

Introduced by Senator Stone

February 19, 2016

An act to amend Section 933.05 of the Penal Code, relating to grand juries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1292, as introduced, Stone. Grand juries: reports.

(1) Existing law sets forth the duties of the grand jury. Existing law requires the grand jury to submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Existing law authorizes a grand jury to request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

This bill would require a grand jury to request a subject person or entity to come before the grand jury as described above. The bill would authorize a grand jury to disclose the factual data used in making its findings during discussions conducted pursuant to these provisions.

This bill would authorize a grand jury to provide to a subject person or entity for comment an administrative draft of that portion of the grand jury's report relating to that subject person or entity. The bill would require an administrative draft provided pursuant to this provision to include proposed grand jury findings, would authorize the draft to include the factual data utilized in making the grand jury's findings, and would prohibit the draft from including the grand jury's recommendations. Within a time period determined by the grand jury, but no sooner than 10 days after the grand jury submits an administrative draft of its report to a subject person or entity for comment, the bill

would authorize the subject person or entity to file with the grand jury written comments on the findings and data included in the administrative draft pertaining to that subject person or entity. The bill would prohibit an officer, agency, department, or governing body of a public agency from disclosing any contents of the administrative draft of the report prior to the public release of the final report.

Existing law requires a grand jury to provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity 2 working days prior to its public release and after the approval of the presiding judge.

This bill would instead require a grand jury to provide to the affected agency for comment a copy of the portion of the grand jury report relating to that person or entity no later than 10 days prior to its public release and after the approval of the presiding judge. The bill would authorize all written comments of the affected agency to be submitted to the presiding judge of the superior court who impaneled the grand jury no later than 10 days after receipt of a copy of the grand jury final report by the affected agency. The bill would require a copy of all written comments by the affected agency to be placed on file as part of the contents of the applicable grand jury final report and included in the public release of the final report.

(2) The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate.

This bill would authorize the governing body of an affected agency to meet in closed session to discuss and prepare written comments of the affected agency to the findings and factual data contained in an administrative draft of the grand jury report and a grand jury final report submitted for comment by a grand jury pursuant to the provisions described above. The bill would require, if a legislative body of a local agency meets to discuss the final report of the grand jury at either a regular or special meeting after the public release of a grand jury final report, the legislative body to do so in a meeting conducted pursuant to the Ralph M. Brown Act unless exempted from this requirement by some other provision of law.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating

the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 933.05 of the Penal Code is amended to
2 read:

3 933.05. (a) For purposes of subdivision (b) of Section 933, as
4 to each grand jury finding, the responding person or entity shall
5 indicate one of the following:

6 (1) The respondent agrees with the finding.

7 (2) The respondent disagrees wholly or partially with the finding,
8 in which case the response shall specify the portion of the finding
9 that is disputed and shall include an explanation of the reasons
10 therefor.

11 (b) For purposes of subdivision (b) of Section 933, as to each
12 grand jury recommendation, the responding person or entity shall
13 report one of the following actions:

14 (1) The recommendation has been implemented, with a summary
15 regarding the implemented action.

16 (2) The recommendation has not yet been implemented, but
17 will be implemented in the future, with a timeframe for
18 implementation.

19 (3) The recommendation requires further analysis, with an
20 explanation and the scope and parameters of an analysis or study,
21 and a timeframe for the matter to be prepared for discussion by
22 the officer or head of the agency or department being investigated
23 or reviewed, including the governing body of the public agency
24 when applicable. This timeframe shall not exceed six months from
25 the date of publication of the grand jury report.

26 (4) The recommendation will not be implemented because it is
27 not warranted or is not reasonable, with an explanation therefor.

28 (c) ~~However, if~~ *If* a finding or recommendation of the grand
29 jury addresses budgetary or personnel matters of a county agency
30 or department headed by an elected officer, both the agency or
31 department head and the board of supervisors shall respond if
32 requested by the grand jury, but the response of the board of

1 supervisors shall address only those budgetary or personnel matters
2 over which it has some decisionmaking authority. The response
3 of the elected agency or department head shall address all aspects
4 of the findings or recommendations affecting his or her agency or
5 department.

6 (d) (1) A grand jury ~~may~~ *shall* request a subject person or entity
7 to come before the grand jury for the purpose of reading and
8 discussing the findings of the grand jury report that relates to that
9 person or entity in order to verify the accuracy of the findings prior
10 to their release.

11 (2) *A grand jury may disclose the factual data used in making*
12 *its findings during discussions conducted pursuant to paragraph*
13 *(1).*

14 (3) *A grand jury may provide to a subject person or entity for*
15 *comment an administrative draft of that portion of the grand jury's*
16 *report relating to that subject person or entity. An administrative*
17 *draft provided pursuant to this paragraph shall include proposed*
18 *grand jury findings, may include the factual data utilized in making*
19 *the grand jury's findings, and shall not include the grand jury's*
20 *recommendations. Within a time period determined by the grand*
21 *jury, but no sooner than 10 days after the grand jury submits an*
22 *administrative draft of its report to a subject person or entity for*
23 *comment, the subject person or entity may file with the grand jury*
24 *written comments on the findings and data included in the*
25 *administrative draft pertaining to that subject person or entity. An*
26 *officer, agency, department, or governing body of a public agency*
27 *shall not disclose any contents of the administrative draft of the*
28 *report prior to the public release of the final report.*

29 (e) During an investigation, the grand jury shall meet with the
30 subject of that investigation regarding the investigation, unless the
31 court, either on its own determination or upon request of the
32 foreperson of the grand jury, determines that such a meeting would
33 be detrimental.

34 (f) A grand jury shall provide to the affected agency *for comment*
35 *a copy of the portion of the grand jury report relating to that person*
36 *or entity* ~~two working~~ *no later than 10 days prior to its public*
37 *release and after the approval of the presiding judge.* ~~No~~ *All written*
38 *comments of the affected agency may be submitted to the presiding*
39 *judge of the superior court who impaneled the grand jury no later*
40 *than 10 days after receipt of a copy of the grand jury final report*

1 *by the affected agency. A copy of all written comments by the*
2 *affected agency shall be placed on file as part of the contents of*
3 *the applicable grand jury final report and included in the public*
4 *release of the final report. An officer, agency, department, or*
5 *governing body of a public agency shall not disclose any contents*
6 *of the report prior to the public release of the final report.*

7 *(g) (1) Notwithstanding any other law, except as provided in*
8 *paragraph (2), the governing body of an affected agency may meet*
9 *in closed session to discuss and prepare written comments of the*
10 *affected agency to both of the following:*

11 *(A) The findings and factual data contained in an administrative*
12 *draft of the grand jury report submitted for comment by a grand*
13 *jury pursuant to paragraph (3) of subdivision (d).*

14 *(B) A grand jury final report submitted for comment by a grand*
15 *jury pursuant to subdivision (f).*

16 *(2) If the legislative body of a local agency meets to discuss the*
17 *final report of the grand jury at either a regular or special meeting*
18 *after the public release of a grand jury final report, the legislative*
19 *body shall do so in a meeting conducted pursuant to the Ralph M.*
20 *Brown Act (Chapter 9 (commencing with Section 54950) of Part*
21 *1 of Division 2 of Title 5 of the Government Code) unless exempted*
22 *from this requirement by some other provision of law.*

23 SEC. 2. The Legislature finds and declares that Section 1 of
24 this act, which amends Section 933.05 of the Penal Code, imposes
25 a limitation on the public's right of access to the meetings of public
26 bodies or the writings of public officials and agencies within the
27 meaning of Section 3 of Article I of the California Constitution.
28 Pursuant to that constitutional provision, the Legislature makes
29 the following findings to demonstrate the interest protected by this
30 limitation and the need for protecting that interest:

31 In order to protect the confidentiality of grand jury investigations
32 and reports, it is necessary for this act to take effect.