

AMENDED IN SENATE AUGUST 26, 2002

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**

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**Introduced by Assembly Member Simitian**

February 14, 2002

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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~~ *provide that a violation of these provisions may be addressed by the use of remedies that are currently available by law, including, but not limited to, 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 the referral of 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, 54956.86,  
 6 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a  
 7 person not entitled to receive it, unless the legislative body  
 8 authorizes disclosure of that 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~~ *Violation of this section*  
 14 *may be addressed by the use of such remedies as are currently*  
 15 *available by law, including, but not limited to:*  
 16 (1) *Injunctive* relief to prevent the disclosure of confidential  
 17 information prohibited by this section.



1 ~~(d) A local agency may take disciplinary~~

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

4 ~~(e) A local agency may refer~~

5 (3) *Referral of* a member of a legislative body who has willfully  
6 disclosed confidential information in violation of this section to  
7 the grand jury for investigation and possible civil accusation  
8 pursuant to Section 3060. If a grand jury presents an accusation  
9 based on an alleged violation of this section, and a trial is  
10 conducted pursuant to Section 3070, the burden of proof shall be  
11 the reasonable doubt standard described in Section 1096 of the  
12 Penal Code, and the district attorney shall establish as an element  
13 of the violation that a closed session was lawfully held.

14 ~~(f) jury.~~

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

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

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

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

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

37 ~~(g)–~~

38 (f) Nothing in this section shall be construed to prohibit  
39 disclosures under the whistleblower statutes contained in Section



- 1 1102.5 of the Labor Code or Article 4.5 (commencing with Section
- 2 53296) of Chapter 2 of this code.

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