



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE
(213) 974-1801
FACSIMILE
(213) 626-7446
TDD
(213) 633-0901

RAYMOND G. FORTNER, JR.
County Counsel

April 28, 2005

TO: SUPERVISOR GLORIA MOLINA, Chair
SUPERVISOR YVONNE BRATHWAITE BURKE
SUPERVISOR ZEV YAROSLAVSKY
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: RAYMOND G. FORTNER, JR.
County Counsel

RE: **Pending Brown Act Legislation**

The enclosed memorandum provides an update on the status of several pieces of pending legislation involving the Brown Act.

For your convenience, we have enclosed copies of the legislation (except for the technical corrections and budget bills) referenced in the memorandum. We will keep you advised of the status of these measures, as well as any other legislation involving the Brown Act.

If you or your staff have any questions concerning this matter, please contact me, or Principal Deputy County Counsel Elizabeth M. Cortez at (213) 974-1951.

RGF:EMC:ds

Enclosures

c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE
(213) 974-1801
FACSIMILE
(213) 626-7446
TDD
(213) 633-0901

RAYMOND G. FORTNER, JR.
County Counsel

April 26, 2005

TO: RAYMOND G. FORTNER, JR.
County Counsel

FROM: ELIZABETH M. CORTEZ *EMC*
Principal Deputy County Counsel

RE: **Pending Brown Act Legislation**

This memorandum is written to advise you of pending legislation involving the Brown Act.

AB 194

AB 194 (Dymally) proposes to amend section 54960.1 of the Government Code regarding remedies for Brown Act violations. Under current law, the District Attorney or any interested person who contends that a legislative body has taken action in violation of certain sections of the Brown Act must make a written demand to the body to cure or correct the alleged violation within certain time frames. Once the demand is received, the body has thirty (30) days to cure or correct if it deems it appropriate. Thereafter, the District Attorney and/or the interested party may file suit.

AB 194 would eliminate the legislative body's ability to cure or correct an alleged violation prior to commencement of judicial action. Under this measure, in an action seeking a judicial determination of a Brown Act violation, the burden of proof would be on the legislative body to prove by clear and convincing evidence that the action taken was not in violation of the specified provisions of the Act. In addition, the ninety (90) day time period for making a written demand has been reduced to sixty (60) days. Currently, AB 194 has been referred to the Assembly's Committee on Local Government.

AB 463

AB 463 (Tran) proposes to expand the circumstances under which a legislative body could call a closed session for public safety reasons. Pursuant to Government Code section 54957, the legislative body may meet in closed session on matters posing a threat to the security of public buildings, essential public services or the public's right of access to public services or facilities. This measure would expand this section to include private property or facilities that are open to the general public, including a discussion regarding response strategies and any preventative measures relating to the security threat. AB 463 is awaiting assignment to committee from the Senate.

AB 1314

AB 1314 (Ridley-Thomas) proposes to add section 54963.5 regarding neighborhood councils. The Brown Act does not apply to a neighborhood council that is community based, comprised of volunteers that receive no stipend, is primarily advisory and has no authority over significant public funds. Notwithstanding that neighborhood councils are not Brown Act bodies, this section would require these councils to post agendas 72 hours in advance of meetings, limit action taken to items listed on the agenda unless an urgency finding could be made, would require that these meetings be open to the public and that the public be allowed an opportunity to address the council. AB 1314 is currently awaiting a hearing date at the Committee on Local Government.

AB 1438

AB 1438 (Salinas) proposes to add section 54953(d) to permit a special county health authority (established pursuant to California Welfare and Institutions Code section 14087.9605) to conduct teleconference meetings if at least 50% (as opposed to a quorum) of the members that would establish a quorum are present within the boundaries of the local health authority's jurisdiction. In addition, a toll-free call-in number must be provided to any person wishing to participate in the meeting and the toll-free number is to be published as part of the meeting notice. AB 1438 is also awaiting assignment to committee from the Senate.

AB 1769

AB 1769 (Committee on Public Employees, Retirement and Social Security) proposes to revise Government Code section 54957.1(a)(7) and add section 54957.11 authorizing a retirement or investment board of a public pension/retirement system to meet in closed session to discuss internal operational security issues which could result in financial harm to the system. This measure would also require roll call voting with decisions being entered into the minutes. In addition, the approval of an audit or special investigation report considered in closed session would be publicly reported upon completion of the audit and/or special investigation. AB 1769 may be heard in committee on May 4, 2005.

SB 1108

SB 1108 is the Senate Judiciary Committee's technical corrections on various California code sections. Included is a proposed technical not substantive revision to Government Code section 54954.5(j) on the safe harbor language for a closed session with a joint powers agency. SB 1108 has been forwarded to the consent calendar.

SB 52 and AB 90

Finally both SB 52 (Chesbro) and AB 90 (Laird), the budget bills for the 2005/06 fiscal year include a proposed two million dollar reduction for state mandated reimbursement costs involving open meeting compliance. Both measures are out of conference and will most likely include further revisions during the month of May.

I will keep you advised of the pending status of these measures, as well as, any other legislation involving the Brown Act.

EMC:ds

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 194

Introduced by Assembly Member Dymally

January 27, 2005

An act to amend Section 54960.1 of the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 194, as amended, Dymally. Brown Act violations: remedy.

The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend. The act authorizes the district attorney or any interested person to commence an action *by mandamus or injunction* for a judicial determination that an action of a legislative body of a local agency taken in violation of the act is null and void but requires that the body have an opportunity to cure or correct the alleged violation prior to commencement of the legal action. The act provides that an action of the body alleged to violate specified provisions of the act shall not be determined to be null and void if the action was taken in substantial compliance with those provisions and in other specified circumstances. *The act requires the district attorney or interested person to make a written demand of the legislative body to cure or correct the alleged violation within 90 days from the date the action was taken unless the action was taken in open session and in violation of a specified provision of the act.*

This bill would ~~remove the requirement that~~ also permit the district attorney or any interested person to commence an action by declaratory relief and would reduce the time period that the district attorney or interested person has to make a written demand of the

legislative body be allowed to cure or correct an alleged violation prior to commencement of a legal action and would remove provisions that preclude specified actions from being determined to be null and void to within 60 days from the date the action was taken, except as specified. Under this bill the burden of proof would be by clear and convincing evidence on the legislative body that its action taken was not in violation of specified provisions of the act.

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

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

1 ~~SECTION 1. Section 54960.1 of the Government Code is~~
2 ~~amended to read:~~

3 *SECTION 1. Section 54960.1 of the Government Code is*
4 *amended to read:*

5 54960.1. (a) The district attorney or any interested person
6 may commence an action by mandamus or, injunction, or
7 *declaratory relief* for the purpose of obtaining a judicial
8 determination that an action taken by a legislative body of a local
9 agency in violation of Section 54953, 54954.2, 54954.5, 54954.6,
10 54956, or 54956.5 is null and void under this section. ~~Nothing in~~
11 ~~this chapter shall be construed to prevent a legislative body from~~
12 ~~curing or correcting an action challenged pursuant to this section.~~
13 *The burden of proof by clear and convincing evidence shall be on*
14 *the legislative body of the local agency to establish that its action*
15 *taken was not in violation of Section 54953, 54954.2, 54954.5,*
16 *54954.6, 54956, or 54956.5.*

17 (b) Prior to any action being commenced pursuant to
18 subdivision (a), the district attorney or interested person shall
19 make a demand of the legislative body to cure or correct the
20 action alleged to have been taken in violation of Section 54953,
21 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall
22 be in writing and clearly describe the challenged action of the
23 legislative body and nature of the alleged violation.

24 (c) (1) The written demand shall be made within ~~90~~ 60 days
25 from the date the action was taken unless the action was taken in
26 an open session but in violation of Section 54954.2, in which
27 case the written demand shall be made within 30 days from the
28 date the action was taken.

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

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

12 (4) Within ~~15~~ 30 days of receipt of the written notice of the
13 legislative body's decision to cure or correct, or not to cure or
14 correct, or within 15 days of the expiration of the 30-day period
15 to cure or correct, whichever is earlier, the demanding party shall
16 be required to commence the action pursuant to subdivision (a)
17 or thereafter be barred from commencing the action.

18 (d) An action taken that is alleged to have been taken in
19 violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or
20 54956.5 shall not be determined to be null and void if any of the
21 following conditions exist:

22 (1) ~~The action taken was in substantial compliance with~~
23 ~~Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.~~

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

27 (3)

28 (2) The action taken gave rise to a contractual obligation,
29 including a contract let by competitive bid other than
30 compensation for services in the form of salary or fees for
31 professional services, upon which a party has, in good faith and
32 without notice of a challenge to the validity of the action,
33 detrimentally relied.

34 (4)

35 (3) The action taken was in connection with the collection of
36 any tax.

37 (5)

38 (4) Any person, city, city and county, county, district, or any
39 agency or subdivision of the state alleging noncompliance with
40 subdivision (a) of Section 54954.2, Section 54956, or Section

1 54956.5, because of any defect, error, irregularity, or omission in
2 the notice given pursuant to those provisions, had actual notice of
3 the item of business at least 72 hours prior to the meeting at
4 which the action was taken, if the meeting was noticed pursuant
5 to Section 54954.2, or 24 hours prior to the meeting at which the
6 action was taken if the meeting was noticed pursuant to Section
7 54956, or prior to the meeting at which the action was taken if
8 the meeting is held pursuant to Section 54956.5.

9 (e) During any action seeking a judicial determination
10 pursuant to subdivision (a) if the court determines, pursuant to a
11 showing of *clear and convincing evidence* by the legislative body
12 that an action alleged to have been taken in violation of Section
13 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been
14 cured or corrected by a subsequent action of the legislative body,
15 the action filed pursuant to subdivision (a) shall be dismissed
16 with prejudice.

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

21 ~~54960.1. (a) The district attorney or any interested person~~
22 ~~may commence an action by mandamus or injunction for the~~
23 ~~purpose of obtaining a judicial determination that an action taken~~
24 ~~by a legislative body of a local agency in violation of this chapter~~
25 ~~is null and void.~~

26 -

27 ~~(b) The fact that a legislative body takes a subsequent action to~~
28 ~~cure or correct an action shall not preclude a judicial~~
29 ~~determination that a violation of this chapter has occurred.~~

ASSEMBLY BILL

No. 463

Introduced by Assembly Member Tran

February 15, 2005

An act to amend Section 54957 of the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 463, as introduced, Tran. Local agencies: security information.

Under the Ralph M. Brown Act, the meetings of the legislative body of a local agency are required to be conducted openly and publicly, with specified exceptions.

Under the act, if certain information is disclosed in an open and public session prior to holding a closed session, the legislative body of a local agency may hold closed sessions with the Attorney General, or a district attorney, sheriff, or chief of police, or their respective deputies, or a security consultant or security operations manager on matters posing a threat to the security of public buildings, a threat to the safety and delivery of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric services, or a threat to the public's right of access to public services or public facilities.

This bill would additionally allow a closed session with those specified persons on matters posing a threat to private property or facilities that are open to the general public, including response strategies and preventative measures relating to that threat.

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

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

1 SECTION 1. Section 54957 of the Government Code is
2 amended to read:

3 54957. (a) Nothing contained in this chapter shall be
4 construed to prevent the legislative body of a local agency from
5 holding closed sessions with the Attorney General, district
6 attorney, agency counsel, sheriff, or chief of police, or their
7 respective deputies, or a security consultant or a security
8 operations manager, on matters posing a threat to the security of
9 public buildings, a threat to the security of essential public
10 services, including water, drinking water, wastewater treatment,
11 natural gas service, and electric service, ~~or~~ a threat to the public's
12 right of access to public services or public facilities, *or a threat*
13 *to private property or facilities that are open to the general*
14 *public, including response strategies and preventative measures*
15 *relating to that threat.*

16 (b) (1) Subject to paragraph (2), nothing contained in this
17 chapter shall be construed to prevent the legislative body of a
18 local agency from holding closed sessions during a regular or
19 special meeting to consider the appointment, employment,
20 evaluation of performance, discipline, or dismissal of a public
21 employee or to hear complaints or charges brought against the
22 employee by another person or employee unless the employee
23 requests a public session.

24 (2) As a condition to holding a closed session on specific
25 complaints or charges brought against an employee by another
26 person or employee, the employee shall be given written notice
27 of his or her right to have the complaints or charges heard in an
28 open session rather than a closed session, which notice shall be
29 delivered to the employee personally or by mail at least 24 hours
30 before the time for holding the session. If notice is not given, any
31 disciplinary or other action taken by the legislative body against
32 the employee based on the specific complaints or charges in the
33 closed session shall be null and void.

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

1 (4) For the purposes of this subdivision, the term “employee”
2 shall include an officer or an independent contractor who
3 functions as an officer or an employee but shall not include any
4 elected official, member of a legislative body or other
5 independent contractors. Nothing in this subdivision shall limit
6 local officials’ ability to hold closed session meetings pursuant to
7 Sections 1461, 32106, and 32155 of the Health and Safety Code
8 or Sections 37606 and 37624.3 of the Government Code. Closed
9 sessions held pursuant to this subdivision shall not include
10 discussion or action on proposed compensation except for a
11 reduction of compensation that results from the imposition of
12 discipline.

O

ASSEMBLY BILL

No. 1314

Introduced by Assembly Member Ridley-Thomas

February 22, 2005

An act to add Section 54963.5 to the Government Code, relating to neighborhood councils.

LEGISLATIVE COUNSEL'S DIGEST

AB 1314, as introduced, Ridley-Thomas. Neighborhood councils: open meetings.

(1) Existing law, the Ralph M. Brown Act, provides that the meetings of legislative bodies of local agencies shall be open and public and all persons shall be permitted to attend, with specified exceptions. For this purpose, a local agency includes any commission, committee, board, or other body of a local agency, whether decisionmaking or advisory, that is created by charter, ordinance, resolution, or other formal action of a legislative body.

Various provisions of local agency charters and local ordinances create or authorize neighborhood councils for the general purpose of enabling citizens to join together to discuss issues of local interest and providing a vehicle through which these citizens can communicate with local agencies.

This bill would provide that, notwithstanding any other provision of law, the Brown Act shall not apply to a neighborhood council that is community-based, comprised of volunteers who receive no stipend for service and have no assigned or paid staff, is primarily advisory, and has authority over no significant amount of public funds. It also would provide that, notwithstanding the inapplicability of the act, any meeting of a neighborhood council shall be open to the public, any member of the public shall be able to address the council during a

meeting on any item within its subject matter jurisdiction, and the council shall be required to post an agenda, as specified.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would find that, in order for a neighborhood council that is community-based, comprised of volunteers, is primarily advisory, and has authority over no significant amount of public funds to operate without the costs and burdens associated with compliance of all aspects of the Ralph M. Brown Act, while still being subject to general requirements that its meetings be open to the public, that any member of the public shall be able to address the council, and that it post an agenda of its meetings, it is necessary that the act not apply to a neighborhood council.

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

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

1 SECTION 1. Section 54963.5 is added to the Government
2 Code, to read:

3 54963.5. (a) Notwithstanding any other provision of law,
4 this chapter shall not apply to a neighborhood council that is
5 community-based, comprised of volunteers who receive no
6 stipend for service and have no assigned or paid staff, is
7 primarily advisory, and has authority over no significant amount
8 of public funds.

9 (b) Notwithstanding subdivision (a), any meeting held by a
10 council specified in subdivision (a) shall be open to the public
11 and any member of the public shall be able to address the council
12 during the meeting on any item within the subject matter
13 jurisdiction of the council. Notice of the meeting shall be posted
14 at an appropriate place accessible to the public, at least 72 hours
15 before the time set for the meeting. The notice shall specify the
16 date, time, and location of the meeting and contain an agenda
17 describing each item of business to be discussed or acted upon.
18 The council shall not take any action on any item of business
19 unless that item appeared on the posted agenda or unless the

1 council members present, by unanimous vote, find that there is a
2 need to take immediate action and that the need for action came
3 to the attention of the council subsequent to the posting of the
4 agenda. If a council violates the procedural meeting requirements
5 of this section and upon demand of any person, the council or
6 committee shall reconsider the item at its next meeting, after
7 allowing for public input on the item.

8 SEC. 2. The Legislature finds and declares that Section 1 of
9 this act, which adds Section 54963.5 to the Government Code,
10 imposes a limitation on the public's right of access to the
11 meetings of public bodies or the writings of public officials and
12 agencies within the meaning of Section 3 of Article I of the
13 California Constitution. Pursuant to that constitutional provision,
14 the Legislature makes the following findings to demonstrate the
15 interest protected by this limitation and the need for protecting
16 that interest.

17 In order for a neighborhood council that is community-based,
18 comprised of volunteers, is primarily advisory, and has authority
19 over no significant amount of public funds to operate without the
20 costs and burdens associated with compliance of all aspects of
21 the Ralph M. Brown Act, while still being subject to general
22 requirements that its meetings be open to the public, that any
23 member of the public be able to address the council, and that it
24 post an agenda of its meetings, it is necessary that Ralph M.
25 Brown Act not apply to a neighborhood council.

ASSEMBLY BILL

No. 1438

Introduced by Assembly Member Salinas

February 22, 2005

An act to amend Section 54953 of the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1438, as introduced, Salinas. Local agencies: open meetings.

(1) The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend. The act authorizes a legislative body to use teleconferencing, subject to specified requirements, including that each teleconference location be accessible to the public and that at least a quorum of the members of the body participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.

Existing law provides that in counties selected by the Director of Health Services with the concurrence of the county, a special county health authority may be established in order to meet the problems of delivery of publicly assisted medical care in each county, and to demonstrate ways of promoting quality care and cost efficiency.

This bill would provide that, notwithstanding the provisions of the act on teleconferencing, with respect to a teleconference meeting of a county health authority established in a county under specified provisions, members of a health authority who are outside the jurisdiction may be counted toward the establishment of a quorum when participating in the teleconference if at least 50% of the number of members that would establish a quorum are present within the jurisdiction and the health authority provides a toll-free teleconference

number that allows any person to call in to participate in the meeting and that toll-free number is identified in the notice and agenda of the meeting.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

1 SECTION 1. Section 54953 of the Government Code is
2 amended to read:

3 54953. (a) All meetings of the legislative body of a local
4 agency shall be open and public, and all persons shall be
5 permitted to attend any meeting of the legislative body of a local
6 agency, except as otherwise provided in this chapter.

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

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

19 (3) If the legislative body of a local agency elects to use
20 teleconferencing, it shall post agendas at all teleconference
21 locations and conduct teleconference meetings in a manner that
22 protects the statutory and constitutional rights of the parties or
23 the public appearing before the legislative body of a local
24 agency. Each teleconference location shall be identified in the
25 notice and agenda of the meeting or proceeding, and each
26 teleconference location shall be accessible to the public. During

1 the teleconference, at least a quorum of the members of the
2 legislative body shall participate from locations within the
3 boundaries of the territory over which the local agency exercises
4 jurisdiction. The agenda shall provide an opportunity for
5 members of the public to address the legislative body directly
6 pursuant to Section 54954.3 at each teleconference location.

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

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

15 (d) (1) *Notwithstanding paragraph (3) of subdivision (b),*
16 *when a health authority conducts a teleconference meeting,*
17 *members who are outside the jurisdiction of the authority may be*
18 *counted toward the establishment of a quorum when*
19 *participating in the teleconference if at least 50 percent of the*
20 *number of members that would establish a quorum are present*
21 *within the boundaries of the territory over which the authority*
22 *exercises jurisdiction, and the health authority provides a*
23 *toll-free teleconference number that allows any person to call in*
24 *to participate in the meeting and that toll-free number is*
25 *identified in the notice and agenda of the meeting.*

26 (2) *For purposes of this subdivision, a health authority means*
27 *any entity created pursuant to Sections 14018.7, 14087.31,*
28 *14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare*
29 *and Institutions Code, and any joint powers authority created*
30 *pursuant to Article 1 (commencing with Section 6500) of Chapter*
31 *5 of Division 7 for the purpose of contracting pursuant to Section*
32 *14087.3 of the Welfare and Institutions Code.*

33 SEC. 2. The Legislature finds and declares that Section 1 of
34 this act, which amends Section 54953 of the Government Code,
35 imposes a limitation on the public’s right of access to the
36 meetings of public bodies or the writings of public officials and
37 agencies within the meaning of Section 3 of Article I of the
38 California Constitution. Pursuant to that constitutional provision,
39 the Legislature makes the following findings to demonstrate the

1 interest protected by this limitation and the need for protecting
2 that interest:

3 Local health initiatives are an essential component of
4 California's health care delivery system, and their ability to meet
5 regularly to address the health care concerns of Medi-Cal
6 beneficiaries is vital. The membership of local health initiative
7 boards of directors is required by statute to represent a diverse
8 group of health care professionals, and, as a result, these boards
9 frequently are large and comprised of persons working and
10 residing outside of the board's jurisdiction. Accordingly, these
11 boards have a demonstrated difficulty in obtaining a quorum of
12 members located within the board's jurisdiction as required by
13 the teleconference provisions of the Ralph M. Brown Act.

ASSEMBLY BILL

No. 1769

Introduced by Committee on Public Employees, Retirement and Social Security (Torrico (Chair), Jones, Mullin, and Negrete McLeod)

April 4, 2005

An act to amend Section 54957.1 of, and to add Sections 6254.18 and 54957.11 to, the Government Code, relating to retirement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1769, as introduced, Committee on Public Employees, Retirement and Social Security. Public pension funds: audits.

Existing law, the California Public Records Act, requires certain public records to be made available for public inspection.

This bill would exempt from public disclosure written advice from the administrator, chief executive officer, chief legal officer, or chief auditor of a public pension or retirement system concerning the need for the retirement board or investment board of a public pension or retirement system, or a committee composed exclusively of members of the board, to discuss in closed session internal operational security issues.

Existing law, the Ralph M. Brown Act, requires that the meetings of the legislative body of a local agency be conducted openly, with specified exceptions, and requires the legislative body to report any action taken in closed session and the vote or abstention of every member present at the closed session.

This bill would authorize a retirement board, or investment board of a public pension or retirement system or a committee composed exclusively of members of the board, to meet in closed session to discuss internal operational security issues of the pension or

retirement system when, based on written advice from the administrator, chief executive officer, chief legal officer, or chief auditor of the pension or retirement system, discussion in open session could result in financial harm to the system or harm to the integrity and security of the operations of the system.

The bill would require decisions made during the closed session to be made by rollcall vote entered into the minutes of the closed session.

The bill would require that the approval of an audit report or special investigation report considered in a closed session be publicly reported upon completion of the audit or special investigation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 6254.18 is added to the Government
2 Code, to read:

3 6254.18. This chapter does not require the disclosure of
4 written advice from the administrator, chief executive officer,
5 chief legal officer, or chief auditor of a public pension or
6 retirement system provided pursuant to Section 54957.11
7 concerning the need for the retirement board or investment board
8 of the public pension or retirement system or a committee
9 composed exclusively of members of the board to discuss in
10 closed session internal operational security issues.

11 SEC. 2. Section 54957.1 of the Government Code is amended
12 to read:

13 54957.1. (a) The legislative body of any local agency shall
14 publicly report any action taken in closed session and the vote or
15 abstention of every member present thereon, as follows:

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

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

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

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

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

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

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

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

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

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

16 *(7) Approval of an audit report or special investigation report*
17 *considered in a closed session held pursuant to Section 54957.11*
18 *shall be reported upon completion of the audit or special*
19 *investigation. The announcement need not identify particulars of*
20 *the audit or investigation if identifying those particulars could*
21 *result in financial harm to the public pension or retirement*
22 *system or harm to the integrity and security of the system's*
23 *operation.*

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

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

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

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

14 SEC. 3. Section 54957.11 is added to the Government Code,
15 to read:

16 54957.11. Notwithstanding any other provision of law, a
17 retirement board or investment board of a public pension or
18 retirement system or a committee composed exclusively of
19 members of the board may hold closed sessions to discuss
20 internal operational security issues of the pension or retirement
21 system when, based on written advice from the administrator,
22 chief executive officer, chief legal officer, or chief auditor of the
23 pension or retirement system, discussion in open session could
24 result in financial harm to the system or harm to the integrity and
25 security of the operations of the system. All decisions made
26 during a closed session pursuant to this section shall be by
27 rollcall vote entered into the minutes of the closed session, as
28 kept pursuant to subdivision (a) of Section 54957.2.

29 SEC. 4. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety
31 within the meaning of Article IV of the Constitution and shall go
32 into immediate effect. The facts constituting the necessity are:

33 In order to address, at the earliest possible time, urgent
34 administrative issues faced by county retirement systems, it is
35 necessary that this act take effect immediately.