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BLC File(s): 1593.12

16 January 2012

** FOR IMMEDIATE RELEASE **

Government Watchdog Sues to Ensure Local Compliance with Open-Meeting Law

Today the government watchdog organization San Diegans for Open Government filed a lawsuit against the State of California in order to invalidate two new budget provisions that allow local governments to escape compliance with the state's landmark open-meeting law, the Ralph M. Brown Act. The lawsuit alleges that the Budget Act of 2012 unconstitutionally suspends the legal requirement that local government agencies post their agendas for public review at least 72 hours before their meetings, and that a related statute illegally extends the requirement's suspension through June 30, 2015. According to SDOG, the two provisions violate Proposition 59 and the new constitutional rights it created for members of the public seeking "information concerning the conduct of the people's business." Approved by the voters in 2004, Proposition 59 prohibits the legislature from enacting any law that limits access to such information without first making "fndings demonstrating the interest protected by the limitation and the need for protecting that interest." SDOG alleges that the legislature did not make those findings even though the two new budget provisions result in less access to information about local government agencies and the business they conduct.

"We citizens cannot sit by while local politicians use Sacramento's inability to budget prudently as a license to conduct the people's business behind closed doors," explained SDOG chairman Ian Trowbridge. "In the grand scheme of things, the cost of posting agendas is basically zero. Local government should not be allowed to use an un-reimbursed bill for relatively few dollars to justify doing the public's business in secret."

The lawsuit is an important test case for Proposition 59 because of another constitutional provision. The state constitution was amended several decades earlier to prohibit the state from imposing new legal requirements on local agencies without reimbursing them for the additional compliance costs. The Brown Act's agenda-posting requirement took effect after that constitutional amendment was passed. Proposition 59 puts a limitation on the amendment prohibiting so-called "unfunded mandates" by requiring special findings to justify restrictions on the public's access to information about local government before the state's failure to fund the mandates can be used by local agencies to avoid posting their agendas.

According to SDOG's attorney, Cory Briggs, "Proposition 59 trumps the constitution's prohibition against unfunded mandates that ensure the public's access to information about how local governments conduct business because that information is so fundamental to our democracy." Referring to prior years when budgets sought to suspend compliance with the Brown Act, Briggs

Government Watchdog Sues to Ensure Local Compliance with Open-Meeting Law

said: "By 2004, voters had grown tired of having to risk back-room deals by local politicians just because the state refused to reimburse their agencies the few bucks necessary to post their agendas in public. Proposition 59 requires the legislature not only to have really good reasons for restricting public access to information about local government, but also to tell the public what those reasons are in advance."

SDOG intends to seek an injunction declaring the Budget Act of 2012 and the related statute unconstitutional. No hearing date on the injunction has been scheduled. A copy of the lawsuit--known as *San Diegans for Open Government v. State of California*, San Diego County Superior Court case no. 37-2012-00100773-CU-MC-CTL--follows this press release.

* * *

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO--HALL OF JUSTICE

SAN DIEGANS FOR OPEN GOVERNMENT, Plaintiff, vs. STATE OF CALIFORNIA and DOES 1 through 10,000, Defendants.	CASE NO. 37-2012-00100773-CU-MC-CTL **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE CALIFORNIA CONSTITUTION**

Plaintiff SAN DIEGANS FOR OPEN GOVERNMENT alleges as follows:

Parties

1. Plaintiff SAN DIEGANS FOR OPEN GOVERNMENT is a non-profit organization formed and operating under the laws of the State of California. At least one of Plaintiff's members resides in and pays taxes within the geographical jurisdiction of Defendant STATE OF CALIFORNIA ("STATE") and has an interest in, among other things, maintaining open, transparent decision-making by local governments. Plaintiff is suing on its own behalf and for its own benefit, and on behalf of and for the benefit of its members, all persons similarly situated, all taxpayers within the geographical jurisdiction of STATE.

2. Defendant STATE is the highest non-federal branch of government within the geographical jurisdiction of the State of California.

3. The true names and capacities of the Defendants identified as DOES 1 through 10,000 are unknown to Plaintiff, who will seek the Court's permission to amend this pleading in order to allege the true names and capacities as soon as they are ascertained. Each of the fictitiously named Defendants 1 through 10,000 has jurisdiction by law over one or more aspects of the action that is being challenged in this proceeding or has some other cognizable interest in the action.

Background Information

4. The Ralph M. Brown Act ("Brown Act"), GOV'T CODE § 54950 *et seq*., is commonly known as California's open-meeting law for local governments. Under Government Code Section 54954.2, all legislative bodies of local governments (*i*) must, generally speaking, post a copy of the agenda for each meeting they intend to conduct at least 72 hours prior to the meeting; and (*ii*) were prohibited from taking any action on any item not appearing on the posted agenda (collectively, "Agenda-Posting Mandate"). The substance of the Agenda-Posting Mandate was enacted by the Legislature as part of Chapter 641 of the Statutes of 1986.

5. Section 6(b) of Article XIIIB of the California Constitution provides as follows: "(1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law. [¶] (2) Payable claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law."

6. On March 23, 1988, California's Commission on State Mandates issued Decision no. CSM-4257, concluding, generally speaking, that the Agenda-Posting Mandate constitutes a reimbursable state mandate imposed on local governments. A true and correct copy of CSM-4257, including the latest reimbursement calculations by the Commission, is attached to this pleading as Exhibit "A." The Agenda-Posting Mandate was amended to apply to more local bodies and to require

the inclusion of a description of closed-session items on posted agendas. On June 28, 2001, the Commission issued Decision no. CSM-4469, concluding, generally speaking, that the additional obligations under the amendment constitutes a reimbursable mandate on local governments. A true and correct copy of Decision no. CSM-4469 is attached to this pleading as Exhibit "B."

7. Government Code Section 17581(a) provides as follows: "No agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply: (1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIIIB of the California Constitution. (2) The statute or executive order, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements."

8. Adopted in June 2012 as part of a budget/appropriations bill with immediate effect, Government Code Section 17581(f) provides as follows: "All state-mandated local programs suspended in the Budget Act for the 2012-13 fiscal year shall also be suspended in the 2013-14 and 2014-15 fiscal years."

9. Also taking immediate effect following approval in June 2012, Assembly Bill no. 1464--the Budget Act of 2012--provides in part as follows: "Pursuant to the provisions of Section 17581 of the Government Code, the mandates identified in the following schedule are specifically identified by the Legislature for suspension during the 2012–13 fiscal year . . . (ccc) Open Meetings Act/Brown Act Reform (Ch. 641, Stats. 1986) (CSM-4257 and CSM-4469)."

10 The Budget Act of 2012 makes no provision for the reimbursement of local governments for their costs associated with compliance with the Agenda-Posting Mandate.

Jurisdiction and Venue

11. Plaintiff seeks review by and relief from this Court under Code of Civil Procedure Section 1060 *et seq.*

12. Venue is proper under Code of Civil Procedure Section 401 because the Attorney General has an office in the City of San Diego.

13. Plaintiff has no plain, speedy, adequate remedy in the ordinary course of law, since its members and other members of the public will suffer irreparable harm as a result of Defendants' violations of the California Constitution, as alleged in this pleading.

14. Plaintiff has a beneficial right and interest in Defendants' fulfillment of all their legal duties, as alleged in this pleading.

15. There is a good-faith dispute between Plaintiff and Defendants that can only be resolved through a judicial determination of their respective rights and responsibilities. Plaintiff contends that the Budget Act of 2012 is unconstitutional insofar as it purports to suspend the Agenda-Posting Mandate as it applies to local governments. Defendants disagree with Plaintiff.

FIRST CAUSE OF ACTION:
Violation of the California Constitution
(Against All Defendants)

16. Paragraphs 1 through 15 are fully incorporated into this paragraph.

17. In November 2004, California voters approved Proposition 59. Proposition 59 added Section 3(b) to Article 1 of the California Constitution. As a result of Proposition 59, Section 3(b) now provides in relevant part as follows: "(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."

18. According to the argument in favor of Proposition 59 in the 2004 Official Voter Information Guide: "What will Proposition 59 do? It will create a new civil right: a constitutional right to know what the government is doing, why it is doing it, and how." A true and correct copy of the Proposition 59 portion of the 2004 Official Voter Information Guide is attached to this pleading as Exhibit "C."

19. The Budget Act of 2012's lack of provision for the reimbursement of local governments for their costs associated with compliance with the Agenda-Posting Mandate has the effect of limiting the public's right of access to information concerning the conduct of the people's business. The Budget Act itself states that "Open Meetings Act/Brown Act Reform (Ch. 641, Stats. 1986) (CSM-4257 and CSM-4469)" are "specifically identified by the Legislature for suspension during the 2012–13 fiscal year." Additionally, Government Code Section 17581(f) has the effect of suspending the Open Meetings Act/Brown Act Reform for the 2013-14 and 2014-15 fiscal years. In other words, the Agenda-Posting Mandate will not be a legal requirement of local governments for the next three fiscal years.

20. The Budget Act of 2012 did not include any findings with respect to the Agenda-Posting Mandate, the Brown Act, Decision no. CSM-4257, or Decision no. CSM-4469. In particular, the Budget Act of 2012 did not include any findings demonstrating the interest protected by suspension of the Agenda-Posting Mandate or the need for protecting that interest.

21. Because of the lack of the constitutionally required findings with regard to the Agenda-Posting Mandate, the Budget Act of 2012 is unconstitutional insofar as it purports to suspend the requirements of the Agenda-Posting Mandate.

22. Plaintiff and other members of the public have been harmed as a result of Defendants' violations of the California Constitution because they have been denied the benefits and protections provided by compliance therewith. By way of example and without limitation, Plaintiff and other members of the public will not have the benefits and protections of the legal requirement that local governments comply with the Agenda-Posting Mandate, thereby making it extremely difficult if not impossible to exercise their civil rights, as codified in Section 3(b) to Article 1 of the California Constitution, "to know what the government is doing, why it is doing it, and how."

Prayer

FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against Defendants (and any and all other parties who may oppose Plaintiff in this proceeding):

A. A judgment determining or declaring that Defendants failed to comply fully with the California Constitution as it relates to the Agenda-Posting Mandate, the Brown Act, Decision no. CSM-4257, Decision no. CSM-4469, and "Open Meetings Act/Brown Act Reform (Ch. 641, Stats. 1986) (CSM-4257 and CSM-4469)," thus rendering that portion of the Budget Act null and void;

B. Injunctive relief prohibiting Defendants from taking any action in reliance on or furtherance of the Budget Act of 2012's identification of "Open Meetings Act/Brown Act Reform (Ch. 641, Stats. 1986) (CSM-4257 and CSM-4469)" as an item for which reimbursement is not provided for the 2012-13 fiscal year unless and until the Legislature makes the constitutionally required findings, as determined by this Court;

C. All attorney fees and other legal expenses incurred in connection with this proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure and the Government Code; and

D. Any and all further relief that this Court may deem appropriate.

Date: July 16, 2012.

Respectfully submitted,

BRIGGS LAW CORPORATION

By: _____
Cory J. Briggs

Attorneys for Plaintiff San Diegans for Open Government

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE CALIFORNIA CONSTITUTION

Exhibit “A”

BEFORE. THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: City of Las Angeles Claimant	"No. CSM-4257 Chapter 641, Statutes of 1986 Government Code Sections 54954.2 and 54954.3 Open Meetings Act

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on March 23, 1988.

IT IS SO ORDERED March 23, 1988.

Russell Gould, Chairperson
Commission on State Mandates

BEFORE THE
COMMISSION ON STATE MANDATES

Claim of:

City of Los Angeles
Claimant

No., CSM-4257
Government Code Sections 54954.2 and 54954.3
Chapter 641, Statutes of 1986
'Open Meetings Act

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on October 22, 1987, in Sacramento, California, during a regularly scheduled meeting. Louis Chappuie appeared on behalf of the City of Los Angeles. James Apps- appeared on behalf of the Department of Finance. There were no other appearances,

Evidence both oral ahd'documentary having been introduced, the matter submitted, and vote taken, the commission finds:

I.

NOTE

1. The finding of' a reimbursable state mandate does. not mean that all increased costs. claimed will be reimbursed. Reimbursement, if any, is subject to. commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; a specific appropriation by the Legislature for such pur p.se; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II.

FINDINGS AND CONCLUSIONS

1. The test claim of the City of Los Angeles was filed with the Commission on State Mandates. on April 1, 1987.

2. The subject of the claim is Chapter 641, Statutes of 1986, Government Code Sections 54954.2 and 64954.3,

3. Chapter 641, Statutes of 1986 added Sections 54954.2 and 54954.3 to. the Government Code to require the legislative body of a local agency to post an agenda containing a brief genera? description of each item of business to be transacted or discussed at a regular meeting, and would prohibit any action to be taken, as defined,, on any item not appearing on the posted agenda. Additionally, this statute would require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body,

4. A higher level of service is now required of the legislative body of a local agency by Chapter 641, Statutes of 1986, Government Code Sections 54964.2 and 54954.3,

5. Government Code Section 17514 defines-the term "costs mandated by *he.-state" as "any increased costs which a local agency . . . is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, which mandates . . . a higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

6. The City of Los Angeles has demonstrated that. it has Incurred increased costs which are costs mandated by the state.

7. None of the requisites for denying a claim, specified in Government Code Section 17556, subdivision (a), were established.

III.

DETERMINATION OF ISSUES

1. The Commission has the authority to decide this claim under the provisions of Government Code Section 17551. ,

2. Chapter 641, Statutes of 7986 imposed a reimbursable state mandate on the legislative body of a local agency. The City of Los Angeles has established that this statute imposed a higher level of service of an existing program by requiring the legislative body of a local agency to post an agenda containing a brief general description of each item of business to be transacted or discussed at a regular meeting, and would prohibit any action to be taken, as defined, on any item not appearing on the posted agenda. Additionally, this statute would require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of Interest to the public that are within the subject matter jurisdiction of the legislative body.

Reinstated: July 31, 2009
Set Aside: July 19, 2005
Adopted: April 25, 2002
j:\mandates\csm4000\4469\PsGs\pgadopt042502

Parameters and Guidelines

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641
Statutes of 1993, Chapters 1136, 1137 and 1138

Open Meetings Act/Brown Act Reform

I. SUMMARY OF THE MANDATE

Government Code sections 54952, 54954.2, 54957.1 and 54957.7, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act.

On June 28, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469). The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

It also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)
- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

1. Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of "legislative bodies" were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

2. School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.[1]

II. ELIGIBLE CLAIMANTS

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, prior to its amendment by Statutes of 1998, chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for *Brown Act Reform* was filed on December 29, 1994. Statutes of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs

[1] The parameters and guidelines for the *School Site Councils and Brown Act Reform* test claim are not included in these parameters and guidelines.

incurred on or after January 1, 1994 for compliance with the *Brown Act Reform* mandate are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

Initial years' costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform*.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are eligible for reimbursement:

A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.[2] (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

[2] As amended by Statutes of 1993, chapter 1136.

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
    a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
    b. 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 consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
    c. 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. (Gov. Code, § 54957.1, subd. (a)(3).)
    d. 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 of 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. (Gov. Code, § 54957.1, subd. (a)(4).)

e. 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. (Gov. Code, § 54957.1, subd. (a)(6).)

3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)

4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform.* If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim must be timely filed. Each of the following cost elements must be identified for each reimbursable activity identified in section IV of this document.

A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred pursuant to section IV.A of these parameters and guidelines for agenda

preparation and posting, including closed session items.[3] Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

1. Actual Time

   List the meeting names and dates. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

   Counties and cities may claim indirect costs pursuant to section V.C.

2. Standard Time

   a. Main Legislative Body Meetings of Counties and Cities

      List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

      Counties and cities may claim indirect costs pursuant to section V.C.

   b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

      List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

      Special districts, counties and cities may claim indirect costs pursuant to section V.C.

   c. School and Community College Districts and County Offices of Education

      List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda for County Offices of Education and for districts by enrollment size are:

[3] The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more	45 minutes
Enrollment 10,000 – 19,999	15 minutes
Enrollment less than 10,000	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to section V.C.

3. Flat Rate[4]

List the meeting names and dates. Multiply the uniform cost allowance, shown in the table provided below, by the number of meetings. The uniform cost allowance shall be adjusted each year subsequent to fiscal year 1997-1998 by the Implicit Price Deflator referenced in Government Code section 17523.

1993-1994	$ 90.10
1994-1995	92.44
1995-1996	95.12
1996-1997	97.31
1997-1998	100.00

B. Direct Cost Reporting

Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract

[4] The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV.B of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

C. Indirect Cost Rates

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department of program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

Community Colleges

Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the OMB Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training

packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

For those entities that elect reimbursement pursuant to the standard time methodology, option 2 in section V.A, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to the flat-rate methodology, option 3 in section V.A, copies of agendas shall be sufficient evidence.

The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-1999 was as follows:

City Manager	17%
City Attorney	15%
City Clerk	36%
Department Managers	9%
Secretaries	23%
Total	100%

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-2001 for each classification is as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manager	$60	$12	29%	$13	$85
City Attorney	$55	$10	30%	$15	$80
City Clerk	$40	$ 8	31%	$12	$60
Department Manager	$45	$ 9	30%	$11	$65
Secretaries	$18	$ 5	25%	$ 7	$30

The blended productive hourly rate for fiscal year 2000-2001 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17%	$85	$14.25
City Attorney	15%	$80	$12.00
City Clerk	36%	$60	$21.60

Department Manager	9%	$65	$ 5.85
Secretaries	23%	$30	$ 6.90
Total	100%		$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain a mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE CALIFORNIA CONSTITUTION

Exhibit “B”

BEFORE THE

COMMISSION ON STATE MANDATES

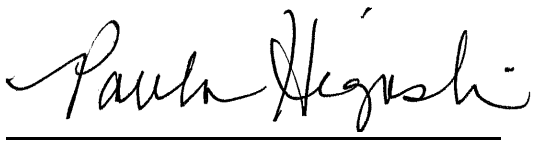
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes of 1993, Chapters 1136, 1137, 1138 and Statutes of 1994, Chapter 32; Filed on December 29, 1994 and amended on August 7, 2000; By the City of Newport Beach, Claimant.	No. CSM 4469 *Brown Act Reform* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on June 28, 2001)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on June 29, 2001.



Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes of 1993, Chapters 1136, 1137, 1138 and Statutes of 1994, Chapter 32; Filed on December 29, 1994 and amended on August 7, 2000; By the City of Newport Beach, Claimant.	No. CSM 4469 *Brown Act Reform* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on June 28, 2001)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on May 24, 2001 during a regularly scheduled hearing. Mr. Glen Everroad and Ms. Pamela Stone appeared on behalf of the City of Newport Beach. Mr. Allan Burdick appeared on behalf of the California State Association of Counties. Mr. Cedrik Zemitis and Mr. Jim Lombard appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 4 to 2, approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires the "legislative bodies" of local agencies to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 54950 et seq., hereafter referred to as the Brown Act or the Act).[2] Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and, section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

[1] As used in the Ralph M. Brown Act, "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. (Gov. Code, § 54951.)

[2] All further statutory references are to the California Government Code unless otherwise indicated.

The California Legislature enacted the Brown Act in 1953 based on an Assembly Judiciary Committee Report regarding the "secret decisionmaking" of local governments. The Act declared the law's intent that deliberations as well as action of local agencies occur openly and publicly. It also represented the Legislature's determination of how the balance should be struck between public access to meetings of multi-member public bodies on the one hand and the need for confidential candor, debate, and information gathering on the other .[3] The underlying theme of the Brown Act recognizes that:

> The people [of this State], 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.[4]

Since the Brown Act was enacted, it has been amended regularly to expand the requirements of the Act and to clarify the "legislative bodies" to which the requirements of the Act apply. Numerous court cases and Attorney General Opinions have re-affirmed the Legislature's original intent to ensure that deliberations and decisionmaking of local agencies be conducted in an open forum with full participation from the public.

Prior Test Claims

The Comrnission on State Mandates has previously determined two test claims on the Brown Act.

Open Meetings Act (CSM-4257)

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim that added Government Code sections 54954.2 and 54954.3 to the Brown Act. Section 54954.2 required the "legislative bodies" of local agencies *for the first time* to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.

Under CSM-4257, local agencies were eligible for reimbursement for the Brown Act requirements for the following types of legislative bodies: 1) the governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity; 2) any board, commission, committee, or body which exercises authority delegated to it by the legislative body; and, 3) planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body. The Comrnission's Parameters and Guidelines for CSM-4257 specifically provided reimbursement for the increased costs to prepare and post a single agenda 72 hours before a meeting of the legislative

[3] California Attorney General's Office, The Brown Act, Open Meetings for Local Legislative Bodies (1994).
[4] Government Code section 54950.

body of a local agency containing a brief general description of each item of business to be transacted or discussed.

School Site Councils and Brown Act Reform (CSM-4501)

The Brown Act came before the Cornmission again in test claim CSM-4501, *School Site Councils and Brown Act Reform,* filed by the Kern High School District, San Diego Unified School District, and the County of Santa Clara. This test claim was filed on Government Code section 54952 and Education Code section 35147 and addressed the application of the open meeting provisions of the Brown Act to specified schoolsite councils and advisory committees of school districts. On April 27, 2000, the Commission approved this test claim finding that Statutes of 1993, chapter 1138 among other things, added Government Code section 54952, subdivision (a), which provided, in relevant part, that the term "legislative body" for purposes of the open meeting requirements of the Brown Act also included any local body created by state or federal statute.

The Commission also found that Statutes of 1994, chapter 239 removed certain school site councils and advisory committees from the full requirements of the Brown Act, but added Education Code section 35147, which imposed an abbreviated set of open meeting requirements on school site councils and advisory committees established as part of the following programs: School Improvement Program; Native American Indian Early Childhood Education Act; Chacon-Moscone Bilingual-Bicultural Education Act; School-Based Coordination Program; Compensatory Education Program; Migrant Education Program; Motivation and Maintenance Program; and the federal Indian Education Program.

The Commission's Parameters and Guidelines for CSM-4501 provided reimbursement for notice and agenda activities for school district's schoolsite councils and certain advisory committees.

Claimant's Contentions

In their test claim, claimant contends that the test claim legislation imposes an increased level of service on local agencies. The claimant asserts the following:

- Government Code section 54952, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the definition of "legislative body" which is subject to the notice requirements of the Brown Act. The agenda preparation and posting requirements of section 54954.2 now apply to an increased number of entities such as standing committees, advisory bodies and other local bodies created by state or federal statute;

- Government Code section 54954.2, subdivision (a), as amended, imposes a higher level of service on local agencies by expanding the notice requirements to include a description of each item to be discussed or transacted in closed session;

- Government Code sections 54957.1, subdivisions (a), (b) and (c) and 54957.7, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the nature and extent of the required public reporting of action taken in closed sessions; and,

- These amendments require an increased level of service by local agencies, necessitating training for local agencies.

Department of Finance Contentions

The Department of Finance (DOF) submitted comments on this test claim on June 1, 1995. Their contention is that while chapters 1136 and 1137 (agenda and notice requirements and closed session requirements) may have resulted in reimbursable state-mandated costs pertaining to certain notification requirements, they may also have resulted in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. In addition, the DOF contends that the intent of chapter 1138 (definition of legislative body) was to. provide cost savings to local governments by simplifying and clarifying the Brown Act requirements. Finally, regarding chapter 32, the DOF states that this is essentially clean-up legislation for the other three named chapters and does not affect the scope of the changes made by those chapters. Consequently, it is the DOF's belief that there are no reimbursable state-mandated costs in that legislation?

At the hearing, the DOF argued that local agencies requested the enactment of the test claim legislation, and therefore, there are no costs mandated by the state.

Interested Party Contentions

The County Counsel of Marin County submitted comments in support of the test claim on May 30, 1995. Their contention is that the 1993 and 1994 amendments to the Brown Act require local agencies to perform an increased level of service resulting in increased state mandated costs for reporting requirements, record keeping, and other County staff responsibilities. In addition, the County claims that these provisions have resulted in an increased level of service to advisory bodies, which are now subject to the Brown Act amendments.

Interested Persons Contentions

Former Senator Quentin Kopp, author of the majority of the Brown Act legislation, submitted comments in opposition to the test claim. His contention is that the amendments to the Brown Act were proposed to reduce the costs to local agencies for posting agendas, making oral statements regarding closed session items, and providing a description of the items on the agenda.

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[5] Regarding chapter 32, the test claim submitted by claimant stated: "The provisions of Chapter 32, Statutes of 1994, did not effect the scope of the state mandated activities and costs described in this test claim,"

The California Newspaper 'Publishers Association submitted comments in opposition to the test claim. Their contention is that the changes to the Brown Act do not create a state mandated local program because the amendments were intended by the legislature to be instructive, not to expand the open meeting requirements. In particular, the clarifying language "A brief general description of an item generally need not exceed 20 words" was added to radically reduce the costs of creating and posting agendas. The First Amendment Coalition submitted comments in opposition to the test claim adopting the arguments and conclusion of the California Newspaper Publishers Association.

Paul C. Minney of Spector, Middleton, Young & Minney, LLP submitted comments on the Draft Staff Analysis. His contention is that both permanent and temporary decisionmaking committees or boards created by formal action are "new legislative bodies" under the test claim statute because these bodies can exercise authority broader than that granted to the legislative body.

COMMISSION FINDINGS

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must direct or obligate an activity or task upon local governmental entities. If the statutory language does not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program, " subject to article XIII B, section 6 of the California Constitution, as an activity that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect irnmediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose "costs mandated by the state?

The test claim legislation requires the performance of certain activities related to public meetings by specified "legislative bodies" of local agencies. These local governmental bodies are carrying out a basic governmental function of making decisions regarding the operations of local agencies that provide services to the public. The mandatory compliance with the Brown Act is unique to local agencies; it is a peculiarly governmental function that does not apply to all residents and entities in the state. Therefore, the Commission finds that compliance by

[6] *County of Los Angeles v. State of California (1987) 43* Cal.3d *46, 56; Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, *537; City of Sacramento v. State of California* (1990) 50 Cal.3d 51, *66; Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

local agencies with the open meeting requirements of the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The Commission continued its inquiry to determine if the test claim legislation constitutes a new program or higher level of service and imposes "costs mandated by the state" upon local agencies. Claimant contends that the test claim legislation imposes a higher level of service upon local agencies because the agenda preparation and posting requirements apply to an increased number of entities now defined as "legislative bodies" such as standing committees, advisory bodies and other local bodies created by state or federal statute. Claimant also contends that the test claim legislation requires new activities regarding the inclusion of closed session items on agendas and the reporting of closed session items both prior to and after the closed session. The analysis of these issues for the statutes at issue is discussed below.

Issue 1: Does the test claim legislation impose a new program or higher level of service upon local governmental bodies within the meaning of article XIII B, section 6 of the California Constitution?

Issue 1 is presented in two parts: Part One discusses the entities subject to the open session notice and agenda requirements and Part Two discusses the closed session requirements for all legislative bodies.

Part One: Entities Subject to Open Session Notice and Agenda Requirements

The notice and agenda provisions of the Brown Act are found in Government Code section 54954.2. Under the test claim legislation, this section requires the "legislative bodies" of local agencies to post a notice and agenda containing a brief general description of each item to be discussed at the meeting. Section 54954.2 states in relevant part the following:

> At least 72 hours before a regular meeting, the legislative body of a 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.

New Entities Subject to the Notice & Agenda Requirements

Government Code section 54952 describes the "legislative bodies" required to comply with the Brown Act. The test claim legislation substantially amended section 54952 to clarify and describe the "legislative bodies" in greater detail. Section 54952 now defines "legislative body" in relevant part as follows:

> (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 which 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.

Thus, the "legislative bodies" required to comply with the Brown Act now include the following:

- The governing body of a local agency;
- A local body created by state or federal statute;
- A permanent decisionmaking body created by formal action;
- A temporary decisionmaking body created by formal action;
- A permanent advisory body created by formal action (except an advisory body with less than a quorum of the members);
- A temporary advisory body created by formal action (except an advisory body with less than a quorum of the members); and,
- Standing connnittees, irrespective of their composition with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action.

Under prior law, the "legislative body" of a local agency required to comply with the Brown Act was defined in several statutory provisions. Section 54952 defined the governing body of a local agency or any board or commission thereof, and any body on which officers of a local agency serve in their official capacity as members; section 54952.2 defined any multimember body with delegated authority of the legislative body; section 54952.3 defined any advisory body created by formal action and included both reduced notice requirements and an exemption from all Brown Act requirements for a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body; and, section 54952.5 defined planning commissions, library boards, recreation cornmissions, and other permanent boards or commissions of a local agency as "legislative bodies. "

While amending section 54952, the test claim legislation also repealed sections 54952.2, 54952.3 and 54952.5. Based on the following analysis, the Commission finds that the test claim legislation created the following two new "legislative bodies" required to comply with the provisions of the Brown Act including the notice and agenda requirements of section 54954.2:

- Any local body created by state or federal statute

This body was not identified as a "legislative body" in prior law. Thus, the Commission finds that under the test claim legislation, it *is* a new body required to comply with the open session notice and agenda requirements imposed by Governrnent Code section 54954.2; and,

- Standing committees with less than a quorum of the governing body which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action

The test claim legislation defines legislative body to include "standing committees of a legislative body, *irrespective of their composition,* which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action." Historically, standing committees were permanent committees that met regularly and considered subjects of a particular class.[7] Their composition, however, varied depending on the body that created them.

Prior to the enactment of the test claim legislation, the various statutory provisions regarding the application of the Brown Act created much confusion as to whether committees, regardless of their composition, fell under the requirements of the Act. However, numerous judicial decisions and opinions of the Attorney General found that the Brown Act essentially governed *all* meetings of a *quorum* of the legislative body of a local agency when the public's business was discussed. [8]

In 1993, just prior to the passage of the test claim legislation, this issue was finally resolved in the *Freedom Newspaper* case. [9] In *Freedom,* a newspaper publisher sought a writ of mandate to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory in nature and was composed of four members of the nine-member board. The Supreme Court held that since the operations committee was an advisory committee composed solely of board members *numbering less than a quorum of the board,* the committee was not a "legislative body" pursuant to the provisions of Government Code section 54952.3, and was therefore excluded from the open meeting requirements of the Brown Act. The *Freedom* Court agreed with a long-standing 1968 Attorney General Opinion that stated: " [w]e have consistently concluded that committees composed of less *than a quorum of the legislative body creating them and not established on a permanent basis for a continuing function are not subject to the open meeting requirements of that Act.* " (Emphasis supplied). [10]

Thus, the Commission finds that while standing committees with less than a quorum of the members of the legislative body were exempt from the requirements of the Brown Act under prior law, the test claim legislation now defines "standing committees, *irrespective of their composition"* as new bodies required to comply with the open session notice and agenda requirements imposed by section 54954.2.

Regarding the other five bodies identified in the test claim legislation, the Commission finds they are not new "legislative bodies" because they were identified in prior law as follows:

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[7] 79 Ops.Cal.Atty.Gen. 69, 72 (1996).
[8] Id., at page 69, fn 3.
[9] *Freedom Newspapers, Inc., v. Orange County Employees Retirement System Board of Directors (1993)* 6 Cal 4th 821, 832-833.
[10] *Id.,* at pages 828-829.

- Governing body of a local agency

This body is identified as a "legislative body" in prior law in section 54952 and thus it is not a new body.

- Permanent decisionmaking committee or board created by formal action

Interested Person, Paul C. Minney, contends that permanent decisionrnaking committees created by formal action were not subject to the Brown Act before the enactment of the test claim legislation. In his comments, he states:

> Staff's conclusion [in the draft staff analysis] is predicated upon the assumption that the legislative body of a local agency can only create a "permanent decision making board" which may exercise the authority of the body that created it. This assumption is incorrect. For example, when a school district approves a charter school (by formal action) it creates a permanent body with decision making body [sic] that exercises authority broader than that granted to the school district.. .

The Commission disagrees. Under prior law, section 54952.2 stated:

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

Also, under prior law, section 54952.5 specifically included permanent boards and commissions of local agencies within the coverage of the Brown Act. That section stated:

> As used in this chapter, 'legislative body' also includes, but is not limited to, planning commissions, library boards, recreation cornmissions, *and other permanent boards or commissions of* a local agency. (Emphasis added.)

When determining the intent of a statute, the first step is to look at the statute's words and give them their plain and ordinary meaning. Where the words of the statute are not ambiguous, they must be applied as written and may not be altered in any way." The plain language of former sections 54952.2 and 54952.5 include permanent boards and commissions as legislative bodies and any board or cornmission that exercises any authority delegated to it; i.e. decisionmaking authority.

Moreover, in their 1989 booklet, *Open Meeting Laws,* the Attorney General's Office determined that decisionmaking bodies were required to comply with the Brown Act before the enactment of the test claim legislation. In the booklet, the Attorney General's Office states:

> *Under current law, decision-making bodies would primarily be covered under section* 54952 *or* 54952.2 and advisory committees under section 54952.3. However, section 54952.5 was invoked by this office to apply to a hearing

[11] *City of Merced v. State of California (1984) 153* Cal. App.3d *777; Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132.

> board of an air pollution control district. (71 Ops.Cal.Atty.Gen. 96 (1988) .) Although there is not a published opinion or indexed letter precisely on point, we think that permanent committees (e.g., budget or finance committees) comprised solely of less than a quorum of the members of a board or commission were not intended to be covered by section 54952.5. (See discussion of less than a quorum exception in section C(6) at page 20 in this pamphlet .) *However, if such committees "exercise" enough "authority" "delegated" to them by a legislative body, they might be covered by section 54952.2 as a decision-making body rather than an advisory body.*

While the Attorney General's views do not bind the Commission, they are entitled to considerable weight. This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements. [12]

Accordingly, the Cornmission finds that permanent decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Temporarv decisionmaking committee or board created by formal action

This body is also identified as a "legislative body" in prior law under section 54952.2 as discussed above. Section 54952.2 stated:

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

For the same reasons discussed under the section analyzing permanent decisionmaking bodies, the Commission finds that temporary decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Permanent advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in sections 54952.3 and 54952.5. Section 54952.3 defined "legislative body" as *any* advisory committee created by formal action. In addition, section 54952.3 provides an exception for any advisory committee composed solely of less than a quorum of the members of the legislative body. Section 54952.5 also defined "legislative body" to include permanent boards or cornmissions of a local agency. Thus, the Comrnission finds that permanent advisory committees or boards created by formal action (except less than a quorum of the members) were "legislative bodies" under prior law.

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[12] *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors, supra, 6* Cal.4th at p. *829.*

- Temporary advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in section 54952.3 as discussed above, and thus, the Commission finds that this body was a "legislative body" under prior law.

- Standing committees comprised of a quorum of the members of the legislative body

These bodies are also defined as a "legislative body" under prior law. Standing committees, by definition, are permanent committees that regularly consider a particular subject matter. When comprised of a quorum of the members of the legislative body, these committees fall under the definition of a committee with delegated authority since they are empowered to make decisions on behalf of the legislative body. [13] In addition, standing committees comprised of a quorum of the members fall under the definition of "legislative body" in former Government Code sections 54952.3 and 54952.5 (i.e. permanent advisory committees of a local agency). Thus, the Cornmission finds that standing committees composed of at least a quorum of the members of the legislative body are not new bodies under the test claim legislation.

The chart below provides a summary of the Cornmission's findings:

Test Claim Legislation Section 54952	**Prior Law Sections 54952, 54952.3, 54952.3, 54952.5**
Governing body	§ 54952 Governing body
Local body created by state or federal statute	**NEW**
Permanent decisionmaking committee or board created by formal action	§ 54952.2 Any board, committee, body that exercises any authority of a legislative body ***delegated*** to it by the legislative body § 54952.5 Planning commissions, library boards, recreation commissions, and other ***permanent*** boards or commissions of a local agency
Temporary decisionmaking committee or board created by formal action	§ 54952.2
Permanent advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3 ***Any*** advisory committee created by formal action (except less than a quorum of the members) § 54952.5 Planning commissions, library boards, recreation commission, ***and other permanent*** boards or commissions of a local agency
Temporary advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3

[13] Former Government Code section 54952.2 stated in relevant part as follows:

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

Standing committees, irrespective of their composition (i.e. even those with less than a quorum of the members of the legislative body) with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action	**NEW--Standing committees with less than a quorum of the members** However, standing committees with a quorum of members of the legislative body are covered in prior law through §§ 54952.2, 54952.3 and 54952.5.

Based on the foregoing, the Commission finds that Government Code sections 54952 and 54954.2, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for two new bodies (local bodies created by state or federal statute and standing committees with less than a quorum of the members of the legislative body with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action) to prepare and post an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Advisory Bodies Subject to the Notice & Agenda Requirements

In the *Open Meetings Act* (CSM-4257) test claim, the Commission determined that Government Code section 54954.2 imposed a reimbursable state mandated program upon "all legislative bodies, " as defined, to post a notice and agenda 72 hours prior to the meeting of a legislative body. That section also required that the notice and agenda contain a brief general description of all items to be discussed at the meeting. Section 54954.2 was enacted in 1986 and applied to all legislative bodies, which by definition included advisory bodies before the enactment of the test claim legislation.

However, prior law (former Governrnent Code section 54952.3, which was enacted in 1968) also *exempted* advisory bodies from the regular notice and agenda provisions of the Act and held them to significantly reduced notice requirements:

> Meetings of such advisory cornmissions, committees or bodies.. .shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.
>
> If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. *No other notice* ***of*** *regular meetings is required.* (Emphasis added.)

Thus, prior law, as specified in sections 54954.2 and 54952.3 , imposed conflicting duties on advisory bodies. If an advisory body complied with section 54952.3 by not preparing and posting an agenda, did it violate section 54954.2? In other words, which statute constitutes prior law with respect to the duties imposed on advisory bodies?

Sutherland Statutory Construction, a treatise on statutory construction, explains that whenever the legislature enacts a provision, it has in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the new provision is presumed to be in accord with the legislative policy embodied in those prior statutes. When a conflict

exists, the more specific statute controls over the more general one. [14] However, where the conflict is irreconcilable, the statute that is the more recent of the two conflicting statutes prevails. [15]

In this case, the Cornmission finds the express language of section 54952.3 is more specific than the provisions of section 54954.2 and thus, prevails as prior law. Section 54952.3 *specifically* identified advisory cornmissions and committees as legislative bodies that were not required to prepare and post an agenda. They were only required to deliver notice of their meetings 24-hours prior to the meeting and to provide in their bylaws for the time and place of holding regular meetings. In contrast, section 54954.2 *generally* referred to "the legislative body of the local agency, or its designee, " when describing the bodies to which the notice requirements applied. Thus, by the repeal of section 54952.3 by the test claim legislation, advisory bodies are now subject, for the first time, to the full notice and agenda requirements specified in section 54954.2, subdivision (a), of the Brown Act.

Therefore, the Commission finds that Government Code section 54954.2, subdivision (a), constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all permanent and temporary advisory bodies created by formal action (except less than a quorum of the members of the legislative body) to comply with the full notice and agenda requirements of the Brown Act by preparing and posting an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Part Two: Closed Session Requirements

Under prior law, the legislative body was required to state the reasons for a closed session either before or after the closed session and to publicly report the action and vote taken in closed session regarding the appointment, employment or dismissal of a public employee. The test claim legislation added four new closed session requirements that apply to all "legislative bodies" including those newly defined under the test claim legislation.

Notice and Agenda Requirements

The test claim legislation amended the notice and agenda provisions to include closed session items on the agenda. Section 54954.2 states, in relevant part, the following:

> At least 72 hours before a regular meeting, the legislative body of a 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. (Underlined portion indicates amendments to this section by the test claim legislation).

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[14] *People v. Tanner* (1979) 24 Cal.3d 5 14, 521, where the California Supreme Court states that "[a] specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates."

[15] 2B, Sutherland, Statutory Construction (5th Ed. 1994) § 51.02.

Under prior law, the legislative body was only required to state the general reason or reasons for the closed session either prior to or after holding the closed session and if desired, cite the statutory authority under which the session was being held? The test claim legislation now requires a brief general description of closed session items to be included on the agenda for the meeting.

Thus, the Commission finds that Government Code section 54954.2, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" defined in Government Code section 54952 to provide a brief general description of all items to be discussed in closed session on the agenda of the meeting.

Prior Disclosure Requirements

Under prior law, section 54957.7 only required a legislative body, prior to or after the closed session, to state the general reason for the closed session and to include the appropriate statutory authority, if desired. The test claim legislation amended this section to provide, in relevant part, as follows:

> (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.

The test claim legislation now requires all legislative bodies to disclose each item to be discussed in closed session prior to the start of the closed session.

Accordingly, the Commission finds that Governrnent Code section 54957.7, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" as defined in Government Code section 54952 to disclose, prior to holding a closed session, each item to be discussed in closed session.

Subsequent Reporting Requirements

Subdivision (b) was added to section 54957.7 by the test claim legislation and provides as follows :

> (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.

[16] Former Government Code section 54957.7.

Section 54957.1, subdivision (a) of the test claim legislation added an extensive list of items requiring the legislative body to publicly report, either orally or in writing,[17] the actions and votes taken in closed session for the following items:

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

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[17] Government Code section 54957.1(b) provides in relevant part the following:
"Reports that are required to be made pursuant to this section may be made orally or in writing."

(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.

Under prior law, the sole reporting requirement for closed sessions under section 54957.1 was to report at the current or a subsequent meeting, any action taken and any roll call vote *to appoint, employ, or dismiss a public employee.* [18] Other issues that could be discussed in closed session such as licensing matters, real estate negotiations or pending litigation did not require any reporting in a public session.'" The test claim legislation now requires the legislative body to reconvene into public, open session and report the actions and votes taken on the five new items listed above which were discussed in closed session.

Therefore, the Cornmission finds that Government Code sections 54957 .7, subdivision (b), and 54957.1, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to reconvene in public session prior to adjournment and report the five items identified in section 54957.1, subdivision (a) (l-4, 6) which were discussed in closed session.

Documentation Requirements

Subdivisions (b) and (c) of section 54957.1 of the test claim legislation concern the provision of documentation from closed sessions to members of the public. This section provides, in relevant part, as follows:

---

[18] Former section 54957.1 stated the following:

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

[19] Government Code sections 54956.7, 54956.8, 54956.9, 54957.

(b). . .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 sumrnarizes the substance of the amendment for the benefit of the document requester or any other person present and requesting the information.

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

Prior to the test claim legislation, section 54957.1 did not address writings. The subject of 'writings' was addressed in section 54957.5 which provided for the inspection and distribution of certain writings that were public records under the California Public Records Act. However, subdivision (e) of section 54957.5 provided that, "(T)his section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of a local agency.. . ". Thus, while prior law provided for the inspection and provision of certain writings distributed to the legislative body, it did not require the distribution of documentation from closed sessions to members of the public.

Accordingly, the Commission finds that Government Code section 54957.1, subdivisions (b) and (c), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to provide copies of documentation from the closed session within the specified timelines.

Issue 2: Does the test claim legislation impose costs mandated by the state pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514?

The remaining issue is whether there are increased costs mandated by the state. Government Code section 175 14 provides in relevant part the following:

> Costs mandated by the state" means any *increased costs* which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975.. .which mandates a new program or higher

level of service within the meaning of Section 6 of Article XIII B of the California Constitution. (Emphasis added.)

In addition, section 17556 provides in relevant part the following:

> The commission shall not find costs mandated by the state, as defined in Section 175 14, in any claim submitted by a local agency or school district, if, after a hearing, the cornmission finds that:
>
> (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

At the May 24, 2001 hearing, the Department of Finance contended that local agencies requested the enactment of the test claim legislation and, thus, there are no costs mandated by the state. Mr. Cedrik Zemitis testified on behalf of the Department of Finance as follows:

> MR. ZEMITIS: Second, local request, we would note that at the time the test claim statute was considered by the legislature, it was clear that these bills were introduced at the behest of local governments. The author of most of the bills stated for the record at the time that existing law was amended specifically at the request of local agencies, Indeed, numerous legislative committee analyses support the author.
>
> In addition, the California School Boards Association at the time stated that clarification of the existing Brown Act will not create additional costs to local government. In addition, the California State Association of Counties and numerous other local entities all officially supported the legislation because it would simplify and clarify the Brown Act with no additional costs.
>
> While we do not have resolutions from all of the affected local entities, which would be in the thousands literally, representatives of those entities clearly sponsored the legislation as well as reported savings and no new costs. Therefore we believe any mandate would not be reimbursable.[20]

In response, the claimant testified that the City of Newport Beach did not request legislative authority to implement the program nor did they sponsor the test claim legislation.[21] In

[20] Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 14, line 25; page 15, lines 1-25; page 16, lines 1-7.

[21] Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 29, lines 15-21.

addition, there is no evidence in the record of a resolution from any governing body of a local agency requesting authorization to implement the test claim legislation. Therefore, the Commission finds that Governrnent Code section 17556, subdivision (a) does not apply in this test claim.

Further, section 17556, subdivision (e) provides that the commission shall not find costs mandated by the state, as defined in Section 175 14, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

> (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

The Department of Finance contends that while chapters 1136 and 1137 may have resulted in reimbursable state-mandated activities pertaining to certain notification requirements, these chapters may also result in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. The Department also contends that the test claim legislation results in cost savings to local governments by simplifying and clarifying the Brown Act. The Department did not comment on the new closed session requirements of the test claim legislation.

The original claimant, the County of Santa Clara, submitted a declaration to support their contention that the test claim legislation resulted in an increase in costs incurred by several County departments. Steve Conrad, SB 90 Coordinator for the County of Santa Clara declared on December 28, 1994 that an additional $560 will be incurred per year by Santa Clara county to include closed session items on the agenda, and that an additional $2,200 will be incurred per year by Santa Clara county to record closed session discussions in order to report in open session the items discussed in closed session, and that an additional $6,300 will be incurred per year by Santa Clara county to prepare and post an agenda for the new bodies defined as "legislative bodies" in the test claim legislation.

In reviewing the language of the test claim legislation, there is no language that provides for offsetting savings resulting in *no* net costs to the claimants, nor does the test claim legislation include any additional revenue specifically intended to fund the mandate. While the Department of Finance contends that the test claim statutes may result in offsetting savings to the claimants by limiting the agenda descriptions to "20 words or less", the Corn-mission finds that the language of the test claim legislation does not support this conclusion. Nor has the Department provided any documentary evidence to support their contention. Former Senator Kopp contends that the legislative intent of these amendments was to simplify and clarify the Brown Act. However, no documentary evidence has been provided to support this contention. Thus, the Comrnission finds that Government Code section 17556, subdivision (e) does not apply in this test claim.

Therefore, the Commission finds that the test claim legislation, which requires the legislative bodies of local agencies to perform a number of additional activities in relation to the open meeting requirements of the Brown Act, imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation (Government Code sections 54952, 54954.2, 54957.1, and 54957.7) imposes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

Open Session Requirements

Activity	Applies To
To prepare and post an agenda at least 72 hours before a regular meeting containing a brief general description of each item of business to be transacted or discussed at the meeting. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	Local Bodies created by state or federal statute. Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action. Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Closed Session Requirements

Activity	Applies To
To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	All "legislative bodies"
To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. [Gov. Code § 54957.7, subd. (a)]	All "legislative bodies"
To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(l-4, 6). [Gov. Code § 54957.7, subd. (b)]	All "legislative bodies"
To provide copies of closed session documents as required. [Gov. Code § 54957.1, Subd. (b) and (c)]	All "legislative bodies"

The Comrnission further concludes that all other statutes and code sections included in this test claim do not constitute a reimbursable state-mandated program.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 958 14.

June 29, 2001, I served the:

Adopted Statement of Decision
Brown Act Reform, CSM 4469
City of Newport Beach, Claimant
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Statutes of 1993, Chapters 1136, 1137 & 1138
Statutes of 1994, Chapter 32

by placing a true copy thereof in an envelope addressed to:

Mr. Glen Everroad, Revenue Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 25, 2000, at Sacramento, California.

Victoria Soriano
VICTORIA SORIANO

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE CALIFORNIA CONSTITUTION

Exhibit “C”

MAKE YOUR VOICE HEARD

OFFICIAL
VOTER INFORMATION GUIDE
CALIFORNIA GENERAL ELECTION NOVEMBER 2004

Propositions

Analysis | Arguments and Rebuttals | Text of Proposed Laws

OFFICIAL TITLE AND SUMMARY
Prepared by the Attorney General

Proposition 59

Public Records, Open Meetings.
Legislative Constitutional Amendment.

Measure amends Constitution to:

- Provide right of public access to meetings of government bodies and writings of government officials.
- Provide that statutes and rules furthering public access shall be broadly construed, or narrowly construed if limiting access.
- Require future statutes and rules limiting access to contain findings justifying necessity of those limitations.
- Preserve constitutional rights including rights of privacy, due process, equal protection; expressly preserves existing constitutional and statutory limitations restricting access to certain meetings and records of government bodies and officials, including law enforcement and prosecution records.

Exempts Legislature's records and meetings.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Potential minor annual state and local government costs to make additional information available to the public.

Final Votes Cast by the Legislature on SCA 1 (Proposition 59)

Assembly:	Ayes 78	Noes 0
Senate:	Ayes 34	Noes 0

Propositions

Title and Summary | Arguments and Rebuttals | Text of Proposed Laws

Ballot Measure Summary
Proposition 1A
Proposition 59
Proposition 60
Proposition 60A
Proposition 61
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Bond Overview

ANALYSIS BY THE LEGISLATIVE ANALYST

Proposition 59

Public Records, Open Meetings.
Legislative Constitutional Amendment.

BACKGROUND

The State Constitution generally does not address the public's access to government information. California, however, has a number of state statutes that provide for the public's access to government information, including documents and meetings.

Access to Government Documents. There are two basic laws that provide for the public's access to government documents:

- ***The California Public Records Act*** establishes the right of every person to inspect and obtain copies of state and local government documents. The act requires state and local agencies to establish written guidelines for public access to documents and to post these guidelines at their offices.
- ***The Legislative Open Records Act*** provides that the public may inspect legislative records. The act also requires legislative committees to maintain documents related to the history of legislation.

Access to Government Meetings. There are several laws that provide for the public's access to government meetings:

- ***The Ralph M. Brown Act*** governs meetings of legislative bodies of local agencies. The act requires local legislative bodies to provide public notice of agenda items and to hold meetings in an open forum.
- ***The Bagley-Keene Open Meeting Act*** requires that meetings of state bodies be conducted openly and that documents related to a subject of discussion at a public meeting be made available for inspection.
- ***The Grunsky-Burton Open Meeting Act*** requires that meetings of the Legislature be open to the public and that all persons be allowed to attend the meetings.

Some Information Exempt From Disclosure. While these laws provide for public access to a significant amount of information, they also allow some information to be kept private. Many of the exclusions are provided in the interest of protecting the privacy of members of the public. For instance,

medical testing records are exempt from disclosure. Other exemptions are provided for legal and confidential matters. For instance, governments are allowed to hold closed meetings when considering personnel matters or conferring with legal counsel.

PROPOSAL

This measure adds to the State Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to public scrutiny. The measure also requires that statutes or other types of governmental decisions, including those already in effect, be broadly interpreted to further the people's right to access government information. The measure, however, still exempts some information from disclosure, such as law enforcement records. Under the measure, future governmental actions that limit the right of access would have to demonstrate the need for that restriction.

The measure does not directly require any specific information to be made available to the public. It does, however, create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private. Over time, this change could result in additional government documents being available to the public.

FISCAL EFFECT

Government entities incur some costs in complying with the public's request for documents. Entities can charge individuals requesting this information a fee for the cost of photocopying documents. These fees, however, do not cover all costs, such as staff time to retrieve the documents. By potentially increasing the amount of government information required to be made public, the measure could result in some minor annual costs to state and local governments.

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OFFICIAL
VOTER INFORMATION GUIDE

CALIFORNIA GENERAL ELECTION NOVEMBER 2004

Propositions

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ARGUMENTS AND REBUTTALS

Proposition 59

Public Records, Open Meetings.
Legislative Constitutional Amendment.

ARGUMENT in Favor of Proposition 59

Proposition 59 is about open and responsible government. A government that can hide what it does will never be accountable to the public it is supposed to serve. We need to know what the government is doing and how decisions are made in order to make the government work for us.

Everyone needs access to information from the government. Why was a building permit granted, or denied? Who is the Governor considering for appointment to a vacancy on the County Board of Supervisors? Why was the superintendent of the school district fired, and who is being considered as a replacement? Who did the City Council talk to before awarding a no-bid contract?

People all across the State ask these questions—and dozens of others—every day. And what they find out is that answers are hard to get.

California has laws that are supposed to help you get answers. But over the years they have been eroded by special interest legislation, by courts putting the burden on the public to justify disclosure, and by government officials who want to

ARGUMENT Against Proposition 59

This measure does not go far enough in guaranteeing the people access to information and documents possessed by state and local government agencies.

In fact, this measure only provides for a general *"right of access to information concerning the conduct of the people's business"* and that laws in California *"shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."*

Laws are construed (i.e., interpreted) by officials charged with following them—and by courts when asked. The rule of interpretation contained in this measure would probably have a very limited effect.

Indeed, this measure explicitly states that it does not supersede or modify any *"right to privacy guaranteed by Section 1"* of Article I of the California Constitution.

While a right to privacy—especially against government intrusion-is critical in today's society—government employee groups are using the state constitution's "right to privacy" to hide the amount of

avoid scrutiny and keep secrets. Proposition 59 will help reverse that trend.

What will Proposition 59 do? It will create a new civil right: a constitutional right to know what the government is doing, why it is doing it, and how. It will ensure that public agencies, officials, and courts broadly apply laws that promote public knowledge. It will compel them to narrowly apply laws that limit openness in government —including discretionary privileges and exemptions that are routinely invoked even when there is no need for secrecy. It will create a high hurdle for restrictions on your right to information, requiring a clear demonstration of the need for any new limitation. It will permit the courts to limit or eliminate laws that don't clear that hurdle. It will allow the public to see and understand the deliberative process through which decisions are made. It will put the burden on the government to show there is a real and legitimate need for secrecy before it denies you information.

At the same time, Proposition 59 ensures that private information about ordinary citizens will remain just that—private. It specifically says that your constitutional right to privacy won't be affected.

You have the right to decide how open your government should be. That's why Proposition 59 was unanimously passed by the Legislature and it is the reason widely diverse organizations support the Sunshine Amendment, including the American Federation of State, County and Municipal Employees and the League of California Cities.

As James Madison, a founding father and America's fourth President, said: "Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives." Tell the government that it's ordinary citizens—not bureaucrats—who ought to decide what we need to know. Vote yes on Proposition 59.

money, benefits, and perks they receive at public expense!

Proposition 59 may be better than nothing, but it does not go far enough. The question is whether to vote "yes" and hope for more or vote "no" and demand more.

GARY B. WESLEY, *Attorney at Law*

REBUTTAL to Argument Against Proposition 59

Mr. Wesley's skepticism of open government laws is understandable. Several years ago, when he sued his city council under the open meeting law alleging it had illegally used a closed session to discuss a topic not mentioned on the agenda, the court would not let him question the council members about what they had discussed behind closed doors.

The court concluded that because the law did not expressly authorize such questioning and because it contained other provisions protecting closed session discussions, government officials could not be asked about what they discussed even to obtain evidence for trial, and even if there was no other way of proving a violation of the law.

In other words, he lost because the court applied the general rule of access narrowly, and the exception allowing secrecy broadly—precisely what Proposition 59 would reverse.

As for privacy, the constitution has never been interpreted to protect the abuse of official authority or the wasting of public resources by anyone, and Proposition 59 will not create a screen for anyone to use in hiding fraud, waste, or other serious misconduct.

On the contrary, Proposition 59 will add independent force to the state's laws requiring government transparency. It will create a window on how all public bodies

MIKE MACHADO, *State Senator*

JACQUELINE JACOBBERGER,
President
League of Women Voters of California

PETER SCHEER, *Executive Director*
California First Amendment Coalition

REBUTTAL to Argument in Favor of Proposition 59

As an attorney who has attempted for many years to use California laws to identify and weed out waste and corruption in local government, I am quite sympathetic to Proposition 59.

It is important, however, for voters to know what Proposition 59 would NOT do.

As written (by the State Legislature), Proposition 59 would continue to exempt from disclosure government records deemed "private" by the courts and would not apply at all to the "confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses . . .".

Voters should also consider that insofar as electing some top persons in government (i.e., having a representative democracy) is key to making career government bureaucrats more accountable, elections (especially for State Assembly, State Senate, and Congress) have been undermined by:

(1) the dependence on private, special interest campaign money (sometimes called "legalized bribes"); and

(2) the self-serving creation (every 10 years) of gerrymandered legislative districts that protect incumbents from competition.

Moreover, anyone who blindly trusts a computer program to and officials conduct the public's business, for well or ill, while sparing the dignity and reputations of ordinary people, public employees, and even high officials who have done nothing to merit public censure or concern.

MIKE MACHADO, *State Senator*

THOMAS W. NEWTON, *General Counsel, California Newspaper Publishers Association*

JOHN RUSSO, *City Attorney*
City of Oakland

count votes (without any "paper trail" for potential verification) is foolish.

Sadly, we are a long way from having true representative democracy in California—and across America.

Government is getting bigger and becoming more wasteful, insular, and abusive. Proposition 59 would not do much to reverse that alarming trend.

GARY B. WESLEY, *Attorney at Law*

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Proposition 59

This amendment proposed by Senate Constitutional Amendment 1 of the 2003–2004 Regular Session (Resolution Chapter 1, Statutes of 2004) expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO
SECTION 3 OF ARTICLE I

SEC. 3. *(a)* The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(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.

Proposition 60

This amendment proposed by Senate Constitutional Amendment 18 of the 2003–2004 Regular Session (Resolution Chapter 103, Statutes of 2004) expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE II

That Section 5 of Article II thereof is amended to read:

SEC. 5. *(a)* The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(b) A political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.

Proposition 60A

This amendment proposed by Senate Constitutional Amendment 18 of the 2003–2004 Regular Session (Resolution Chapter 103, Statutes of 2004) expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE III

That Section 9 is added to Article III thereof, to read:

SEC. 9. The proceeds from the sale of surplus state property occurring on or after the effective date of this section, and any proceeds from the previous sale of surplus state property that have not been expended or encumbered as of that date, shall be used to pay the principal and interest on bonds issued pursuant to the Economic Recovery Bond Act authorized at the March 2, 2004, statewide primary election. Once the principal and interest on those bonds are fully paid, the proceeds from the sale of surplus state property shall be deposited into the Special Fund for Economic Uncertainties, or any successor fund. For purposes of this section, surplus state property does not include property purchased with revenues described in Article XIX or any other special fund moneys.

Proposition 61

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

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

SECTION 1. Part 6 (commencing with Section 1179.10) is added to Division 1 of the Health and Safety Code, to read:

PART 6. CHILDREN'S HOSPITAL BOND ACT OF 2004

CHAPTER 1. GENERAL PROVISIONS

1179.10. This part shall be known and may be cited as the Children's Hospital Bond Act of 2004.

1179.11. As used in this part, the following terms have the following meanings:

(a) "Authority" means the California Health Facilities Financing Authority established pursuant to Section 15431 of the Government Code.

(b) "Children's hospital" means either:

(1) A University of California general acute care hospital described below:

(A) University of California, Davis Children's Hospital.

(B) Mattel Children's Hospital at University of California, Los Angeles.

(C) University Children's Hospital at University of California, Irvine.

(D) University of California, San Francisco Children's Hospital.

(E) University of California, San Diego Children's Hospital.

(2) A general acute care hospital that is, or is an operating entity of, a California nonprofit corporation incorporated prior to January 1, 2003, whose mission of clinical care, teaching, research, and advocacy