Agency Negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator as long as the name of the agent or designee is announced at an open session prior to the closed session)

Negotiating Parties: (Specify name of party, (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

2. Pending and Anticipated Litigation (§ 54956.9)

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Subdivision (d)(1) of section 54956.9.)

Name of case: (Specify by reference to claimant’s name, names of parties, case or claim numbers)
or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (d)(2) or (3) of section 54956.9: (Specify number of potential cases)¹⁴

¹³ These agenda descriptions are taken directly from section 54954.5 of the Act; only closed session matters applicable to school boards are included here.

Initiation of litigation pursuant to subdivision (d)(4) of section 54956.9: (Specify number of potential cases)

3. Tort Claims (§ 54956.95)

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to section 54961)

Agency claimed against: (Specify name)

4. Threat to Public; Personnel Actions—Appointment, Employment, Evaluation, Discipline/Dismissal/Release (§ 54957)

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release. Discipline includes potential reduction in compensation.)

5. Negotiations With Represented Employees/Discussions with Unrepresented Employees (§ 54957.6)

CONFERENCE WITH LABOR NEGOTIATOR ¹⁵

¹⁴ A district "may be required to provide additional information on the agenda or in an oral statement prior to the closed session" as to which of the statutorily defined categories of potential litigation applies (e.g., facts relating to an accident, disaster, or transactional occurrence that might result in litigation; receipt of a tort claim; and statements in or outside of an open meeting threatening litigation. (§ 54954.5, subd. (c).)

¹⁵ Because we believe school district closed sessions for purposes of negotiations with its represented employees under the EERA are exempt from the Brown Act we recommend the following reference: "The Governing Board will meet in closed session for

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative as long as the name of the agent or designee is announced at an open session held prior to the closed session)

Employee organization: (Specify name of organization representing employee or employees in question)

Or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

Student Expulsions: Although not mentioned specifically in the Brown Act, closed sessions for *student discipline* matters are authorized by Education Code sections 35146 (discipline or suspension) and 48918 (expulsion). (See also “Blanket Authorization for Education Code Closed Sessions,” Section IV (E) at p. 34.) Governing board deliberation on an expulsion may occur in closed session even if the hearing was held in public pursuant to the student’s request. (*Ibid.*) Therefore, an agenda item might read:

CLOSED SESSION FOR STUDENT DISCIPLINE (Ed. Code, § 35146) or
CLOSED SESSION FOR EXPULSION HEARING (Ed. Code, § 48918)

D. Notice of Meetings

Notice of regular meetings must be provided at least 72 hours before the meeting by posting the agenda in a physical location accessible to the public and, as of January 1, 2012, on the local agency’s web site if it has one. (§ 54954.2.)

E. Mailed Notice of Meetings

A copy of the agenda and/or the entire agenda packet must be sent to anyone with a written request on file at the time the agenda is posted or when distributed to all or a majority of the members, whichever occurs first. (§ 54954.1.) Effective January 1, 2003, if requested, the agenda and documents in the agenda packet must be made available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. (§ 54954.1.) Requests for notice are valid

purposes of negotiations pursuant to Government Code section 3549.1.” The Brown Act section applies where the board is considering salaries for unrepresented employees.

for one year. Failure of any person to receive the notice called for by section 54954.1 will not constitute grounds for any court to invalidate the action taken at the meeting for which the notice was given. Effective July 1, 2008 if a writing that is a public record and relates to an open session agenda item is distributed less than 72 hours prior to a meeting, the writing shall be made available for public inspection at a location designated by the agency for that purpose and may be posted on the agency's web site. (SB No. 343 (Negrete McLeod) Stats. 2008, ch. 298, eff. July 1, 2008 amending § 54957.5.)

F. Special and Emergency Meetings

1. Special Meetings (§ 54956)

A special meeting of the board may be held at any time and on almost any topic if the following conditions are met:

- » The meeting is called by either the president of the board or by a majority of the board;
- » Notice of the meeting is mailed or delivered to each board member and to the media who request to be noticed and posted 24-hours in advance of the meeting, including; on the local agency's website, if it has one; and¹⁶
- » Only business specified in the notice is considered.

Effective January 1, 2012, a governing board cannot consider the salaries, salary schedules, or compensation in the form of fringe benefits, of local agency executives, including a superintendent and assistant superintendents, in a special meeting. Some classified executive positions, such as chief business official, and directors or managers are exempt from this requirement. (§ 54954.2.)

2. Emergency Meetings

The board may hold an emergency meeting without complying with the 24-hour notice or posting requirements when an "emergency situation" exists, as determined by a majority of the members of the legislative body. An "emergency situation" is specifically defined as work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, and now also includes a "dire emergency," which is defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist

¹⁶ Notice must be given to newspapers and radio or television stations that have requested notice in writing.

activity that poses immediate and significant peril. (§ 54956.5.) The 24-hour notice and posting requirements may be dispensed with if the following criteria are met:

- » The emergency situation involves matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities;
- » Notice is given to the media at least one hour in advance, or in the case of a dire emergency, notice is given at or near the time that the presiding officer notifies the members of the legislative body of the emergency meeting; and
- » A list of persons the presiding officer attempted to notify and the minutes of such meeting shall be posted for a minimum of 10 days after the meeting.

Prior to January 1, 2003, a board was prohibited from meeting in closed session during an emergency meeting. That prohibition has been repealed and a legislative body may now meet in closed session if agreed to by a two-thirds vote of the members present, or, if less than two-thirds are present, by a unanimous vote of those present. (§ 54956.5, subd. (c).)

G. Discussion of Items Not on Agenda; Public Comment on Agendized Items^{17 18}

1. Consideration of Emergency Items

The Act allows the governing board under certain circumstances to consider items which did not appear on the agenda. These circumstances include a majority vote determination that an emergency situation exists as defined in the Act; and consideration of an item at a continued meeting, when the prior meeting occurred not more than five days earlier. (§ 54954.2, subd. (b).) The more frequently invoked exception can occur where the board, by a 2/3 vote of the members present (or unanimous vote if less than 2/3 of the board is present), determines that there is a need for immediate action and that the need to act came to the district's attention subsequent to the agenda being posted. (§ 54954.2, subd. (b)(2).) Dependent on timing, frequently a safer approach involves calling a Special Meeting for a time contiguous with the upcoming regular meeting.

¹⁷ In this context, an "emergency situation" means a work stoppage, crippling activity, or other activity which severely impairs public health or safety, or both, as well as a "dire emergency," which includes a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses an immediate and significant peril. (§ 54956.5.)

¹⁸ Senate Bill No. 138 (West) Stats. 1997, ch. 253, effective January 1, 1998, revised Education Code section 54953 (b)(3) to require that teleconferenced meetings must allow for public input at each teleconference site.

2. Consideration of Statements Made/Questions Posed/Public Testimony

Except as indicated above, the general agenda requirements of section 54954.2 prohibit the governing board from acting on or discussing matters not appearing on the agenda. However:

- » “Members of a legislative body or its staff [to] may briefly respond to statements made or questions posed by persons exercising their public testimony rights under section 54954.3.” (§ 54954.2; also see Ed. Code, § 35145.5.)
- » Board members or staff, either in response to public questions, or on their own initiative, may “ask for clarification, make a brief announcement, or make a brief report on his or her own activities.”

Thus agenda items such as “Board Reports,” “Superintendent’s Report,” and “Comments from the Board” are legal under the Brown Act as long as the actual reports are limited to the activities described above, e.g., the activities of a board or staff member. The Act also states a board member, the board itself, or staff, “subject to the rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, or request staff to report back” to the body at a subsequent meeting about the matter, or take action to direct staff to place a matter of business on a future agenda. (§ 54954.2, subd. (a).) The “subject to rules” requirement mentioned above means boards should be permitted to establish or continue to operate under their own bylaws or other rules for the conduct of meetings with regard to placing items on future agendas.

3. Public Comment on Agendized Items

The Act requires every regular meeting agenda to provide an opportunity for members of the public to address the board “on any item of interest to the public before or during . . . consideration of the item.” This right to speak is limited to matters within the jurisdiction of the board. (§ 54954.3, subd. (a).) The board is not required to entertain comments regarding matters previously considered by a committee composed exclusively of members of the legislative body at an open meeting where all interested members of the public were given an opportunity to comment, unless the board determines that the item has been substantially changed since the committee heard the item. (§ 54954.3, subd. (a).) Every notice for a special meeting must also provide an opportunity for the public to address the board, but only regarding the item(s) listed in the special meeting notice.

4. Reasonable Regulation of Public Participation Including Right to Place Matters on Agenda

Education Code sections 35145.5 and 72121.5 state the “intent of the Legislature that members of the public be allowed to place matters directly related to school business on the agenda of school district governing board meetings.” However, as to this and other permissible forms of public participation, including addressing agendized or non-agendized items, a board may adopt reasonable regulations “limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.” (§ 54954.3, subd. (b)(1).) In *Chaffee v. San Francisco Public Library Commission, et al.* (2005) 13 Cal.App.4th 109, the Court rejected the argument that such regulation requires that each speaker have three minutes to publicly address a matter; in that case, the Commission’s regulation provided for “up to” three minutes; at the meeting in question, the Commission shortened the time to two minutes in order timely to complete its agenda. The Court upheld the change stating, “We do not mean to imply that restrictions on public comment time may be applied unreasonably or arbitrarily. However, there is no difficulty in imagining situations in which such limits would be appropriate.” Where time limits are placed on public comment, an individual utilizing a translator is entitled to at least twice the allotted time for comment unless simultaneous translation is available. (§ 54954.3, subd. (b)(2).)

The law recognizes that boards have business to conduct; therefore, “regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.” (Ed. Code, §§ 35145.5; 72121.5.) A California Court of Appeal held that the public does not have the right to speak on the issue of whether or not an item should be placed on the meeting agenda. (*Coalition of Labor, et al. v. County of Santa Barbara Board of Supervisors* (2005) 129 Cal.App.4th 205.) We believe *Coalition* does not apply fully to school districts in light of Education Code section 35145.5. In 2012, a California Court of Appeal clarified, however, that a school board has discretion to refuse to place a proposed item on the agenda for a board meeting based on the board’s determination that the proposed agenda item did not directly relate to school district business. (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229.) The court found the duty imposed by Education Code section 35145.5 is not purely ministerial; rather, the law gives

school boards discretionary power to determine whether proposed agenda items are “directly related to school district business.”

While public entities must be mindful of citizens’ rights to express their political viewpoints, they are not required to tolerate disruptive or threatening speech. In *McMahon v. Albany School District* (2002) 104 Cal.App.4th 1275, the court held that “ ... conduct of dumping gallons of garbage on the floor of a school room during a school board meeting was sufficient to support an arrest for disturbing a public meeting and was not speech protected by the First Amendment.” In 2010, the California Court of Appeal rejected a First Amendment challenge to public agency injunctions prohibiting a “local gadfly” from attending public agency meetings. The Court held that substantial evidence supported findings that credible threats were made against city officials, and irreparable harm was reasonably likely to occur if the injunctions were not issued. (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526.) The same year, however, the federal Ninth Circuit Court of Appeals held that a governing board meeting is a limited public forum under the First Amendment to the U.S. Constitution and that speech at board meetings can only be regulated with rules that are “viewpoint neutral.”¹⁹ (*Norse v. City of Santa Cruz* (2010) 629 F.3d 966.) The court held that a board may eject a member only for “actually disturbing or impeding a meeting.” In 2012, the federal Ninth Circuit Court of Appeals clarified that a rule prohibiting members of the public from engaging in “insolent” behavior violated the First Amendment because it did not limit impermissible behavior only to actual disturbances. (*Acosta v. City of Costa Mesa* (2012) 694 F.3d 960.) In establishing reasonable time, place and manner restrictions on public comment during board meetings, boards may have rules of decorum to prohibit behavior that disrupts, disturbs or impedes a meeting. Such rules or enforcement of standards of decorum, however, must be tailored to address only behavior that actually disrupts, disturbs or impedes, and not to restrict speech merely because it is insulting or offensive.

¹⁹ Robert Norse was ejected from one city council meeting for giving a silent Nazi salute and from another council meeting for whispering to another meeting attendee.

5. Public Criticism of Policies

The Act provides that a governing board shall not prohibit public criticism of its policies, procedures, programs, or services, or of its own acts or omissions. (§ 54954.3, subd. (c).) However, the right to voice such criticism does not confer any privilege or protection not otherwise provided by law. Two Federal District Court decisions strongly indicate that the First Amendment protects public discussions of personnel issues in the type of forum represented by open board meetings. (see *Baca v. Moreno Valley Unified School District* (1996) 936 F.Supp. 719 and *Leventhal v. Vista Unified School District* (1997) 973 F.Supp. 951.) Nonetheless, because the California Constitution recognizes a right to privacy, governing boards will still be required to balance competing interests, i.e., the privacy rights of individually identified employees against the public right to criticize services and programs. Criticism should be limited to district-related actions. A school administrator may choose to address the board in public session when his/her demotion is being considered as a public agenda item, and the superintendent may not prohibit that appearance. (90 Ops.Cal.Atty.Gen. 47 (2007).)

IV. PROPER CLOSED SESSION ACTIVITIES

Evolution of the Brown Act has produced increasingly specific direction regarding closed session agenda requirements, actions that can be taken in closed session, reporting out of actions and release of documents when matters/cases are completed.

A. General Requirements for Closed Session

The Act provides specific guidelines for closed session agenda items. (§ 54954.5.) See the discussion of those guidelines and how their use can protect the governing board in section III.C.

The Act requires the governing board to disclose item(s) to be discussed in closed session prior to holding a closed session. This may be done by referring to the closed session agenda items as listed by number or letter on the agenda. For example, the board could announce, "The board will now adjourn to closed session to consider items one through five and seven through nine on the closed session agenda." For certain types of closed sessions additional information must be divulged orally or in writing

before the closed session. For example, real property closed sessions under section 54956.8 require prior public session disclosure of the identity of the district's negotiators, the real property which the negotiations concern and the parties to the negotiation; closed sessions concerning compensation for unrepresented employees under section 54957.6 require identification of the district's designated representatives. Other examples of information which must be provided prior to a closed session are in the Act.

In closed session the board may consider only those items listed on the agenda or in its disclosure statement if different. (§ 54957.7, subd. (a).) The board is not required to disclose information prohibited by federal or state law. (§ 54957.7, subd. (a).) The Act specifically prohibits disclosure of confidential information acquired in a closed session to a person not entitled to receive the information, unless the board authorizes such disclosure. (§ 54963.) This section codifies earlier opinions of California courts and the California Attorney General on this subject. (See, e.g., 80 Ops.Cal.Atty.Gen. 231 (1997); 76 Ops.Cal.Atty.Gen. 289 (1993); *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324.) Remedies available for violations of this prohibition include injunctive relief to prevent the disclosure of confidential information, disciplinary action against an employee who willfully discloses confidential information, and referral to the grand jury of a member of the governing board who has willfully disclosed confidential information. However, in order to impose employee discipline for violating this prohibition, the local agency must have provided the employee training and/or notice of the section's requirements. The following circumstances do not violate this section:

- » The making of a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of the law, including disclosure of facts necessary to establish the illegality of an action taken by a legislative body;
- » The expression of an opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action;
- » Disclosures under the "whistleblower" statutes contained in the Labor and Government Codes.

B. Personnel Actions In Closed Session; Distinctions Regarding “Complaints or Charges” And The 24-Hour Notice Requirement

1. General

The Brown Act authorizes closed sessions “to consider the appointment, employment, evaluation of performance,²⁰ discipline or dismissal of a public employee *or* to hear complaints or charges brought against the employee by another person or employee.” (§ 54957; emphasis added.)²¹ Considering the parameters of a closed session covering “employment”, a Court of Appeal in *Travis v. Board of Trustees of California State University* (2008) 161 Cal.App.4th 335 ruled that such closed sessions are not limited to initial hiring decisions but may include consideration of factors surrounding a decision to re-employ or bring back an employee following a leave of absence; such factors may include the extent of the employee’s right to return, the position or duties the employee may assume, potential displacement of other employees and the returning employee’s mental and/or physical fitness to return. [Please Note: While this case arose under the Bagley-Keene Open Meeting Act, Government Code section 11120 et seq., the decision applies to Brown Act agencies because the language at issue is identical to the Brown Act personnel exemption in section 54957.]

While some of the foregoing “personnel matters” might, in a given factual situation, also involve “complaints or charges” against an employee, it is critical accurately to identify situations which require applying the 24-hour notice requirement; while the notice requirement is not likely to apply to most closed session discussions of “standard” personnel items and under circumstances discussed below, the penalty for being wrong can be expensive and burdensome.

2. Complaints or Charges: The 24-Hour Notice Requirement

Section 54957 provides, in pertinent part:

As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session

²⁰ A Court of Appeal upheld a governing board’s right to evaluate its superintendent in closed session including the right to consider district evaluation procedures and renewal of his/her contract. (*Duval v. Board of Trustees of the Coalinga-Huron Joint Unified School District* (2001) 93 Cal.App.4th 902.) Please note that such contracts must be ratified in open session and any final decision on compensation must also take place in open session.

²¹ Government Code section 54957.10 was added during the 2001 legislative session, allowing local agencies to discuss early withdrawal of funds from a deferred compensation plan based on financial hardship arising from an unforeseeable emergency.

rather than in closed session, which notice shall be delivered to the employee . . . at least 24-hours before the time for holding the session. ***If notice is not given, any disciplinary action taken by the legislative body against the employee based on the specific complaint or charges in the closed session shall be null and void.*** (Emphasis added.)

Since many “standard” personnel actions such as an evaluation or deliberating whether to release probationary employees involve reviewing negative aspects of employee performance or behavior, some confusion existed at the time of the 1994 amendment as to whether 24-hour notice was required prior to closed session consideration of, e.g., whether to dismiss permanent employees and/or release probationary or temporary certificated employees. These issues gained major significance, because if the 24-hour notice was applicable, *public* consideration of such questions could be mandated at the employee’s option and if the notice was required but not given, significant dismissal or disciplinary decisions could be declared “null and void” requiring reinstatement and backpay, if applicable.

Fortunately, a superior court decision, a later Attorney General opinion and subsequent appellate court rulings have confirmed Dannis Woliver Kelley’s initial opinion that the 24-hour notice requirement and “employee option” for public hearing do not apply to discussions of evaluations, initiating dismissal of a permanent employee and non-reelection of probationary certificated employees.

a. Superior Court Ruling that Brown Act 24-hour Notice Requirement Does Not Apply To Initiation of Permanent Certificated Employee Dismissal Proceedings Borne Out in Later Appellate Cases

In 2009, the California court of appeal affirmed the following rule with respect to initiating charges against a permanent certificated employee: A governing board is not required to provide an employee a 24-hour written notice and a right to request a public session when the board holds a closed session to consider whether evidence before it warrants initiating a permanent certificated employee’s dismissal. (*Kolter v. Los Angeles Unified School District* (2009) 170 Cal.App.4th 1346.) The following are pre-requisites to the 24-hour notice requirement: (1) There must be specific complaints or charges from another employee or person; (2) the board must actually hear and consider the complaints or charges; and (3) impose disciplinary action against the employee being complained about as opposed to (4)

evaluating or reviewing evaluations or other materials to determine whether a basis exists for initiating disciplinary proceedings.

Where a governing board met in closed session to consider a statement of charges for dismissal of Kolter, a permanent certificated employee of the district, and decided to proceed with the process to dismiss Kolter, the court of appeal affirmed the commission's and superior court's rulings that a 24-hour written notice to the employee was not required. Kolter did not receive any pre-meeting notice of the session or of the charges against her. After the closed session, the district served the charges.

Kolter requested a hearing before the Commission on Professional Competence ("Commission"). Before any evidence was presented to the Commission, the petitioner moved to dismiss the proceedings, arguing the governing board's closed session violated her rights under the Brown Act. Her motion to dismiss on this basis was denied by the Commission. The court held that the purpose of the 24-hour written notice requirement is to allow an employee to request an open session to defend against specific complaints or charges brought against him or her by another individual and thus to clear his or her name. Under what is commonly referred to as the "personnel exception," the 24-hour notice set forth in section 54957 is not required when a legislative body meets in a closed session for the purpose of considering the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee. The court noted that the governing board did not conduct an evidentiary hearing on the statement of charges against the employee; rather, it considered whether those charges justified the initiation of dismissal proceedings.

In *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568, the court of appeal concluded that a demoted police officer did not have a right to 24-hours' notice of a civil service commission meeting to review and deliberate upon its hearing officer's findings and recommendations with respect to the recommendation for demotion. The court stated that an employee is not ". . . entitled to 24-hour written notice when the closed session is for the sole purpose of considering, or deliberating, whether complaints or charges brought against the employee justify dismissal or disciplinary action." However, when a city housing commission met to overturn their hearing officer's disciplinary

recommendation, a court held the commission violated the Brown Act by not giving the appropriate 24-hour notice. (*Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860.)

The critical difference between *Morrison* and *Bollinger* is the fact that the Morrison commission rejected the hearing officer's recommendations and decided, in effect, to rehear the matter itself and determine different facts. In *Bollinger* the commission convened simply to review the recommendation and accepted the facts and discipline as presented. When reviewing a disciplinary recommendation from a hearing officer, a board should always provide notice to the affected employee of the right to an open hearing if the board may decide to modify or reject the recommendation. In accord with due process rights, the board must provide an opportunity for the employee to respond to and comment on any proposed change.

Bell v. Vista Unified School District (2000) 82 Cal.App.4th 672 is instructive on the issue of a hearing of complaints or charges. In that case the board considered in closed session a letter from a C.I.F. Commissioner following an investigation; the Commissioner's letter stated that there had been a finding of "undue influence" in violation of C.I.F. recruiting rules and recommended that appropriate disciplinary action be taken. The letter was presented to the board by the superintendent and the assistant superintendent for human resources who was also active in C.I.F. matters; the board removed the offending coach from his coaching position. The court of appeal held that this action required compliance with the 24-hour notice provision of section 54957, that the C.I.F. letter had evolved into a complaint or charge against the coach and once presented to the board the employee was then entitled to the opportunity to respond to it.²²

b. Non-Reelection Of Probationary Employees

In 78 Ops.Cal.Atty.Gen. 218 (1995) the California Attorney General opined that the 24-hour notice requirement did *not* apply to a governing board's closed session consideration of whether to non-

²² The court comes close to phrasing these matters in "due process" terms even though removing this extra assignment requires no due process; please see Education Code section 44923

reelect a second year probationary certificated employee. The Attorney General concluded that “complaints or charges” connote an accusation, i.e., something alleged against an individual. By contrast,

Performance evaluations conducted in the due course of district business are not in the nature of an accusation and are not normally thought of as being ‘brought against the employee’. This is particularly true when the evaluation is used as a basis for determining whether to reelect a probationary employee.

At least two Court of Appeal decisions have confirmed the Attorney General’s analysis: in *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87, the court ruled that consideration of whether to non-reelect probationary teachers, in this instance, constituted primarily an evaluation of their performance, rather than a hearing about specific complaints or charges brought against the employee; accordingly the 24-hour notice was not required. Again in *Furtado v. Sierra Community College District* (1998) 68 Cal.App.4th 876, the court specifically declined to equate negative comments in an evaluation with “complaints or charges” under section 54957; this case also involved a governing board decision not to re-elect a probationary employee.

In summary, the board may evaluate an employee’s performance and make a decision to non-reelect a probationary employee in closed session without providing the 24-hour notice or opportunity to request an open session hearing; furthermore, such notice and opportunity for public hearing do not apply when the board is considering whether information before it justifies initiation of permanent certificated dismissal proceedings.

3. Definition of “Employee”

The definition of “employee” includes an officer or an independent contractor who functions as an officer or employee (e.g., an interim superintendent),²³but excludes elected officials, members of the governing board,²⁴ or any other independent contractors. Based on these provisions, it would appear, for example, that employment of outside legal counsel is an open session matter. (§ 54957.)

²³ This definition appears to contradict the accepted (and I.R.S.) definition of independent contractor. In addition, a retired certificated employee who purports to serve as an independent contractor “interim superintendent” might run afoul of STRS earnings restrictions for failure to meet such definition. (See Ed. Code, § 35046.) The board must, however, be the employer of the employees; the Attorney General has rendered an opinion that a County Board of Education may not hold a personnel or labor closed session where the County Superintendent is the employer. (Ops.Cal.Atty.Gen. No. 01-505 (2002).)

²⁴ Discussions concerning board member relations, board member censure, filling a board vacancy, etc., must occur in open session.

4. Compensation

When the board is involved in section 54957 consideration of hiring, appointing, evaluating, disciplining, etc., such closed session “shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.” (§ 54957, subd. (b) (4).) Thus, when considering compensation for a particular unrepresented employee, it may also be appropriate to agendize the matter under section 54957.6 (conference with labor negotiators); however, final action on such compensation may not be taken in closed session, but must await an open session. Contracts with certain high level administrators must be ratified during open session. (§ 53262, subd. (a).) Compensation for these administrators may not be placed on special meeting agenda for discussion or action. (§ 54956, subd. (b).) Further, prior to any final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a district executive, a governing board must orally report a summary of a recommendation for the final action during the open meeting in which the action is to be taken. (§ 54953, subd. (c)(3).)

5. Budget Matters and “Available Funds”

Prior to the passage of Senate Bill No. 752 in 1994, section 54957 prohibited discussions of a “local agency’s available funds, funding priorities, or budget,” in the context of a personnel session. This prohibition was deleted; however, it remains the position of our firm that “generic” discussions of budget matters, such as for anticipated reductions in personnel or programs, are not proper closed session matters until and unless the discussion involves individuals and therefore enters the sphere of “closed session-personnel” (or involves negotiations with exclusive representatives, thereby exempting the closed session from the Brown Act)²⁵ Once an employee scheduled for layoff requests an administrative hearing, one or more of the litigation closed session exceptions may apply.

C. Pending Litigation

The 1994 amendments required more detailed description of the circumstances in which a governing board may hold a closed session to discuss pending litigation. (§ 54956.9.) An attorney need

²⁵ Senate Bill No. 752 (Kopp, Calderon) Stats. 1994, ch. 32, effective April 1, 1994.

not actually be *present* at a closed session in order for the meeting to fall within the “confer with, or receive advice from” exception in section 54956.9. Rather, such advice can be transmitted by written opinion, technological devices (e.g., speaker phone teleconference), and perhaps even through a personal intermediary (e.g., the superintendent or board president conveys information received from the attorney either verbally or in writing).

The California Supreme Court has ruled that circulation of written legal advice to board members does not constitute a “meeting” under the Brown Act, since section 54956.9 was “intended to apply to collective action of local governing boards and not to the passive receipt by individuals of their mail.” (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 376.) In addition, nothing in the Brown Act supersedes or negates the attorney-client privilege, which is also preserved in the Public Records Act, regarding such writings. (*Id.*, at p. 369-373; see also § 6254, subds. (b) and (k); § 54956.9, subd. (b)(3)(F).)

1. Facts and Circumstances Warranting Closed Session Defined

The Act permits governing boards to hold closed sessions to confer with or receive advice from legal counsel regarding pending litigation when an adjudicative proceeding before a court, administrative body, hearing officer or arbitrator has been initiated formally, or when legal counsel has determined based on existing facts and circumstances that there is a significant exposure to litigation.

The amendments to the Act define “facts and circumstances” permitting a closed session and specify whether the facts and circumstances must be disclosed by the governing board. (§ 54956.9.) The board may hold a closed session under the following facts and circumstances:

a. Potential Litigation—Unknown to Plaintiff

If the facts and circumstances might result in litigation but are facts which the board believes are not yet known to a potential plaintiff, the board is not required to disclose the facts or circumstances. (§ 54956.9, subd. (e)(1).)

b. Facts Related To Accident, Disaster, Incident or Transaction

If the basis of the facts and circumstances relate to an accident, disaster, incident, or transactional occurrence which might result in litigation and are known to the potential plaintiff or plaintiffs,

the governing board may discuss the matter in closed session. The facts must be publicly stated on the agenda or announced prior to the closed session. (§ 54956.9, subd. (e)(2).)

c. Receipt of a Tort Claim or Written Threat of Litigation

A closed session may be held to discuss a tort claim or other written communication from a potential plaintiff threatening litigation. The claim or communication shall be available for inspection on the same basis that all documents are made available to the public. (§ 54956.9, subd. (e)(3).)²⁶

d. Threat of Litigation in Open Session

A closed session may be held to consider potential litigation regarding a statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the board. (§ 54956.9, subd. (e)(4).) However, since such a threat is probably unanticipated, a closed session for this purpose is not likely to have been agendized beforehand. Therefore, in order to adjourn immediately to closed session, a board would have to vote by 2/3 that a need for “immediate action” exists on a matter which came to its attention after the agenda was posted. (§ 54954.2, subd. (b)(2).)

e. Threats Outside Of Open Session/Record Required

A closed session may be held to consider potential litigation regarding a statement threatening litigation made by a person outside an open and public meeting, as long as the public officer or employee receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting. That record shall also be available for public inspection. Records created for this purpose need not identify the alleged victim of unlawful or tortuous sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortuous conduct, unless the identity of the person has already been publicly disclosed. (§ 54956.9, subd. (e)(5).)

²⁶ The public document disclosure requirements are still covered by section 54957.5 with some modifications discussed in Section VI.

f. Discussion of Whether Closed Session Is Permitted

The law continues to allow the board to meet in closed session to consider whether, based upon facts and circumstances, a closed session is indeed authorized under the pending litigation exception. In this context, a stronger argument can perhaps be made for requiring the actual presence of legal counsel, although the receipt of written advice would probably still meet the requirements of this section.

2. "Party" to Litigation Defined

The law specifies that a district is a "party" or has "significant exposure to litigation" if an officer or employee of the district is sued or has exposure for past or future activities (or alleged activities) that occurred within the course and scope of the individual's office or employment. This includes litigation in which it is an issue whether an activity is outside the scope of employment.

3. Attorney-Client Privilege

The 1994 amendments specifically protect and recognize the attorney-client privilege with regard to written or other communications outside of board meetings between legal counsel and the governing board. This language protects letters or other communication from the attorney from being publicly disclosed. (See also Section IV (C) at p. 30.)

D. Meeting with Labor Negotiator and Negotiable Matters

Prior law permitted a closed session to meet with the local agency's labor negotiator regarding "salary, salary schedules, or compensation paid in the form of fringe benefits." (§ 54957.6, subd. (a).) The 1994 amendments added authority for closed sessions to discuss "any other matter within the statutorily-provided scope of representation," with respect to represented employees.

Notwithstanding the pre-1994 and post-1994 changes to the Brown Act, our firm's position continues to be, with respect to represented employees, that the Rodda Act exemption from the Brown Act authorizes boards to hold closed sessions regarding negotiations (e.g., instruction or direction to negotiators), mediation or impasse procedures, and contractual arbitration hearings, and thus provides the *exclusive* authority for such closed sessions. Accordingly, compliance with the Brown Act in these

circumstances is not required. (§ 3549.1.) However, as discussed below, *unrepresented employee* discussions come within the Brown Act's purview.

The Brown Act section permitting closed session discussions with the district's labor negotiator specifically allows closed session discussions of "an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative." (§ 54957.6.) The agency's designated representative for negotiating with unrepresented employees must be identified by name on the closed session agenda. A section has been added which clarifies the definition of "employee," using the same language which was added to the "personnel exception." (§ 54957.6, subd. (b).)

E. Parameters for Closed Session Discussions of Real Property Transactions

In 2011 the California Attorney General published an opinion concerning the authorization for closed session discussions of real property transactions. (94 Ops.Cal.Atty.Gen 82 (2011)). The opinion responded to a request for clarification of the open meeting exception after a prior opinion concluded that discussion of a loan modification of a real estate sublease was not within the scope of the exception. The 2011 opinion concluded that only three subjects may be considered in a closed session related to a real property negotiation: (1) the amount of consideration the public agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred; (2) the form, manner and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms.

F. Blanket Authorization for Education Code Closed Sessions

Section 54962 of the Act prohibits any closed session of legislative bodies except as authorized by the Brown Act "or by any provision of the Education Code pertaining to school districts and community college districts." This amendment automatically authorizes closed sessions provided for under the Education Code which are not specifically cross-referenced in the Brown Act. For example, this would

apply to a closed session related to student discipline and governing board hearings to consider challenges to grades assigned by the teacher or instructor. (Ed. Code, §§ 35146, 48918, 49070, 76232.)

V. REPORTING OUT OF CLOSED SESSION

A. General Requirements

Reports out of closed session must be:

- » Oral or written
- » Report each member's vote or abstention
- » No secret ballots

Required reports must now be announced at the same meeting at which the closed session action was taken. In most circumstances the governing board must report out immediately following the action taken by reconvening in open session following the closed session meeting. Details related to reporting out are set forth below:

1. **Real Estate Negotiations, Section 54957.1, subd. (a)(1)(A)**

- » Final approval concluding real estate negotiations must be reported at the same meeting, including the substance of the agreement.
- » When final approval rests with another party, the governing board must disclose its approval and the substance of the agreement upon inquiry by any person, following being informed of acceptability by the other party or parties.

2. **Decisions to Initiate or Defend Litigation or Enter as Amicus Curiae, Section 54957.1, subd. (a)(2)**

Decisions to defend, to seek or refrain from seeking appellate review or to enter a case as amicus curiae:

- » The board's decision must be reported at the same meeting;
- » The report shall identify the parties and substance of the litigation.

EXCEPT:

The board is not required to identify the action, the defendants or the particulars, other than the decision to initiate or intervene in litigation itself if to do so would jeopardize service of process or the board's ability to conclude existing settlement negotiations to its advantage.

3. Settlement of Pending Litigation, Section 54957.1, subd. (a)(3)

- » Final approval settling pending litigation must be reported at the same meeting, including the substance of the agreement.
- » When final approval rests with another party, the governing board may await acceptance and finalization by the other party or parties and then must disclose its approval and the substance of the agreement upon inquiry by any person.

4. Actions Affecting Employees

Actions to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status²⁷ of a public employee in closed session shall be reported out at the same meeting during which the closed session is held. (§ 54957.1, subd. (a)(5).)

The report of employee appointment, dismissal, etc., shall identify the title of the position. The reporting out requirement of specifying the affected *position* does not mean an employee's name must be reported out. However, this is separate and distinct from the Public Records Act requirement which would require such disclosure upon request. Actions to dismiss or non-renew an employment contract shall not be reported until the employee has exhausted all administrative remedies, if there are any available. An example of administrative remedies is the right of permanent certificated and classified employees to request a hearing after receiving disciplinary charges. By contrast, since probationary certificated and classified employees and temporary certificated employees typically have no administrative remedies

²⁷ This language is more expansive than the circumstances authorizing proper closed sessions in the first place, by including resignations and any action which "affects the employment status of a public employee." However, the authority for proper "closed session-personnel" topics under section 54957 only enumerates appointment, employment, evaluation, discipline or dismissal. The expanded phrase suggests that consideration of granting leaves of absence, promotions and transfers which involve employee privacy rights and/or performance issues are proper closed session matters.

provided by law to challenge their release, the Brown Act does not authorize a delay in reporting out such board actions.²⁸

Prior to the 1994 amendments, the Brown Act allowed for the reporting out of personnel decisions at the same or *subsequent* regular meeting of the board. However, as an option, a district administrator may still inform an employee prior to the board meeting that he or she intends to recommend dismissal/release of the employee to the board, and allow the employee an opportunity to resign prior to the meeting. Before using this approach, districts should consult legal counsel to avoid inadvertently “coercing” a resignation which would later be subject to subsequent legal challenge.

5. Approval of Negotiated Labor Agreements

Local agencies must report approval of an agreement concluding labor negotiations, after the agreement is final and has been ratified by the other side. The report must identify the items approved and the other party to the negotiations. (§ 54957.1, subd. (a)(6).)

Again, our firm’s position is that the EERA governs this area exclusively, particularly as to the provisions of Assembly Bill No. 1200 contained in that law. Section 3547.5 requires public disclosure of the major provisions of the agreement, including the costs that would be incurred in current and subsequent fiscal years before the board ratifies the agreement. Section 3540.2 requires a district with a qualified or negative budget certification under section 42131 of the Education Code to allow the county office of education at least ten (10) working days to review and comment on any proposed agreement prior to board ratification. The county superintendent shall notify the school district publicly within those ten (10) days of his/her opinion on whether such proposed agreement “would endanger the fiscal well-being of the school district.” (§ 3540.2, subd. (c).)

6. Superintendents’ Contracts

Government Code section 53262 requires ratification of superintendents’ (deputies, associates, and assistants) contracts to occur in *open session*. Therefore, while the board may discuss such matters

²⁸ However, if the district has afforded probationary employees an administrative challenge to release from employment by board policy, the authority for delay in reporting out would apply.

in closed session (“appointment” or “employment” with title “superintendent” specified in the agenda), action to ratify the contract must occur only in open session.²⁹

7. Student Discipline

Education Code section 48918 authorizes school districts to hold expulsion hearings in closed session, unless otherwise requested by a student’s parent or guardian. However, any final action to expel a pupil must be taken only in a public session. (Ed. Code, § 48918, subd. (j).) Although Education Code section 48918, subdivision (k) provides that records of student expulsion, “including the cause therefor” are “nonprivileged, disclosable public record [s],” in *Rim of the World Unified School District v. Superior Court* (2002) 104 Cal.App.4th 1393, the California Court of Appeal ruled that the federal Family Educational Rights and Privacy Act (“FERPA”) preempts state law to the extent that FERPA conditions receipt of federal funds on protecting students’ confidential records. Therefore, districts should not release the names of students who have been expelled or other personally identifiable information related to student disciplinary actions taken by the governing board.³⁰

²⁹ Since January 1, 2012, consideration of salary and other compensation for a superintendent must occur at a regular Board meeting, not a special meeting. (§ 54956, subd. (b).)

³⁰ Districts should identify students by number or other reference that protects the student’s name.

B. Release of Documents from Closed Session

Reports out of closed session may be oral or written; if written, there are specific requirements governing release of documents. (§ 54957.1, subd. (b).) To the extent documents are available at the conclusion of a closed session, such as approved contracts and settlement agreements, they must be made available to anyone who has a standing request to receive documents and to anyone giving the governing board notice of its request within 24-hours of the posting of the agenda. If the document is amended during the closed session, the governing board may make it available after it is retyped during normal business hours the next day,³¹ provided that the presiding officer or his/her designee explains the substance of the document amendments in open session for the benefit of the requesting person or anyone else present and requesting information. (§ 54957.1, subd. (b).)

C. Limitation on Liability for Disclosure

The Act prohibits a current or former employee from bringing an action for injury to reputation, liberty or other personal interests with respect to disclosure made by the governing board in an effort to comply with the closed session reporting requirements. (§ 54957.1, subd. (e).) However, governing boards should be aware that privacy interests are constitutionally protected. Therefore, it is questionable as to whether immunity from suit on these grounds can be provided by legislation.

VI. RELEASE/DISCLOSURE OF RECORDS

The Act requires local agencies to provide public session agendas and other disclosable writings distributed to all or a majority of board members in connection with matters to be discussed at an open meeting “upon request without delay.” This requirement does not affect applicability of the Public Records Act to all other requests for public documents, including but not limited to the 10-day period to respond to the request. (§ 6253, subd. (c).)

Additionally, writings that are public records and that are distributed during a public meeting must be made available to the public at the meeting if the writing is prepared by the local agency or legislative

³¹ If there are substantial amendments, the document may be made available as soon as it is retyped.

body, or after the meeting if prepared by another person. Such writings must be made available in appropriate alternative formats upon request by a person with a disability, in accordance with the Americans with Disabilities Act. (§ 54957.5, subd. (b).)

VII. VIOLATIONS OF THE BROWN ACT

A. State of Mind Requirement

Misdemeanor liability exists if a member “intends to deprive the public of information to which the member knows or has reason to know the public is entitled” under the Brown Act. (§ 54959.)

B. Brown Act Violations

The Act permits interested persons to commence an action for mandamus, injunction or declaratory relief to stop or prevent violations or threatened violations of the Brown Act or to determine the applicability of the Act to actions or threatened future actions of the board. The district attorney may pursue Brown Act violations and a court may determine whether any rule or action of the governing board unlawfully penalizes or otherwise discourages the free expression of one or more of its members. (§ 54960, subd. (a).)

In 2012, the Legislature amended Section 54960 and added Section 54960.2 to prohibit a district attorney or an interested person from filing an action for an alleged violation of the Act for *past actions* of a board, unless certain conditions are met, including: (1) the challenged action must have taken place within the past nine months; (2) the potential plaintiff must first send a cease and desist letter to the agency; (3) the plaintiff must give the agency 30 days to respond; (4) the agency must fail to respond with an unconditional commitment to cease the violation and/or not repeat it in the future; and (5) the plaintiff must file within 60 days. A plaintiff may recover attorney’s fees if certain conditions are met if he or she is successful or if the challenge is the catalyst for agency action.

Section 54963, added in 2002, specifically prohibits board members and any other persons present from disclosing information obtained in a closed session, unless authorized to do so by the legislative body. The Act permits the board to seek several remedies including injunctive relief, referral of

a member to the grand jury, and discipline of an employee who violates this section, as long as the employee has been trained in the requirements of the section. This section codifies older Attorney General opinions and case law and does not apply to disclosures to a district attorney, grand jury, non-confidential information or appropriate disclosures under current whistleblower statutes, including Labor Code section 1102.5.

C. Tape Recordings of Closed Session

After finding a Brown Act violation, a court has the discretion to require a board to tape record its closed sessions and preserve those tapes under such terms of security and confidentiality the court deems appropriate. Indeed this was one of the remedies ordered in *McKee v. Orange Unified School District, supra*. The court may require the governing board to designate a clerk or other officer to be the custodian of those recordings. (§ 54960, subds. (b) and (c).)

The Act describes the procedure for litigants seeking discovery of tape recordings of closed sessions in civil cases alleging violations of the Act. If a court determines good cause exists to believe a violation has occurred, the relevant portion of the closed session recording will first be reviewed by the judge in his/her chambers. Upon concluding that disclosure of the recording would assist in resolving the litigation, the judge may make a transcript of the recording which will be a public exhibit in the proceeding. (§ 54960, subds. (c)(3) and (4).) Communications protected by the attorney-client privilege may not be disclosed under this provision. (§ 54960, subd. (c).)

D. Timelines for Filing Actions

A written demand on the governing board to cure a Brown Act violation must be made within 90 days of the action, or within 30 days if it was an open session action in violation of the agenda requirements of the Act. (§ 54960.1.) Court actions must be filed 15 days from the receipt of the board's notice of its intention to cure or not, or within 15 days of the expiration of the 30 days the board has to respond to the request, whichever is shorter. (§ 54960.1.) In the case of a 24-hour notice violation under section 54957 a timely cure will not relieve the district of interim liability for the violation. (See *Moreno v. City of King* (2005) 127 Cal.App.4th 17.)

E. Effect of Brown Act Violation

Pre-1994 law nullified actions taken in violation of the Brown Act sections related to open and public meetings (§ 54953), agenda and posting requirements (§ 54954.2), and special meetings. (§ 54956.) The 1994 amendments added the section governing closed session agendas. (§ 54954.5; § 54960.1, subd. (c).) Recent amendments have added the section governing emergency meetings. (§ 54956.5; see § 54960.1, subd. (a).)

There are still exceptions which will protect the governing board from having action nullified, including substantial compliance with the enumerated sections; actions taken in connection with the issuance of notes, bonds, or other evidences of indebtedness; actions giving rise to contractual obligations upon which a party has in good faith and without a notice of a challenge to the action detrimentally relied (e.g., a collectively negotiated agreement); and actions taken in connection with collection of any tax. (§ 54960.1, subd. (c)(1)- (4).)

A contractual obligation for services in the form of salary or fees for professional services which is created in violation of the Brown Act will be subject to nullification even if there is good faith detrimental reliance. (§ 54960.1, subd. (c)(3).)

Exempt from nullification are actions challenged by anyone claiming lack of notice, when the person or entity had actual notice at least 72 hours prior to the meeting at which the action was taken. (§ 54960, subd. (c)(5).)

APPENDIX A
Government Code Sections
54950 – 54963
Ralph M. Brown Act

RALPH M. BROWN ACT

Government Code

Title 5. Local Agencies

Division 2. Cities, Counties and Other Agencies

Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies

Chapter 9. Meetings

Text of Proposition 59 (2004)

§ 54950. Declaration, intent; sovereignty

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. Short title

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

§ 54951. 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.

§ 54952. Legislative body, definition

As used in this chapter, "legislative body" means:

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

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

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

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

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

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

§ 54952.1. Member of a legislative body of a local agency; conduct

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

§ 54952.2. Meeting; prohibited devices for obtaining collective concurrence; exclusions from chapter

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

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

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

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to

allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

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

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

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

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

§ 54952.3. Simultaneous or serial order meetings of a subsequent legislative body; compensation and stipends

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

§ 54952.6. 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. Copies of chapter to members of legislative body of local agencies

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. 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. Meetings to be open and public; attendance

(a) 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.

(b)(1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c)(1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d)(1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in

to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2018.

§ 54953.1. Testimony of members before grand jury

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.

§ 54953.2. Legislative body meetings to meet protections and prohibitions of the Americans with Disabilities Act

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

§ 54953.3. Conditions to attendance

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. Right to record proceedings; conditions; tape or film records made by or under direction of local agencies

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

§ 54953.6. Prohibitions or restrictions on broadcasts of proceedings of legislative body; reasonable findings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

§ 54953.7. Allowance of greater access to meetings than minimal standards in this chapter

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. Time and place of regular meetings; special meetings; emergencies

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

§ 54954.1. Mailed notice to persons who filed written request; time; duration and renewal of requests; fee

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

§ 54954.2. Agenda; posting; action on other matters; posting on Internet Web site

(a)(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. 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 on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

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

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

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

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

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

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

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

§ 54954.3. Opportunity for public to address legislative body; adoption of regulations; public criticism of policies

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, 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. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b)(1) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

§ 54954.4. Reimbursements to local agencies and school districts for costs

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

§ 54954.5. Closed session item descriptions

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers) or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question) or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

§ 54954.6. New or increased taxes or assessments; public meetings and public hearings; joint notice requirements

(a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of

subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

§ 54955. Adjournment; adjourned meetings

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 reconvened 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 meetings; call; notice

(a) 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 written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of 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 or discussed. No other business shall be considered at these meetings by the legislative body. 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. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

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

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

§ 54956.5. Emergency meetings in emergency situations

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that 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, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) 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.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the 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 sessions, license applications; rehabilitated criminals

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.

§ 54956.75. Closed session; response to confidential final draft audit report; public release of report

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

§ 54956.8. Real property transactions; closed meeting with negotiator

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 grant authority 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 its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members 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.

§ 54956.81. Investment of pension funds; closed session

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

§ 54956.86. Charges or complaints from members of local agency health plans; closed hearings; members' rights

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

§ 54956.87. Records of certain health plans; meetings on health plan trade secrets

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Managed Health Care in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

§ 54956.9. Pending litigation; closed session; lawyer-client privilege; notice; memorandum

(a) 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.

(b) For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

(c) 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.

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

(1) Litigation, to which the local agency is a party, has been initiated formally.

(2) 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.

(3) 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 (2).

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

(e) For purposes of paragraphs (2) and (3) of subdivision (d), "existing facts and circumstances" shall consist only of one of the following:

(1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of

any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(f) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), 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.

(h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

§ 54956.95. Closed sessions; insurance pooling; tort liability losses; public liability losses; workers' compensation liability

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

§ 54956.96. Joint powers agency; legislative body; closed session; confidential information

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

§ 54957. Closed sessions; personnel matters; exclusion of witnesses

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session 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 the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

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

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

§ 54957.1. Closed sessions; public report of action taken

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

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

§ 54957.2. Minute book record of closed sessions; inspection

(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 writings distributed for discussion or consideration at public meetings; writings distributed less than 72 hours prior to meeting; public records; inspection; closed sessions

(a) Notwithstanding Section 6255 or any other law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with

Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

(b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This chapter shall not 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 6253, except that a surcharge shall not be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

§ 54957.6. Closed sessions; salaries, salary schedules or fringe benefits

(a) 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, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

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.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more 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.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

§ 54957.7. Disclosure of items to be discussed in closed sessions

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

§ 54957.8. Multijurisdictional law enforcement agency; closed sessions by legislative or advisory body of agency

(a) For purposes of this section, "multijurisdictional law enforcement agency" means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

§ 54957.9. Disorderly conduct of general public during meeting; clearing of 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.

§ 54957.10. Closed sessions; local agency employee application for early withdrawal of funds in deferred compensation plan; financial hardship

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

§ 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. Penalty for unlawful meeting

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

§ 54960. Actions to stop or prevent violations of meeting provisions; applicability of meeting provisions; validity of rules or actions on recording closed sessions

(a) The district attorney or 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 ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

§ 54960.1. Unlawful action by legislative body; action for mandamus or injunction; prerequisites

(a) The district attorney or any interested person may commence an action by mandamus or injunction 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, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c) (1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever

is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 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, 54954.5, 54954.6, 54956, and 54956.5.

(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, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

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

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

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

§ 54960.2. Actions to determine past violations by legislative body; conditions; cease and desist letters; responses by legislative body; unconditional commitments to cease; resolutions to rescind commitments

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To _____:

The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

[Chairperson or acting chairperson of the legislative body]

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

§ 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, 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 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. Meetings prohibited in facilities; grounds; identity of victims of tortious sexual conduct or child abuse

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be

present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortuous sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

§ 54962. Closed session by legislative body prohibited

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

§ 54963. Confidential information acquired during an authorized closed legislative session; authorization by legislative body; remedies for violation; exceptions

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grandjury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

APPENDIX B
California Constitution
Article 1, Section 3(b)
Proposition 59 (2004)

PROPOSITION 59 (2004)

California Constitution; Article 1, Section 3 (b):

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

APPENDIX C
EDUCATION CODE SECTIONS
35140 through 35149,
48912, 48918, 49070,
60617, 72121, 72121.5,
72122 and 72129

Education Code

Title 2. Elementary and Secondary Education Division 3. Local Administration Part 21. Local Educational Agencies Chapter 2. Governing Boards Article 3. Meetings

§ 35140. Time and place of meetings

Subject to the provisions of this article the governing board of any school district shall by rule and regulation fix the time and place for its regular meetings. Such action shall be proper notice to all members of the board of the regular meetings.

§ 35141. Frequency of meetings

The governing board of any union or joint union high school district, shall hold its regular meetings either monthly or quarterly. The governing board of any other high school district, shall hold its regular meetings monthly.

§ 35142. Time prescribed by rules and regulations

Subject to the provisions of Section 35141, the times at which the regular meetings of the governing board of a high school district are to be held shall be prescribed by the rules and regulations adopted by such board for its own government.

§ 35143. Annual organizational meetings

The governing board of each school district shall hold an annual organizational meeting. In a year in which a regular election for governing board members is conducted, the meeting shall be held on a day within a 15-day period that commences with the date upon which a governing board member elected at that election takes office. Organizational meetings in years in which no such regular election for governing board members is conducted shall be held during the same 15-day period on the calendar. Unless otherwise provided by rule of the governing board, the day and time of the annual meeting shall be selected by the board at its regular meeting held immediately prior to the first day of such 15-day period, and the board shall notify the county superintendent of schools of the day and time selected. The clerk of the board shall, within 15 days prior to the date of the annual meeting, notify in writing all members and members-elect of the date and time selected for the meeting.

If the board fails to select a day and time for the meeting, the county superintendent of schools having jurisdiction over the district shall, prior to the first day of such 15-day period and after the regular meeting of the board held immediately prior to the first day of such 15-day period, designate the day and time of the annual meeting. The day designated shall be within the 15-day period. He shall notify in writing all members and members-elect of the date and time.

At the annual meeting the governing board of each high school district, union high school district, and joint union high school district shall organize by electing a president from its members and a clerk.

At the annual meeting each city board of education shall organize by electing a president from its members.

At the annual meeting the governing board of each other type of school district, except a community college district, shall elect one of its members clerk of the district.

As an alternative to the procedures set forth in this section, a city board of education whose members are elected in accordance with a city charter for terms of office commencing in December, may hold its annual organizational meeting required in this section between December 15 and January 14, inclusive, as provided in rules and regulations which shall be adopted by such board. At the annual meeting the city board of education shall organize by electing a president and vice president from its members who shall serve in such office during the period January 15 next to the following January 14, unless removed from such office by majority vote of all members of the city board of education.

§ 35144. Special meetings

A special meeting of the governing board of a school district may be called at any time by the presiding officer of the board, or by a majority of the members thereof, by delivering personally or by mail written notice to each member of the board, and to each local newspaper of general circulation, radio, or television station requesting notice in writing. The notice shall be delivered personally or by mail at least 24-hours before the time of 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 those meetings by the governing board. 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 board a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The call and notice shall be posted at least 24-hours prior to the special meeting in a location that is freely accessible to members of the public and district employees.

§ 35145. Public meetings; posting of agenda; commencement of action

All meetings of the governing board of any school district shall be open to the public and shall be conducted in accordance with Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code. All actions authorized or required by law of the governing board shall be taken at the meetings and shall be subject to the following requirements:

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

(b) An agenda shall be posted by the governing board, or its designee, in accordance with the requirements of Section 54954.2 of the Government Code. Any interested person may commence an action by mandamus or injunction pursuant to Section 54960.1 of the Government Code for the purpose of obtaining a judicial determination that any action taken by the governing board in violation of this subdivision or Section 35144 is null and void.

§ 35145.5. Legislative intent; agenda; public participation

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. Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the governing board on any item of interest to the public, before or during the governing board's consideration of the item, that is within the subject matter jurisdiction of the governing board. Governing boards shall adopt

reasonable regulations to insure that this intent is carried out. The regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.

This subdivision shall not preclude the taking of testimony at regular meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that, except as authorized by Section 54954.2 of the Government Code, no action is taken by the board on those matters at the same meeting at which the testimony is taken. Nothing in this paragraph shall be deemed to limit further discussion on the same subject matter at a subsequent meeting.

§ 35146. Closed sessions

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.

§ 35147. Open meeting law exceptions and application; notice; agenda; conduct; materials

(a) Except as specified in this section, any meeting of the councils or committees specified in subdivision (b) is exempt from the provisions of this article, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Division 3 of Title 2 of the Government Code), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).

(b) The councils and schoolsite advisory committees established pursuant to Sections 52063, 52069, 52176, and 52852, subdivision (b) of Section 54425, Sections 54444.2 and 62002.5, and committees formed pursuant to Section 11503 are subject to this section.

(c)(1) Any meeting held by a council or committee specified in subdivision (b) shall be open to the public, and any member of the public shall be able to address the council or committee during the meeting on any item within the subject matter jurisdiction of the council or committee. Notice of the meeting shall be posted at the schoolsite, or other appropriate place accessible to the public, at least 72 hours before the time set for the meeting. The notice shall specify the date, time, and location of the meeting and contain an agenda describing each item of business to be discussed or acted upon. The council or committee may not take any action on any item of business unless that item appeared on the posted agenda or unless the council or committee members present, by unanimous vote, find that there is a need to take

immediate action and that the need for action came to the attention of the council or committee subsequent to the posting of the agenda.

(2) Questions or brief statements made at a meeting by members of the council, committee, or public that do not have a significant effect on pupils or employees in the school or school district, or that can be resolved solely by the provision of information, need not be described on an agenda as items of business. If a council or committee violates the procedural meeting requirements of this section, upon demand of any person, the council or committee shall reconsider the item at its next meeting, after allowing for public input on the item.

(d) Any materials provided to a schoolsite council shall be made available to any member of the public who requests the materials pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

§ 35148. Repealed

§ 35149. Meetings deemed to be regular

The first meeting of any newly elected or appointed school district governing board, and any annual meeting required by law to be held by such board for purposes of its organization, shall be deemed a regular meeting of the board for purposes of any requirement of law that periodic meetings shall be held by such board, and the regular business of the board may be transacted at such a meeting.

Education Code

Title 2. Elementary and Secondary Education
Division 4. Instruction and Services
Part 27. Pupils
Chapter 6. Pupil Rights and Responsibilities
Article 1. Suspension or Expulsion

§ 48912. Closed sessions; consideration of suspension or other disciplinary action; notice

(a) The governing board may suspend a pupil from school for any of the acts enumerated in Section 48900 for any number of schooldays within the limits prescribed by Section 48903.

(b) Notwithstanding the provisions of Section 35145 of this code and Section 54950 of the Government Code, the governing board of a school district shall, unless a request has been made to the contrary, hold closed sessions if the board is considering the suspension of, disciplinary action against, or any other action against, except expulsion, any pupil, if a public hearing upon that question would lead to the giving out of information concerning a school pupil which would be in violation of Article 5 (commencing with Section 49073) of Chapter 6.5.

(c) Before calling a closed session to consider these matters, the governing board shall, in writing, by registered or certified mail or by personal service, notify the pupil and the pupil's parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board to call and hold a closed session. Unless the pupil or the pupil's parent or guardian shall, in writing, within 48 hours after receipt of the written notice of the board's intention, request that the hearing be held as a public meeting, the hearing to consider these matters shall be conducted by the governing board in closed session. In the event that a written request is served upon the clerk or secretary of the governing board, the meeting shall be public, except that any discussion at that meeting which may be in conflict with the right to privacy of any pupil other than the pupil requesting the public meeting, shall be in closed session.

§ 48918. Rules governing expulsion procedures; hearings; notice; decision in absence of request for postponement

The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

(a) (1) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board of the school district.

(2) Within 10 schooldays after the conclusion of the hearing, the governing board of the school district shall decide whether to expel the pupil, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the governing board

of the school district does not meet on a weekly basis, the governing board of the school district shall decide whether to expel the pupil within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent of schools, unless the pupil requests in writing that the decision be postponed.

(3) If compliance by the governing board of the school district with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable during the regular school year, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. If compliance by the governing board of the school district with the time requirements for the conducting of an expulsion hearing under this subdivision is impractical due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48925, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days before the first day of school for the school year. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days before the date of the hearing. The notice shall include all of the following:

(1) The date and place of the hearing.

(2) A statement of the specific facts and charges upon which the proposed expulsion is based.

(3) A copy of the disciplinary rules of the school district that relate to the alleged violation.

(4) A notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1.

(5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or to be represented by legal counsel or by a nonattorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses. In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or to have committed a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall be given five days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during his or her testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential. This subdivision shall not preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing. This section does not require a pupil or the pupil's parent or guardian to be represented by legal counsel or by a nonattorney adviser at the hearing.

(A) For purposes of this section, "legal counsel" means an attorney or lawyer who is admitted to the practice of law in California and is an active member of the State Bar of California.

(B) For purposes of this section, “nonattorney adviser” means an individual who is not an attorney or lawyer, but who is familiar with the facts of the case, and has been selected by the pupil or pupil's parent or guardian to provide assistance at the hearing.

(c) (1) Notwithstanding Section 35145, the governing board of the school district shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days before the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board of the school district may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

(2) If the governing board of the school district or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.

(3) If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or to commit a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television.

(d) Instead of conducting an expulsion hearing itself, the governing board of the school district may contract with the county hearing officer, or with the Office of Administrative Hearings pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207 of this code, for a hearing officer to conduct the hearing. The governing board of the school district may also appoint an impartial administrative panel of three or more certificated persons, none of whom is a member of the governing board of the school district or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board of the school district. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to the classroom instructional program from which the expulsion referral was made, unless the parent, guardian, or responsible adult of the pupil requests another school placement in writing. Before the placement decision is made by the parent, guardian, or responsible adult, the superintendent of schools or the superintendent's designee shall consult with school district personnel, including the pupil's teachers, and the parent, guardian, or responsible adult regarding any other school placement options for the pupil in addition to the option to return to his or her classroom instructional program from which the expulsion referral was made. If the hearing officer or administrative panel finds that the pupil committed any of the acts specified in subdivision (c) of Section 48915, but does not recommend expulsion, the pupil shall be immediately reinstated and may be referred to his or her prior school or another comprehensive school, or, pursuant to the procedures set forth in Section 48432.5, a continuation school of the school district. The decision not to recommend expulsion shall be final.

(f) (1) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board of the school district. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If

the governing board of the school district accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board of the school district may order.

(2) The decision of the governing board of the school district to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board of the school district or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations that shall be examined only by the governing board of the school district or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) (1) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board of the school district to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

(2) In hearings that include an allegation of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or to commit a sexual battery as defined in subdivision (n) of Section 48900, evidence of specific instances, of a complaining witness' prior sexual conduct is to be presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.

(i) (1) Before the hearing has commenced, the governing board of the school district may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board of the school district or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11455.20 of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board of the school district in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board of the school district in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board of the school district, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision of the state, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(j) Whether an expulsion hearing is conducted by the governing board of the school district or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board of the school district in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by all of the following:

(1) Notice of the right to appeal the expulsion to the county board of education.

(2) Notice of the education alternative placement to be provided to the pupil during the time of expulsion.

(3) Notice of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that school district of the pupil's expulsion.

(k) (1) The governing board of the school district shall maintain a record of each expulsion, including the cause for the expulsion. Records of expulsions shall be nonprivileged, disclosable public records.

(2) The expulsion order and the causes for the expulsion shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

Education Code

Title 2. Elementary and Secondary Education
Division 4. Instruction and Services
Part 27. Pupils
Chapter 6.5. Pupil Records
Article 3. Rights of Parents

§ 49070. Challenging content of records

Following an inspection and review of a pupil's records, the parent or guardian of a pupil or former pupil of a school district may challenge the content of any pupil record.

(a) The parent or guardian of a pupil may file a written request with the superintendent of the district to correct or remove any information recorded in the written records concerning his or her child which the parent or guardian alleges to be any of the following:

- (1) Inaccurate.
- (2) An unsubstantiated personal conclusion or inference.
- (3) A conclusion or inference outside of the observer's area of competence.
- (4) Not based on the personal observation of a named person with the time and place of the observation noted.
- (5) Misleading.
- (6) In violation of the privacy or other rights of the pupil.

(b) Within 30 days of receipt of a request pursuant to subdivision (a), the superintendent or the superintendent's designee shall meet with the parent or guardian and the certificated employee who recorded the information in question, if any, and if the employee is presently employed by the school district. The superintendent shall then sustain or deny the allegations.

If the superintendent sustains any or all of the allegations, he or she shall order the correction or the removal and destruction of the information. However, in accordance with Section 49066, the superintendent shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade.

If the superintendent denies any or all of the allegations and refuses to order the correction or the removal of the information, the parent or guardian may, within 30 days of the refusal, appeal the decision in writing to the governing board of the school district.

(c) Within 30 days of receipt of an appeal pursuant to subdivision (b), the governing board shall, in closed session with the parent or guardian and the certificated employee who recorded the information in

question, if any, and if the employee is presently employed by the school district, determine whether or not to sustain or deny the allegations.

If the governing board sustains any or all of the allegations, it shall order the superintendent to immediately correct or remove and destroy the information from the written records of the pupil, and so inform the parent or guardian in writing. However, in accordance with Section 49066, the governing board shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade.

The decision of the governing board shall be final.

Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board, unless the parent or guardian initiates legal proceedings relative to the disputed information within the prescribed period.

(d) If the final decision of the governing board is unfavorable to the parent or guardian, or if the parent or guardian accepts an unfavorable decision by the district superintendent, the parent or guardian shall be informed and shall have the right to submit a written statement of his or her objections to the information. This statement shall become a part of the pupil's school record until the information objected to is corrected or removed.

Education Code

Title 2. Elementary and Secondary Education
Division 4. Instruction and Services
Part 33. Instructional Materials and Testing
Chapter 5. California Assessment of Academic Achievement
Article 2. Program Provisions

§ 60617. Meetings of governing board; closed sessions; confidentiality

The governing board of any school district may meet in closed session only to review the actual contents of any approved or adopted assessment, provided the governing board agrees by resolution to accept any terms or conditions for that review that are established by rules and regulations of the State Board of Education. The purpose of this provision is to maintain the confidentiality of the assessments under review.

Education Code

*Title 3. Postsecondary Education
Division 7. Community Colleges
Part 45. Districts and Governing Boards
Chapter 2. Meetings and Members
Article 2. Meetings*

§ 72121. Public meetings

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

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

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

§ 72121.5. Agenda; public participation; regulations

It is the intent of the Legislature that members of the public be able to place matters directly related to community college district business on the agenda of community college 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.

§ 72122. Closed sessions

The governing board of a community college district shall, unless a request by the student 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 in connection with any student of the community college district, if a public hearing upon the question would lead to the giving out of information concerning students which would be in violation of state or federal law regarding the privacy of student records.

Before calling a 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

student is a minor, notify the student and his or her parent or guardian, or the student if the student is an adult, of the intent of the governing board of the district to call and hold the closed session. Unless the student, or his or her parent, or guardian shall, in writing, within 48 hours after receipt of the written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider those matters shall be conducted by the governing board in closed session. If the written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at the meeting that might be in conflict with the right to privacy of any student other than the student requesting the public meeting or on behalf of whom the 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 community college district shall be taken at a public meeting and the result of that action shall be a public record of the community college district.

The governing board of a community college district may hold closed sessions to consider the conferring of honorary degrees or to consider gifts from a donor who wants to remain anonymous.

§ 72129. Special meetings; notice

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

(b) A notice of the meeting shall be posted at least 24-hours prior to the special meeting and shall specify the time and location of the meeting and the business to be transacted and shall be posted in a location that is freely accessible to members of the public and district employees.

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APPENDIX D
GOVERNMENT CODE SECTIONS
3540, 3540.2, 3547, 3547.5, 3549.1 and
3549.3
(From the Rodda Act)

Government Code

Title 1. General
Division 4. Public Officers and Employees
Chapter 10.7. Meeting and Negotiating in Public Educational Employment
Article 1. General Provisions

§ 3540. Purpose of chapter

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

It is the further intention of the Legislature that this chapter shall not restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of the school district with respect to district policies on academic and professional matters, so long as the exercise of the functions does not conflict with lawful collective agreements.

It is the further intention of the Legislature that any legislation enacted by the Legislature governing employer-employee relations of other public employees shall be incorporated into this chapter to the extent possible. The Legislature also finds and declares that it is an advantageous and desirable state policy to expand the jurisdiction of the board created pursuant to this chapter to cover other public employers and their employees, in the event that this legislation is enacted, and if this policy is carried out, the name of the Educational Employment Relations Board shall be changed to the "Public Employment Relations Board."

§ 3540.2. Qualified or negative certifications; proposed agreements; review process; financial impact; review and comment by Superintendent

(a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall allow the county office of education in which the school district is located at least 10 working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The school district shall provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

(b) The Superintendent shall develop a format for use by the appropriate parties in generating the financial information required pursuant to subdivision (a).

(c) The county superintendent of schools shall notify the school district, the county board of education, the district superintendent, the governing board of the school district, and each parent and teacher

organization of the district within those 10 days if, in his or her opinion, the agreement reviewed pursuant to subdivision (a) would endanger the fiscal well-being of the school district.

(d) A school district shall provide the county superintendent of schools, upon request, with all information relevant to provide an understanding of the financial impact of any final collective bargaining agreement reached pursuant to Section 3543.2.

(e) A county office of education, or a school district for which the county board of education serves as the governing board, that has a qualified or negative certification pursuant to Section 1240 of the Education Code shall allow the Superintendent at least 10 working days to review and comment on any proposed agreement or contract made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The county superintendent of schools shall provide the Superintendent with all information relevant to yield an understanding of the financial impact of that agreement or contract. The Superintendent shall notify the county superintendent of schools, and the county board of education within those 10 days if, in his or her opinion, the proposed agreement or contract would endanger the fiscal well-being of the county office.

§ 3547. Proposals relating to representation; informing public; adoption of proposals and regulations

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24-hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24-hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

§ 3547.5. Major provisions of exclusive representative agreement; disclosure format; certification relative to the budget

(a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

(b) The superintendent of the school district and chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant

to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement in each year of its term.

(c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of a collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code

§ 3549.1. Public meeting provisions; exemptions

All the proceedings set forth in subdivisions (a) to (d), inclusive, are exempt from the provisions of Sections 35144 and 35145 of the Education Code, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise:

(a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and negotiating process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

§ 3549.3. Severability

If any provisions of this chapter or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

APPENDIX E
GOVERNMENT CODE SECTION
53262
RATIFICATION OF CERTAIN
ADMINISTRATIVE OFFICER
CONTRACTS
(Open Session Item)

Government Code

Title 5. Local Agencies
Division 2. Cities, Counties, and Other Agencies
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies
Chapter 2. Officers and Employees
Article 3.5. Employment Contracts

§ 53262. Ratification of contracts with certain administrative officers of local agencies; availability to public

(a) All contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.

(b) Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.

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