

AMENDED IN ASSEMBLY APRIL 23, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2690**

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**Introduced by Committee on Judiciary (Assembly Members Feuer  
(Chair), Atkins, Dickinson, Huber, Monning, and Wieckowski)**

March 13, 2012

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An act to amend Section 43.99 of the Civil Code, to amend Section 1038 of the Code of Civil Procedure, to amend Sections 89307 and 89750.5 of the Education Code, to amend Sections 810, 54954.5, and 54956.9 of the Government Code, and to amend Section 28245 of the Penal Code, relating to governmental liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 2690, as amended, Committee on Judiciary. Civil law: tort claims.

Existing law establishes provisions commonly known as the Tort Claims Act, which governs the liability and immunity of public entities and their officers and employees, claims and actions against public entities and their officers and employees, insurance indemnification, and the defense of public officers and employees. Under existing law, claims under the Tort Claims Act include tort claims as well as certain contract claims.

This bill would instead declare that these provisions may be referred to as the Government Claims Act, and would revise various statutory provisions to refer to that title. The bill would also make technical, nonsubstantive changes to these provisions.

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 43.99 of the Civil Code is amended to  
2 read:

3 43.99. (a) There shall be no monetary liability on the part of,  
4 and no cause of action for damages shall arise against, any person  
5 or other legal entity that is under contract with an applicant for a  
6 residential building permit to provide independent quality review  
7 of the plans and specifications provided with the application in  
8 order to determine compliance with all applicable requirements  
9 imposed pursuant to the State Housing Law (Part 1.5 (commencing  
10 with Section 17910) of Division 13 of the Health and Safety Code),  
11 or any rules or regulations adopted pursuant to that law, or under  
12 contract with that applicant to provide independent quality review  
13 of the work of improvement to determine compliance with these  
14 plans and specifications, if the person or other legal entity meets  
15 the requirements of this section and one of the following applies:

16 (1) The person, or a person employed by any other legal entity,  
17 performing the work as described in this subdivision, has completed  
18 not less than five years of verifiable experience in the appropriate  
19 field and has obtained certification as a building inspector,  
20 combination inspector, or combination dwelling inspector from  
21 the International Conference of Building Officials (ICBO) and has  
22 successfully passed the technical written examination promulgated  
23 by ICBO for those certification categories.

24 (2) The person, or a person employed by any other legal entity,  
25 performing the work as described in this subdivision, has completed  
26 not less than five years of verifiable experience in the appropriate  
27 field and is a registered professional engineer, licensed general  
28 contractor, or a licensed architect rendering independent quality  
29 review of the work of improvement or plan examination services  
30 within the scope of his or her registration or licensure.

31 (3) The immunity provided under this section does not apply  
32 to any action initiated by the applicant who retained the qualified  
33 person.

34 (4) A “qualified person” for purposes of this section means a  
35 person holding a valid certification as one of those inspectors.

36 (b) Except for qualified persons, this section shall not relieve  
37 from, excuse, or lessen in any manner, the responsibility or liability  
38 of any person, company, contractor, builder, developer, architect,

1 engineer, designer, or other individual or entity who develops,  
2 improves, owns, operates, or manages any residential building for  
3 any damages to persons or property caused by construction or  
4 design defects. The fact that an inspection by a qualified person  
5 has taken place may not be introduced as evidence in a construction  
6 defect action, including any reports or other items generated by  
7 the qualified person. This subdivision shall not apply in any action  
8 initiated by the applicant who retained the qualified person.

9 (c) Nothing in this section, as it relates to construction inspectors  
10 or plans examiners, shall be construed to alter the requirements  
11 for licensure, or the jurisdiction, authority, or scope of practice,  
12 of architects pursuant to Chapter 3 (commencing with Section  
13 5500) of Division 3 of the Business and Professions Code,  
14 professional engineers pursuant to Chapter 7 (commencing with  
15 Section 6700) of Division 3 of the Business and Professions Code,  
16 or general contractors pursuant to Chapter 9 (commencing with  
17 Section 7000) of Division 3 of the Business and Professions Code.

18 (d) Nothing in this section shall be construed to alter the  
19 immunity of employees of the Department of Housing and  
20 Community Development under the Government Claims Act  
21 (Division 3.6 (commencing with Section 810) of Title 1 of the  
22 Government Code) when acting pursuant to Section 17965 of the  
23 Health and Safety Code.

24 (e) The qualifying person shall engage in no other construction,  
25 design, planning, supervision, or activities of any kind on the work  
26 of improvement, nor provide quality review services for any other  
27 party on the work of improvement.

28 (f) The qualifying person, or other legal entity, shall maintain  
29 professional errors and omissions insurance coverage in an amount  
30 not less than two million dollars (\$2,000,000).

31 (g) The immunity provided by subdivision (a) does not inure  
32 to the benefit of the qualified person for damages caused to the  
33 applicant solely by the negligence or willful misconduct of the  
34 qualified person resulting from the provision of services under the  
35 contract with the applicant.

36 SEC. 2. Section 1038 of the Code of Civil Procedure is  
37 amended to read:

38 1038. (a) In any civil proceeding under the Government Claims  
39 Act (Division 3.6 (commencing with Section 810) of Title 1 of the  
40 Government Code) or for express or implied indemnity or for

1 contribution in any civil action, the court, upon motion of the  
2 defendant or cross-defendant, shall, at the time of the granting of  
3 any summary judgment, motion for directed verdict, motion for  
4 judgment under Section 631.8, or any nonsuit dismissing the  
5 moving party other than the plaintiff, petitioner, cross-complainant,  
6 or intervenor, or at a later time set forth by rule of the Judicial  
7 Council adopted under Section 1034, determine whether or not  
8 the plaintiff, petitioner, cross-complainant, or intervenor brought  
9 the proceeding with reasonable cause and in the good faith belief  
10 that there was a justifiable controversy under the facts and law  
11 which warranted the filing of the complaint, petition,  
12 cross-complaint, or complaint in intervention. If the court should  
13 determine that the proceeding was not brought in good faith and  
14 with reasonable cause, an additional issue shall be decided as to  
15 the defense costs reasonably and necessarily incurred by the party  
16 or parties opposing the proceeding, and the court shall render  
17 judgment in favor of that party in the amount of all reasonable and  
18 necessary defense costs, in addition to those costs normally  
19 awarded to the prevailing party. An award of defense costs under  
20 this section shall not be made except on notice contained in a  
21 party's papers and an opportunity to be heard.

22 (b) "Defense costs," as used in this section, shall include  
23 reasonable attorneys' fees, expert witness fees, the expense of  
24 services of experts, advisers, and consultants in defense of the  
25 proceeding, and where reasonably and necessarily incurred in  
26 defending the proceeding.

27 (c) This section shall be applicable only on motion made prior  
28 to the discharge of the jury or entry of judgment, and any party  
29 requesting the relief pursuant to this section waives any right to  
30 seek damages for malicious prosecution. Failure to make the  
31 motion shall not be deemed a waiver of the right to pursue a  
32 malicious prosecution action.

33 (d) This section shall only apply if the defendant or  
34 cross-defendant has made a motion for summary judgment,  
35 judgment under Section 631.8, directed verdict, or nonsuit and the  
36 motion is granted.

37 SEC. 3. Section 89307 of the Education Code is amended to  
38 read:

39 89307. (a) Any legislative body may hold a closed session  
40 under any of the following circumstances:

1 (1) A closed session with its negotiator prior to the purchase,  
2 sale, exchange, or lease of real property by or for the student body  
3 organization to grant authority to its negotiator regarding the price  
4 and terms of payment for the purchase, sale, exchange, or lease.  
5 Prior to the closed session, the legislative body shall hold an open  
6 and public session in which it identifies its negotiators, the real  
7 property or real properties that the negotiations may concern, and  
8 the person or persons with whom its negotiators may negotiate.

9 (2) For purposes of this subdivision:

10 (A) A negotiator may be a member of the legislative body.

11 (B) “Lease” includes renewal or renegotiation of a lease.

12 (b) (1) Based on advice of its legal counsel, holding a closed  
13 session to confer with, or receive advice from, its legal counsel  
14 regarding a liability claim or pending litigation when discussion  
15 in open session concerning the matter would prejudice the position  
16 of the student body organization in the litigation.

17 (2) For purposes of this subdivision, all applications of the  
18 lawyer-client privilege other than those provided in this section  
19 are hereby abrogated. This section is the exclusive expression of  
20 the lawyer-client privilege for purposes of conducting  
21 closed-session meetings pursuant to this article.

22 (3) For purposes of this subdivision, “litigation” means any  
23 adjudicatory proceeding, including, but not limited to, eminent  
24 domain, court proceeding, or a proceeding of an administrative  
25 body exercising its adjudicatory authority, hearing officer, or  
26 arbitrator.

27 (4) For purposes of this subdivision, litigation shall be  
28 considered pending when any of the following circumstances exist:

29 (A) Litigation, to which the student body organization is a party,  
30 has been initiated formally.

31 (B) A point has been reached where, in the opinion of the  
32 legislative body on the advice of its legal counsel, based on existing  
33 facts and circumstances, there is a significant exposure to litigation  
34 against the student body organization.

35 (C) Based on existing facts and circumstances, the legislative  
36 body is meeting only to decide whether a closed session is  
37 authorized pursuant to subparagraph (B).

38 (D) Based on existing facts and circumstances, the legislative  
39 body has decided to initiate, or is deciding whether to initiate,  
40 litigation.

1 (5) For purposes of subparagraphs (B), (C), and (D) of paragraph  
2 (4), “existing facts and circumstances” shall consist of ~~only~~ *only*  
3 *of one of the following:*

4 (A) Facts and circumstances that might result in litigation against  
5 the student body organization, but which the organization believes  
6 are not yet known to a potential plaintiff or plaintiffs, which facts  
7 and circumstances need not be disclosed.

8 (B) Facts and circumstances, including, but not necessarily  
9 limited to, an accident, disaster, incident, or transactional  
10 occurrence, that might result in litigation against the student body  
11 organization and that are known to a potential plaintiff or plaintiffs,  
12 which facts or circumstances shall be publicly stated on the agenda  
13 or announced.

14 (C) The receipt of a claim pursuant to the Government Claims  
15 Act (Division 3.6 (commencing with Section 810) of Title 1 of the  
16 Government Code) or some other written communication from a  
17 potential plaintiff threatening litigation.

18 (D) A statement made by a person in an open and public meeting  
19 threatening litigation on a specific matter within the responsibility  
20 of the legislative body.

21 (E) A statement threatening litigation made by a person outside  
22 an open and public meeting on a specific matter within the  
23 responsibility of the legislative body, so long as the official or  
24 employee of the student body organization receiving knowledge  
25 of the threat makes a contemporaneous or other record of the  
26 statement prior to the meeting. The records so created need not  
27 identify the alleged victim of unlawful or tortious sexual conduct  
28 or anyone making the threat on their behalf, or identify a public  
29 employee who is the alleged perpetrator of any unlawful or tortious  
30 conduct upon which a threat of litigation is based, unless the  
31 identity of the person has been publicly disclosed.

32 (6) Nothing in this section shall require disclosure of written  
33 communications that are privileged and not subject to disclosure  
34 pursuant to the California Public Records Act (Chapter 3.5  
35 (commencing with Section 6250) of Division 7 of Title 1 of the  
36 Government Code).

37 (7) Prior to holding a closed session pursuant to this section,  
38 the legislative body shall state on the agenda or publicly announce  
39 and identify the provision of this section that authorizes the closed  
40 session. If the session is closed pursuant to paragraph (1), the

1 legislative body shall state the title of or otherwise specifically  
2 identify the litigation to be discussed, unless the legislative body  
3 states that to do so would jeopardize the ability of the student body  
4 organization to effectuate service of process upon one or more  
5 unserved parties, or that to do so would jeopardize its ability to  
6 conclude existing settlement negotiations to its advantage.

7 (8) For purposes of this subdivision, a student body organization  
8 shall be considered to be a “party” or to have a “significant  
9 exposure to litigation” if an officer or employee of the student  
10 body organization is a party or has significant exposure to litigation  
11 concerning prior or prospective activities or alleged activities  
12 during the course and scope of that office or employment, including  
13 litigation in which it is an issue whether an activity is outside the  
14 course and scope of the office or employment.

15 (c) (1) Nothing contained in this section shall be construed to  
16 prevent a legislative body from holding closed sessions with the  
17 Attorney General, district attorney, sheriff, or chief of police, or  
18 their respective deputies, on matters posing a threat to the security  
19 of public buildings or a threat to the public’s right of access to  
20 public services or public facilities, or from holding closed sessions  
21 during a regular or special meeting to consider the appointment,  
22 employment, evaluation of performance, discipline, or dismissal  
23 of an employee of the student body organization or to hear  
24 complaints or charges brought against the employee by another  
25 person or employee unless the employee requests a public session.

26 (2) As a condition to holding a closed session on specific  
27 complaints or charges brought against an employee by another  
28 person or employee, the employee shall be given written notice of  
29 his or her right to have the complaints or charges heard in an open  
30 session rather than a closed session, which notice shall be delivered  
31 to the employee personally or by mail at least 24 hours before the  
32 time for holding the session. If notice is not given, any disciplinary  
33 or other action taken by the legislative body against the employee  
34 based on the specific complaints or charges in the closed session  
35 shall be null and void.

36 (3) A legislative body also may exclude from the public or  
37 closed meeting, during the examination of a witness, any or all  
38 other witnesses in the matter being investigated by the legislative  
39 body.

1 (4) For the purposes of this subdivision, the term “employee”  
2 shall include an officer or an independent contractor who functions  
3 as an officer or an employee of the student body organization, but  
4 shall not include any elected official, member of a legislative body,  
5 or other independent contractor. Closed sessions held pursuant to  
6 this section shall not include discussion or action on proposed  
7 compensation except for a reduction of compensation that results  
8 from the imposition of discipline.

9 (d) (1) A legislative body shall publicly report any action taken  
10 in closed session and the vote or abstention of every member  
11 present thereon, as follows:

12 (A) Approval of an agreement concluding real property  
13 negotiations pursuant to subdivision (a) shall be reported after the  
14 agreement is final, as follows:

15 (i) If its own approval renders the agreement final, the legislative  
16 body board or subboard shall report that approval and the substance  
17 of the agreement in open session at the public meeting during  
18 which the closed session is held.

19 (ii) If final approval rests with the other party to the negotiations,  
20 the legislative body shall disclose the fact of that approval and the  
21 substance of the agreement upon inquiry by any person, as soon  
22 as the other party or its agent has informed the legislative body of  
23 its approval.

24 (B) Approval given to its legal counsel to defend, or seek or  
25 refrain from seeking appellate review or relief, or to enter as an  
26 amicus curiae in any form of litigation, as the result of a  
27 consultation under subdivision (b) shall be reported in open session  
28 at the public meeting during which the closed session is held. The  
29 report shall identify, if known, the adverse party or parties and the  
30 substance of the litigation. In the case of approval given to initiate  
31 or intervene in an action, the announcement need not identify the  
32 action, the defendants, or other particulars, but shall specify that  
33 the direction to initiate or intervene in an action has been given  
34 and that the action, the defendants, and the other particulars shall,  
35 once formally commenced, be disclosed to any person upon  
36 inquiry, unless to do so would jeopardize the ability of the student  
37 body organization to effectuate service of process on one or more  
38 unserved parties, or that to do so would jeopardize its ability to  
39 conclude existing settlement negotiations to its advantage.

1 (C) Approval given to its legal counsel of a settlement of  
2 pending litigation, as defined in subdivision (b), at any stage prior  
3 to or during a judicial or quasi-judicial proceeding shall be reported  
4 after the settlement is final, as follows:

5 (i) If a legislative body accepts a settlement offer signed by the  
6 opposing party, the legislative body shall report its acceptance and  
7 identify the substance of the agreement in open session at the public  
8 meeting during which the closed session is held.

9 (ii) If final approval rests with some other party to the litigation  
10 or with the court, then, as soon as the settlement becomes final,  
11 and upon inquiry by any person, the legislative body shall disclose  
12 the fact of that approval and identify the substance of the  
13 agreement.

14 (D) Action taken to appoint, employ, dismiss, accept the  
15 resignation of, or otherwise affect the employment status of an  
16 employee of the employee organization in closed session pursuant  
17 to subdivision (c) shall be reported at the public meeting during  
18 which the closed session is held. Any report required by this  
19 subparagraph shall identify the title of the employee's position.  
20 Notwithstanding the general requirement of this subparagraph, the  
21 report of a dismissal or of the nonrenewal of an employment  
22 contract shall be deferred until the first public meeting following  
23 the exhaustion of administrative remedies, if any.

24 (E) Approval of an agreement concluding labor negotiations  
25 with represented employees pursuant to subdivision (e) shall be  
26 reported after the agreement is final and has been accepted or  
27 ratified by the other party. The report shall identify the item  
28 approved and the other party or parties to the negotiation.

29 (2) Reports that are required to be made pursuant to this  
30 subdivision may be made orally or in writing. A legislative body  
31 shall provide to any person who has submitted a written request  
32 to the legislative body within 24 hours of the posting of the agenda,  
33 or to any person who has made a standing request for all  
34 documentation as part of a request for notice of meetings pursuant  
35 to Section 89306.5, if the requester is present at the time the closed  
36 session ends, copies of any contracts, settlement agreements, or  
37 other documents that were finally approved or adopted in the closed  
38 session. If the action taken results in one or more substantive  
39 amendments to the related documents requiring retyping, the  
40 documents need not be released until the retyping is completed

1 during normal business hours, provided that the presiding officer  
2 of the legislative body, or his or her designee, orally summarizes  
3 the substance of the amendments for the benefit of the document  
4 requester or any other person present and requesting the  
5 information.

6 (3) The documentation referred to in paragraph (2) shall be  
7 available to any person on the next business day following the  
8 meeting in which the action referred to is taken or, in the case of  
9 substantial amendments, when any necessary retyping is complete.

10 (4) Nothing in this subdivision shall be construed to require that  
11 a legislative body approve actions not otherwise subject to the  
12 approval of that legislative body.

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

18 (e) (1) Notwithstanding any other provision of law, a legislative  
19 body may hold closed sessions with the designated representative  
20 of the student body organization regarding the salaries, salary  
21 schedules, or compensation paid in the form of fringe benefits of  
22 its represented and unrepresented employees, and, for represented  
23 employees, any other matter within the statutorily provided scope  
24 of representation. However, prior to the closed session, the  
25 legislative body shall hold an open and public session in which it  
26 identifies its designated representatives.

27 (2) (A) Closed sessions of a legislative body, as permitted in  
28 this subdivision, shall be for the purpose of reviewing its position  
29 and instructing the designated representative of the student body  
30 organization.

31 (B) Closed sessions, as permitted in this subdivision, may take  
32 place prior to and during consultations and discussions with  
33 representatives of employee organizations and unrepresented  
34 employees.

35 (C) Closed sessions with the designated representative of the  
36 student body organization regarding the salaries, salary schedules,  
37 or compensation paid in the form of fringe benefits may include  
38 discussion of the available funds and funding priorities of the  
39 student body organization, but only insofar as these discussions

1 relate to providing instructions to the designated representative of  
2 the student body organization.

3 (D) Closed sessions held pursuant to this subdivision shall not  
4 include final action on the proposed compensation of one or more  
5 unrepresented employees.

6 (E) For the purposes enumerated in this subdivision, a legislative  
7 body may also meet with a state conciliator who has intervened  
8 in the proceedings.

9 (3) For the purposes of this subdivision, the term “employee”  
10 includes an officer or an independent contractor who functions as  
11 an officer or an employee of the student body organization, but  
12 shall not include any elected official, member of a legislative body,  
13 or other independent contractors.

14 (f) (1) Prior to holding any closed session, the legislative body  
15 shall disclose, in an open meeting, the item or items to be discussed  
16 in the closed session. The disclosure may take the form of a  
17 reference to the item or items as they are listed by number or letter  
18 on the agenda. In the closed session, the legislative body may  
19 consider only those matters covered in its statement. Nothing in  
20 this subdivision shall require or authorize a disclosure of  
21 information prohibited by state or federal law.

22 (2) After any closed session, the legislative body shall reconvene  
23 into open session prior to adjournment, and shall make any  
24 disclosures required by subdivision (d) of action taken in the closed  
25 session.

26 (3) The disclosure required to be made in open session pursuant  
27 to this subdivision may be made at the location announced in the  
28 agenda for the closed session, as long as the public is allowed to  
29 be present at that location for the purpose of hearing the  
30 announcements.

31 SEC. 4. Section 89750.5 of the Education Code is amended to  
32 read:

33 89750.5. (a) Notwithstanding Sections 948 and 965.2 of the  
34 Government Code or any other provision of law, the trustees may  
35 settle, adjust, or compromise any pending action or final judgment,  
36 without the need for a recommendation, certification, or approval  
37 from any other state officer or entity. The Controller shall draw a  
38 warrant for the payment of any settlement, adjustment, or  
39 compromise, or final judgment against the trustees if the trustees

1 certify that a sufficient appropriation for the payment of the  
2 settlement, adjustment, compromise, or final judgment exists.

3 (b) Notwithstanding paragraph (3) of subdivision (b) of Section  
4 905.2 of the Government Code or any other provision of law, the  
5 trustees may pay any claim for money or damages on express  
6 contract or for an injury for which the trustees or their officers or  
7 employees are liable, without approval of the California Victim  
8 Compensation and Government Claims Board, if the trustees  
9 determine that payment of the claim is in the best interests of the  
10 California State University and that funds are available to pay the  
11 claim. The authority of the trustees conferred by this subdivision  
12 does not alter any other requirements governing claims in the  
13 Government Claims Act (Division 3.6 (commencing with Section  
14 810) of Title 1 of the Government Code), except to grant the  
15 trustees authority to pay these claims.

16 (c) Notwithstanding Chapter 3 (commencing with Section  
17 13940) of Part 4 of Division 3 of Title 2 of the Government Code,  
18 the trustees may discharge from accountability the sum of one  
19 thousand dollars (\$1,000) or less, owing to the California State  
20 University, if the trustees determine that the money is uncollectible  
21 or the amount does not justify the cost of collection. A discharge  
22 of accountability by the trustees does not release any person from  
23 the payment of any moneys due the California State University.

24 SEC. 5. Section 810 of the Government Code is amended to  
25 read:

26 810. (a) Unless the provision or context otherwise requires,  
27 the definitions contained in this part govern the construction of  
28 this division.

29 (b) This division may be referred to as the Government Claims  
30 Act.

31 SEC. 6. Section 54954.5 of the Government Code is amended  
32 to read:

33 54954.5. For purposes of describing closed session items  
34 pursuant to Section 54954.2, the agenda may describe closed  
35 sessions as provided below. No legislative body or elected official  
36 shall be in violation of Section 54954.2 or 54956 if the closed  
37 session items were described in substantial compliance with this  
38 section. Substantial compliance is satisfied by including the  
39 information provided below, irrespective of its format.

1 (a) With respect to a closed session held pursuant to Section  
2 54956.7:

3 LICENSE/PERMIT DETERMINATION

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

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

7 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

8 Property: (Specify street address, or if no street address, the  
9 parcel number or other unique reference, of the real property under  
10 negotiation)

11 Agency negotiator: (Specify names of negotiators attending the  
12 closed session) (If circumstances necessitate the absence of a  
13 specified negotiator, an agent or designee may participate in place  
14 of the absent negotiator so long as the name of the agent or  
15 designee is announced at an open session held prior to the closed  
16 session.)

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

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

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

22 CONFERENCE WITH LEGAL COUNSEL—EXISTING  
23 LITIGATION

24 (Paragraph (1) of subdivision (d) of Section 54956.9)

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

27 or

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

30 CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED  
31 LITIGATION

32 Significant exposure to litigation pursuant to paragraph (2) or  
33 (3) of subdivision (d) of Section 54956.9: (Specify number of  
34 potential cases)

35 (In addition to the information noticed above, the agency may  
36 be required to provide additional information on the agenda or in  
37 an oral statement prior to the closed session pursuant to paragraphs  
38 (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

39 Initiation of litigation pursuant to paragraph (4) of subdivision  
40 (d) of Section 54956.9: (Specify number of potential cases)

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

3 LIABILITY CLAIMS

4 Claimant: (Specify name unless unspecified pursuant to Section  
5 54961)

6 Agency claimed against: (Specify name)

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

9 THREAT TO PUBLIC SERVICES OR FACILITIES

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

13 PUBLIC EMPLOYEE APPOINTMENT

14 Title: (Specify description of position to be filled)

15 PUBLIC EMPLOYMENT

16 Title: (Specify description of position to be filled)

17 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

18 Title: (Specify position title of employee being reviewed)

19 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

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

26 CONFERENCE WITH LABOR NEGOTIATORS

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

33 Employee organization: (Specify name of organization  
34 representing employee or employees in question)

35 or

36 Unrepresented employee: (Specify position title of unrepresented  
37 employee who is the subject of the negotiations)

38 (g) With respect to closed sessions called pursuant to Section  
39 54957.8:

40 CASE REVIEW/PLANNING

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

3 (h) With respect to every item of business to be discussed in  
4 closed session pursuant to Sections 1461, 32106, and 32155 of the  
5 Health and Safety Code or Sections 37606 and 37624.3 of the  
6 Government Code:

7 **REPORT INVOLVING TRADE SECRET**

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

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

11 **HEARINGS**

12 Subject matter: (Specify whether testimony/deliberation will  
13 concern staff privileges, report of medical audit committee, or  
14 report of quality assurance committee)

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

17 **CHARGE OR COMPLAINT INVOLVING INFORMATION  
18 PROTECTED BY FEDERAL LAW**

19 (No additional information is required in connection with a  
20 closed session to discuss a charge or complaint pursuant to Section  
21 54956.86.)

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

24 **CONFERENCE INVOLVING A JOINT POWERS AGENCY  
25 (Specify by name)**

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

28 Name of local agency representative on joint powers agency  
29 board: (Specify name)

30 (Additional information listing the names of agencies or titles  
31 of representatives attending the closed session as consultants or  
32 other representatives.)

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

35 **AUDIT BY BUREAU OF STATE AUDITS**

36 **SEC. 7.** Section 54956.9 of the Government Code is amended  
37 to read:

38 54956.9. (a) Nothing in this chapter shall be construed to  
39 prevent a legislative body of a local agency, based on advice of  
40 its legal counsel, from holding a closed session to confer with, or

1 receive advice from, its legal counsel regarding pending litigation  
2 when discussion in open session concerning those matters would  
3 prejudice the position of the local agency in the litigation.

4 (b) For purposes of this chapter, all expressions of the  
5 lawyer-client privilege other than those provided in this section  
6 are hereby abrogated. This section is the exclusive expression of  
7 the lawyer-client privilege for purposes of conducting  
8 closed-session meetings pursuant to this chapter.

9 (c) For purposes of this section, “litigation” includes any  
10 adjudicatory proceeding, including eminent domain, before a court,  
11 administrative body exercising its adjudicatory authority, hearing  
12 officer, or arbitrator.

13 (d) For purposes of this section, litigation shall be considered  
14 pending when any of the following circumstances exist:

15 (1) Litigation, to which the local agency is a party, has been  
16 initiated formally.

17 (2) A point has been reached where, in the opinion of the  
18 legislative body of the local agency on the advice of its legal  
19 counsel, based on existing facts and circumstances, there is a  
20 significant exposure to litigation against the local agency.

21 (3) Based on existing facts and circumstances, the legislative  
22 body of the local agency is meeting only to decide whether a closed  
23 session is authorized pursuant to paragraph (2).

24 (4) Based on existing facts and circumstances, the legislative  
25 body of the local agency has decided to initiate or is deciding  
26 whether to initiate litigation.

27 (e) For purposes of paragraphs (2) and (3) of subdivision (d),  
28 “existing facts and circumstances” shall consist only of one of the  
29 following:

30 (1) Facts and circumstances that might result in litigation against  
31 the local agency but which the local agency believes are not yet  
32 known to a potential plaintiff or plaintiffs, which facts and  
33 circumstances need not be disclosed.

34 (2) Facts and circumstances, including, but not limited to, an  
35 accident, disaster, incident, or transactional occurrence that might  
36 result in litigation against the agency and that are known to a  
37 potential plaintiff or plaintiffs, which facts or circumstances shall  
38 be publicly stated on the agenda or announced.

39 (3) The receipt of a claim pursuant to the Government Claims  
40 Act (Division 3.6 (commencing with Section 810) of Title 1 of the

1 Government Code) or some other written communication from a  
2 potential plaintiff threatening litigation, which claim or  
3 communication shall be available for public inspection pursuant  
4 to Section 54957.5.

5 (4) A statement made by a person in an open and public meeting  
6 threatening litigation on a specific matter within the responsibility  
7 of the legislative body.

8 (5) A statement threatening litigation made by a person outside  
9 an open and public meeting on a specific matter within the  
10 responsibility of the legislative body so long as the official or  
11 employee of the local agency receiving knowledge of the threat  
12 makes a contemporaneous or other record of the statement prior  
13 to the meeting, which record shall be available for public inspection  
14 pursuant to Section 54957.5. The records so created need not  
15 identify the alleged victim of unlawful or tortious sexual conduct  
16 or anyone making the threat on their behalf, or identify a public  
17 employee who is the alleged perpetrator of any unlawful or tortious  
18 conduct upon which a threat of litigation is based, unless the  
19 identity of the person has been publicly disclosed.

20 (f) Nothing in this section shall require disclosure of written  
21 communications that are privileged and not subject to disclosure  
22 pursuant to the California Public Records Act (Chapter 3.5  
23 (commencing with Section 6250) of Division 7 of Title 1).

24 (g) Prior to holding a closed session pursuant to this section,  
25 the legislative body of the local agency shall state on the agenda  
26 or publicly announce the paragraph of subdivision (d) that  
27 authorizes the closed session. If the session is closed pursuant to  
28 paragraph (1) of subdivision (d), the body shall state the title of or  
29 otherwise specifically identify the litigation to be discussed, unless  
30 the body states that to do so would jeopardize the agency's ability  
31 to effectuate service of process upon one or more unserved parties,  
32 or that to do so would jeopardize its ability to conclude existing  
33 settlement negotiations to its advantage.

34 (h) A local agency shall be considered to be a "party" or to have  
35 a "significant exposure to litigation" if an officer or employee of  
36 the local agency is a party or has significant exposure to litigation  
37 concerning prior or prospective activities or alleged activities  
38 during the course and scope of that office or employment, including  
39 litigation in which it is an issue whether an activity is outside the  
40 course and scope of the office or employment.

1 SEC. 8. Section 28245 of the Penal Code is amended to read:  
2 28245. Whenever the Department of Justice acts pursuant to  
3 this article as it pertains to firearms other than handguns, the  
4 department's acts or omissions shall be deemed to be discretionary  
5 within the meaning of the Government Claims Act pursuant to  
6 Division 3.6 (commencing with Section 810) of Title 1 of the  
7 Government Code.

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