

AMENDED IN SENATE APRIL 9, 2007

AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 964

Introduced by Senator Romero

February 23, 2007

An act to amend ~~Sections 54952.2 and 54957.5~~ *Section 54952.2* of, and to add Section 54963.1 to, the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 964, as amended, Romero. Local agencies.

The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference.

This bill would prohibit any use of technological devices to conduct a meeting of a legislative body among members who are in different locations. It also would prohibit any use of substantive serial communications by members of a legislative body of a local agency, or by any officer, employee, consultant, or designee of the members of the legislative body or of the local agency, to conduct deliberations, as defined, by a majority of the members of that legislative body.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure. The Ralph M. Brown Act provides that, notwithstanding

any other provision of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act unless exempt from disclosure under that act. The Ralph M. Brown Act requires that these writings be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

This bill would provide that, notwithstanding any other provision of law, ~~all members of a legislative body of a local agency shall have an equal right of access to any writing of that agency and would prohibit the agency from charging any member a fee to inspect or obtain copies of its writings. It also would provide that when any local agency official, employee, or agent prepares any writing that relates to any matter on the agenda of a meeting of the legislative body of that local agency, the writing shall be made available to all members of the legislative body at the time the agenda is posted, if the writing exists at that time, but in no event later than the time the meeting commences when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available, and shall not charge any of those members a fee to inspect or obtain a copy of that writing.~~

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 54952.2 of the Government Code is
- 2 amended to read:
- 3 54952.2. (a) As used in this chapter, “meeting” includes any
- 4 congregation of a majority of the members of a legislative body
- 5 at the same time and place to hear, discuss, or deliberate upon any
- 6 item that is within the subject matter jurisdiction of the legislative
- 7 body or the local agency to which it pertains.

1 (b) (1) Except as authorized pursuant to Section 54953, any use
2 of technological devices to conduct a meeting of a legislative body
3 among members who are in different locations is prohibited.

4 (2) Any use of substantive serial communications by members
5 of a legislative body of a local agency, or by any officer, employee,
6 consultant, or designee of the members of the legislative body or
7 of the local agency, to conduct deliberations by a majority of the
8 members of that legislative body is prohibited. For this purpose,
9 deliberations include, but are not limited to, both of the following:

10 (A) Any communication that advances or clarifies a member's
11 understanding of an issue, facilitates an agreement or compromise
12 among members on an issue, or advances the ultimate resolution
13 of an issue.

14 (B) Any communication of information that is not otherwise
15 part of the agenda packet for a publicly noticed meeting of the
16 legislative body if that information relates to an item on an agenda
17 for a meeting of the legislative body, or is likely to be placed upon
18 an agenda of a meeting in the near future. Deliberations do not
19 include communication of information that relates solely to the
20 time and place of meetings, travel arrangements, delivery of
21 meeting materials, or similar procedural matters.

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

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

27 (2) The attendance of a majority of the members of a legislative
28 body at a conference or similar gathering open to the public that
29 involves a discussion of issues of general interest to the public or
30 to public agencies of the type represented by the legislative body,
31 provided that a majority of the members do not discuss among
32 themselves, other than as part of the scheduled program, business
33 of a specified nature that is within the subject matter jurisdiction
34 of the local agency. Nothing in this paragraph is intended to allow
35 members of the public free admission to a conference or similar
36 gathering at which the organizers have required other participants
37 or registrants to pay fees or charges as a condition of attendance.

38 (3) The attendance of a majority of the members of a legislative
39 body at an open and publicized meeting organized to address a
40 topic of local community concern by a person or organization other

1 than the local agency, provided that a majority of the members do
2 not discuss among themselves, other than as part of the scheduled
3 program, business of a specific nature that is within the subject
4 matter jurisdiction of the legislative body of the local agency.

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

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

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

22 ~~SEC. 2.—Section 54957.5 of the Government Code is amended~~
23 ~~to read:~~

24 ~~54957.5.—(a) Notwithstanding Section 6255 or any other~~
25 ~~provisions of law, agendas of public meetings and any other~~
26 ~~writings, when distributed by any person to all, or a majority of~~
27 ~~all, of the members of a legislative body of a local agency in~~
28 ~~connection with a matter subject to discussion or consideration at~~
29 ~~a public meeting of the body, are disclosable public records under~~
30 ~~the California Public Records Act (Chapter 3.5 (commencing with~~
31 ~~Section 6250) of Division 7 of Title 1), and shall be made available~~
32 ~~upon request without delay. However, this section shall not include~~
33 ~~any writing exempt from public disclosure under Section 6253.5,~~
34 ~~6254, 6254.7, or 6254.22.~~

35 ~~(b) Writings that are public records under subdivision (a) and~~
36 ~~that are distributed during a public meeting shall be made available~~
37 ~~for public inspection at the meeting if prepared by the local agency~~
38 ~~or a member of its legislative body, or after the meeting if prepared~~
39 ~~by some other person. These writings shall be made available in~~
40 ~~appropriate alternative formats upon request by a person with a~~

1 disability, as required by Section 202 of the Americans with
2 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal
3 rules and regulations adopted in implementation thereof.

4 (e) Nothing in this chapter shall be construed to prevent the
5 legislative body of a local agency from charging a fee or deposit
6 for a copy of a public record pursuant to Section 6253, except that
7 no surcharge shall be imposed on persons with disabilities in
8 violation of Section 202 of the Americans with Disabilities Act of
9 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
10 adopted in implementation thereof.

11 (d) This section shall not be construed to limit or delay the
12 public's right to inspect or obtain a copy of any record required to
13 be disclosed under the requirements of the California Public
14 Records Act (Chapter 3.5 (commencing with Section 6250) of
15 Division 7 of Title 1). Nothing in this chapter shall be construed
16 to require a legislative body of a local agency to place any paid
17 advertisement or any other paid notice in any publication.

18 (e) When any local agency official, employee, or agent prepares
19 any writing that relates to any matter on the agenda of a meeting
20 of the legislative body of that local agency, the writing shall be
21 made available to all members of the legislative body at the time
22 the agenda is posted, if the writing exists at that time, but in no
23 event later than the time the meeting commences.

24 SEC. 3. Section 54963.1 is added to the Government Code, to
25 read:

26 54963.1. (a) Notwithstanding Section 6252.5 or any other
27 provision of law, all members of a legislative body of a local
28 agency, as permitted by law in the administration of their duties,
29 shall have an equal right of access to any writing of that local
30 agency.

31 (b) A local agency shall provide access to its writings pursuant
32 to this section in a nondiscriminatory manner and shall not charge
33 any member of a legislative body any fee to inspect or obtain copies
34 of its writings.

35 (c) For purposes of this section, a writing is defined pursuant
36 to subdivision (g) of Section 6252.

37 SEC. 2. Section 54963.1 is added to the Government Code, to
38 read:

39 54963.1. (a) Notwithstanding Section 6252.5 or any other
40 provision of law, when the members of a legislative body of a local

1 agency are authorized to access a writing of the body or of the
2 agency as permitted by law in the administration of their duties,
3 the local agency shall not discriminate between or among any of
4 those members as to which writing or portion thereof is made
5 available or when it is made available, and shall not charge any
6 of those members a fee to inspect or obtain a copy of that writing.
7 (b) For purposes of this section, a writing is defined pursuant
8 to subdivision (g) of Section 6252.

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