

AMENDED IN SENATE AUGUST 8, 2002

AMENDED IN SENATE JUNE 27, 2002

AMENDED IN ASSEMBLY APRIL 22, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1945

Introduced by Assembly Member Simitian

February 14, 2002

An act to add Section 54963 to the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1945, as amended, Simitian. Open meetings: closed sessions: confidential information.

The Ralph M. Brown Act generally requires that the meetings of the legislative body of a local agency be conducted openly and publicly, but also provides that the legislative body of a local agency may hold closed sessions for specified purposes. The act provides that a member of a legislative body who attends a meeting of that body where action is taken in violation of the act, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the act, is guilty of a misdemeanor.

This bill would provide that a person may not disclose confidential information, as defined, that has been acquired by being present in a closed session authorized under the act, as specified, unless the legislative body authorizes disclosure of that confidential information.

The bill would authorize a local agency to seek injunctive relief to prevent the disclosure of confidential information under these

provisions, to take disciplinary action against an employee who has willfully disclosed confidential information, and to refer a member of a legislative body who has willfully disclosed confidential information to the grand jury for investigation and possible accusation under specified procedures. The bill would provide that a local agency may not take any of these actions against a person for making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, expressing an opinion concerning the propriety or legality of actions taken by a legislative body in closed session, *including disclosing specified facts to a district attorney or grand jury to establish the illegality of action taken or potential illegality of action deliberated upon that would be illegal if the action is taken*, or disclosing information acquired by being present in a closed session that is not confidential information.

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

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

- 1 SECTION 1. Section 54963 is added to the Government
- 2 Code, to read:
- 3 54963. (a) A person may not disclose confidential
- 4 information that has been acquired by being present in a closed
- 5 session authorized by Section 54956.7, 54956.8, 54956.9, 54957,
- 6 54957.6, 54957.8, or 54957.10 to a person not entitled to receive
- 7 it, unless the legislative body authorizes disclosure of that
- 8 confidential information.
- 9 (b) For purposes of this section, “confidential information”
- 10 means a communication made in a closed session that is
- 11 specifically related to the basis for the legislative body of a local
- 12 agency to meet lawfully in closed session under this chapter.
- 13 (c) A local agency may seek injunctive relief to prevent the
- 14 disclosure of confidential information prohibited by this section.
- 15 (d) A local agency may take disciplinary action against an
- 16 employee who has willfully disclosed confidential information in
- 17 violation of this section.
- 18 (e) A local agency may refer a member of a legislative body
- 19 who has willfully disclosed confidential information in violation
- 20 of this section to the grand jury for investigation and possible *civil*
- 21 accusation pursuant to Section 3060. If a grand jury presents an



1 accusation based on an alleged violation of this section, and a trial
2 is conducted pursuant to Section 3070, the burden of proof shall
3 be the reasonable doubt standard described in Section 1096 of the
4 Penal Code, and the district attorney shall establish as an element
5 of the violation that a closed session was lawfully held.

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

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

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

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

24 (g) *Nothing in this section shall be construed to prohibit*
25 *disclosures under the whistleblower statutes contained in Section*
26 *1102.5 of the Labor Code or Article 4.5 (commencing with Section*
27 *53296) of Chapter 2 of this code.*

