

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 711

Introduced by Senator Leno

February 27, 2009

An act to amend Sections 54954.5, 54957.1, and 54957.6 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 711, as amended, Leno. Public meetings: closed sessions: labor negotiations.

(1) The Ralph M. Brown Act requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Under the act, the legislative body of a local agency may hold a closed session with the local agencies' designated representatives regarding negotiations concerning employee compensation but is required, in an open and public session prior to those closed sessions, to disclose specified information identifying the agency's designated representatives. Existing law prohibits a closed session from including any final action on the proposed compensation of unrepresented employees. The act also requires the legislative body of a local agency to publicly report any action taken in closed session, as prescribed, including the approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the other party. The act provides a legislative body or elected official is not in violation of certain provisions of the act if the agenda that describes a closed session item is in substantial compliance by including specified information.

This bill would additionally require a local agency, before holding a closed session regarding employee compensation, to identify the

employee or class of employees that are the subject of the negotiations, the representatives of the employees, and ~~all known matters within the scope of the negotiations, and to also make available to the public certain written proposals.~~ The bill would require the legislative body, before commencing negotiations for a new collective bargaining agreement or initial proposal for an unrepresented employee, to present, in an open and public session, ~~the new collective bargaining agreement or an initial proposal~~ *to provide an oral report by its designated representative on the current status of the negotiations.* The bill would additionally require any ~~vote~~ *action* of the legislative body on the collective bargaining agreement or initial proposal to be taken at an open and public session.

The bill would revise the prohibition against a closed session ~~including a final action on the proposed compensation of unrepresented employees to instead prohibit the closed session from including any final vote.~~ The bill ~~would for these purposes and~~ require ~~a any final vote on any~~ action taken pursuant to a closed session to be conducted during an open and public regular meeting of the legislative body, ~~and but only after disclosure of certain writings, cost projections, and methodology specified public disclosures.~~ The bill would also make a conforming change to delete the requirement that the legislative body publicly report the action taken in closed session after the agreement is final. The bill would also make conforming changes to the information required to be included in an agenda describing a closed session, for purposes of compliance with the act.

The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 54954.5 of the Government Code is
2 amended to read:

1 54954.5. For purposes of describing closed session items
2 pursuant to Section 54954.2, the agenda may describe closed
3 sessions as provided below. No legislative body or elected official
4 shall be in violation of Section 54954.2 or 54956 if the closed
5 session items were described in substantial compliance with this
6 section. Substantial compliance is satisfied by including the
7 information provided below, irrespective of its format.

8 (a) With respect to a closed session held pursuant to Section
9 54956.7:

10 LICENSE/PERMIT DETERMINATION

11 Applicant(s): (Specify number of applicants)

12 (b) With respect to every item of business to be discussed in
13 closed session pursuant to Section 54956.8:

14 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

15 Property: (Specify street address, or if no street address, the
16 parcel number or other unique reference, of the real property under
17 negotiation)

18 Agency negotiator: (Specify names of negotiators attending the
19 closed session) (If circumstances necessitate the absence of a
20 specified negotiator, an agent or designee may participate in place
21 of the absent negotiator so long as the name of the agent or
22 designee is announced at an open session held prior to the closed
23 session.)

24 Negotiating parties: (Specify name of party (not agent))

25 Under negotiation: (Specify whether instruction to negotiator
26 will concern price, terms of payment, or both)

27 (c) With respect to every item of business to be discussed in
28 closed session pursuant to Section 54956.9:

29 CONFERENCE WITH LEGAL COUNSEL—EXISTING
30 LITIGATION

31 (Subdivision (a) of Section 54956.9)

32 Name of case: (Specify by reference to claimant's name, names
33 of parties, case or claim numbers)

34 or

35 Case name unspecified: (Specify whether disclosure would
36 jeopardize service of process or existing settlement negotiations)

37 CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED
38 LITIGATION

39 Significant exposure to litigation pursuant to subdivision (b) of
40 Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

1 The employee or class of employees that are the subject of the
2 negotiations

3 Representative of the employees

4 Employee organization: (Specify name of organization
5 representing employee or employees in question)

6 or

7 Unrepresented employee: (Specify position title of unrepresented
8 employee who is the subject of the negotiations)

9 ~~All known matters within the scope of the negotiations~~

10 ~~Any written proposals communicated by the local agency to~~
11 ~~representatives of public employees and proposals received by the~~
12 ~~local agency from representatives of the public employees~~

13 *Oral reports by agency's designated representative on the*
14 *current status of the negotiations*

15 (g) With respect to closed sessions called pursuant to Section
16 54957.8:

17 CASE REVIEW/PLANNING

18 (No additional information is required in connection with a
19 closed session to consider case review or planning.)

20 (h) With respect to every item of business to be discussed in
21 closed session pursuant to Sections 1461, 32106, and 32155 of the
22 Health and Safety Code or Sections 37606 and 37624.3 of the
23 Government Code:

24 REPORT INVOLVING TRADE SECRET

25 Discussion will concern: (Specify whether discussion will
26 concern proposed new service, program, or facility)

27 Estimated date of public disclosure: (Specify month and year)

28 HEARINGS

29 Subject matter: (Specify whether testimony/deliberation will
30 concern staff privileges, report of medical audit committee, or
31 report of quality assurance committee)

32 (i) With respect to every item of business to be discussed in
33 closed session pursuant to Section 54956.86:

34 CHARGE OR COMPLAINT INVOLVING INFORMATION
35 PROTECTED BY FEDERAL LAW

36 (No additional information is required in connection with a
37 closed session to discuss a charge or complaint pursuant to Section
38 54956.86.)

39 (j) With respect to every item of business to be discussed in
40 closed session pursuant to Section 54956.96:

1 CONFERENCE INVOLVING A JOINT POWERS AGENCY
2 (Specify by name)

3 Discussion will concern: (Specify closed session description
4 used by the joint powers agency)

5 Name of local agency representative on joint powers agency
6 board: (Specify name)

7 (Additional information listing the names of agencies or titles
8 of representatives attending the closed session as consultants or
9 other representatives.)

10 (k) With respect to every item of business to be discussed in
11 closed session pursuant to Section 54956.75:

12 AUDIT BY BUREAU OF STATE AUDITS

13 SEC. 2. Section 54957.1 of the Government Code is amended
14 to read:

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

18 (1) Approval of an agreement concluding real estate negotiations
19 pursuant to Section 54956.8 shall be reported after the agreement
20 is final, as follows:

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

25 (B) If final approval rests with the other party to the negotiations,
26 the local agency shall disclose the fact of that approval and the
27 substance of the agreement upon inquiry by any person, as soon
28 as the other party or its agent has informed the local agency of its
29 approval.

30 (2) Approval given to its legal counsel to defend, or seek or
31 refrain from seeking appellate review or relief, or to enter as an
32 amicus curiae in any form of litigation as the result of a
33 consultation under Section 54956.9 shall be reported in open
34 session at the public meeting during which the closed session is
35 held. The report shall identify, if known, the adverse party or
36 parties and the substance of the litigation. In the case of approval
37 given to initiate or intervene in an action, the announcement need
38 not identify the action, the defendants, or other particulars, but
39 shall specify that the direction to initiate or intervene in an action
40 has been given and that the action, the defendants, and the other

1 particulars shall, once formally commenced, be disclosed to any
2 person upon inquiry, unless to do so would jeopardize the agency's
3 ability to effectuate service of process on one or more unserved
4 parties, or that to do so would jeopardize its ability to conclude
5 existing settlement negotiations to its advantage.

6 (3) Approval given to its legal counsel of a settlement of pending
7 litigation, as defined in Section 54956.9, at any stage prior to or
8 during a judicial or quasi-judicial proceeding shall be reported
9 after the settlement is final, as follows:

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

14 (B) If final approval rests with some other party to the litigation
15 or with the court, then as soon as the settlement becomes final,
16 and upon inquiry by any person, the local agency shall disclose
17 the fact of that approval, and identify the substance of the
18 agreement.

19 (4) Disposition reached as to claims discussed in closed session
20 pursuant to Section 54956.95 shall be reported as soon as reached
21 in a manner that identifies the name of the claimant, the name of
22 the local agency claimed against, the substance of the claim, and
23 any monetary amount approved for payment and agreed upon by
24 the claimant.

25 (5) Action taken to appoint, employ, dismiss, accept the
26 resignation of, or otherwise affect the employment status of, a
27 public employee in closed session pursuant to Section 54957 shall
28 be reported at the public meeting during which the closed session
29 is held. Any report required by this paragraph shall identify the
30 title of the position. The general requirement of this paragraph
31 notwithstanding, the report of a dismissal or of the nonrenewal of
32 an employment contract shall be deferred until the first public
33 meeting following the exhaustion of administrative remedies, if
34 any.

35 (6) Pension fund investment transaction decisions made pursuant
36 to Section 54956.81 shall be disclosed at the first open meeting of
37 the legislative body held after the earlier of the close of the
38 investment transaction or the transfer of pension fund assets for
39 the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. 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 summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

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

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

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

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 3. Section 54957.6 of the Government Code is amended to read:

54957.6. (a) (1) Notwithstanding any other law, a legislative body of a local agency may hold a closed session pursuant to this section with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees,

1 and, for represented employees, any other matter within the
2 statutorily provided scope of representation.

3 (2) Before holding a closed session pursuant to paragraph (1),
4 the legislative body of the local agency shall hold an open and
5 public session in which it does all of the following:

6 (A) Identifies the agency's designated representatives, the
7 employee or class of employees that are the subject of the
8 negotiations, and the representatives of the employees.

9 ~~(B) Identifies all known matters within the scope of the~~
10 ~~negotiations.~~

11 ~~(C) Makes available to the public any written proposals~~
12 ~~communicated by the local agency to representatives of public~~
13 ~~employees and proposals received by the local agency from~~
14 ~~representatives of the public employees.~~

15 ~~(B) Provides an oral report by its designated representative on~~
16 ~~the current status of the negotiations.~~

17 (3) The notice required by ~~subparagraphs (A) and (B)~~
18 ~~subparagraph (A)~~ of paragraph (2) may be given orally or as part
19 of the meeting agenda.

20 ~~(b) A legislative body of a local agency shall present a new~~
21 ~~collective bargaining agreement or an initial proposal for an~~
22 ~~unrepresented employee in an open and public session, before~~
23 ~~commencing negotiations regarding that new collective bargaining~~
24 ~~agreement or initial proposal. A vote of a legislative body on the~~
25 ~~new collective bargaining agreement or initial proposal subject to~~
26 ~~this subdivision shall be taken at an open and public session.~~

27 (e)

28 (b) A closed session of a legislative body of a local agency
29 authorized pursuant to this section is subject to all of the following
30 conditions:

31 (1) The closed session shall be only for the purpose of reviewing
32 the position of the local agency and instructing the local agency's
33 designated representatives.

34 (2) The closed session may only take place prior to and during
35 consultations and discussions with representatives of employee
36 organizations and unrepresented employees.

37 ~~(3) The closed session with the local agency's designated~~
38 ~~representative regarding the salaries, salary schedules, or~~
39 ~~compensation paid in the form of fringe benefits may include~~

1 (3) *The closed session may include discussion of an agency's*
2 *available funds and funding priorities, but only insofar as these*
3 *discussions relate to providing instructions to the local agency's*
4 *designated representative.*

5 (4) ~~The closed session held pursuant to this section shall not~~
6 ~~include any final vote action.~~

7 ~~(d) A final vote on any action taken pursuant to this section~~
8 ~~shall be conducted during an open and public regular meeting of~~
9 ~~the legislative body, but only after disclosure, pursuant to~~
10 ~~subdivision (a) of Section 54957.5 of all writings associated with~~
11 ~~the proposed action, including any projections of the proposed~~
12 ~~action's costs and any assumptions and methodology used to~~
13 ~~calculate those costs.~~

14 (c) *Any final action on an agreement subject to this section shall*
15 *be conducted during an open and public regular meeting of the*
16 *legislative body. The proposed agreement and a summary of its*
17 *major provisions, including, but not limited to, the costs that would*
18 *be incurred by the local agency under the agreement for the current*
19 *and subsequent fiscal years, shall be disclosed at a public meeting.*
20 *Final action shall not take place on any proposal until a reasonable*
21 *time has elapsed after disclosure of the proposal to enable the*
22 *public to become informed and the public has the opportunity to*
23 *express itself regarding the proposal at a meeting of the legislative*
24 *body.*

25 ~~(e)~~

26 (d) For the purposes enumerated in this section, a legislative
27 body of a local agency may also meet with a state conciliator who
28 has intervened in the proceedings.

29 ~~(f)~~

30 (e) For the purposes of this section, "employee" includes an
31 officer or an independent contractor who functions as an officer
32 or an employee, but shall not include an elected official, member
33 of a legislative body, or other independent contractor.

34 SEC. 4. If the Commission on State Mandates determines that
35 this act contains costs mandated by the state, reimbursement to
36 local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.