

AMENDED IN ASSEMBLY MARCH 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1827

Introduced by Assembly Member Cohn

January 20, 2004

An act to amend ~~Section~~ *Sections 11125.4 and 54954.5* of, and to add Sections 11126.2 and 54956.75 to, the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1827, as amended, Cohn. Closed sessions: state audits.

Under the Bagley-Keene Open Meeting Act and the Ralph M. Brown Act the meetings of state bodies and the legislative bodies of local agencies, including public commissions, boards, councils, and other public agencies in the state, are required to be open and public, including their actions and deliberations, unless the act authorizes a closed session. *Under the Bagley-Keene Open Meeting Act a special meeting may be called for any one of specified purposes where compliance with the 10-day notice provisions would impose a substantial hardship on the state body or where immediate action is required to protect the public interest.*

Existing law also prohibits the release of any papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed, and prohibits the State Auditor and any employee or former employee of the ~~bureau~~ *Bureau of State Audits* from divulging or making known to any person not employed by the bureau any particulars of any record, document, or information not expressly permitted by law.

This bill would permit a state body or the legislative body of a local agency, including any other public agency subject to these open meeting laws, to hold a closed session to ~~discuss issues relating to audit work currently being conducted by~~ *consider its response to a confidential final draft audit report from the Bureau of State Audits or a confidential draft audit report prepared by the bureau*, unless the report has been publicly released or is exempted from that requirement by some other provision of law.

The bill would also authorize a state body to hold the closed session as a special meeting.

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 11125.4 of the Government Code is*
- 2 *amended to read:*
- 3 11125.4. (a) A special meeting may be called at any time by
- 4 the presiding officer of the state body or by a majority of the
- 5 members of the state body. A special meeting may only be called
- 6 for one of the following purposes where compliance with the
- 7 10-day notice provisions of Section 11125 would impose a
- 8 substantial hardship on the state body or where immediate action
- 9 is required to protect the public interest:
- 10 (1) To consider “pending litigation” as that term is defined in
- 11 subdivision (e) of Section 11126.
- 12 (2) To consider proposed legislation.
- 13 (3) To consider issuance of a legal opinion.
- 14 (4) To consider disciplinary action involving a state officer or
- 15 employee.
- 16 (5) To consider the purchase, sale, exchange, or lease of real
- 17 property.
- 18 (6) To consider license examinations and applications.
- 19 (7) To consider an action on a loan or grant provided pursuant
- 20 to Division 31 (commencing with Section 50000) of the Health
- 21 and Safety Code.
- 22 (8) *To consider its response to a draft audit report as permitted*
- 23 *by Section 11126.2.*
- 24 (b) When a special meeting is called pursuant to one of the
- 25 purposes specified in subdivision (a), the state body shall provide

notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

SEC. 2. Section 11126.2 is added to the Government Code, to read:

11126.2. (a) Nothing in this article shall be construed to prohibit a state body from holding closed sessions to discuss issues

~~relating to audit work currently being conducted by the Bureau of State Audits or a confidential draft audit report by the Bureau of State Audits. prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.~~

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

~~SEC. 2.—~~

SEC. 3. Section 54954.5 of the Government Code is amended to read:

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

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

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

3
4 (c) With respect to every item of business to be discussed in
5 closed session pursuant to Section 54956.9:

6
7 CONFERENCE WITH LEGAL COUNSEL—EXISTING
8 LITIGATION

9 (Subdivision (a) of Section 54956.9)

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

12 or

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

15 CONFERENCE WITH LEGAL
16 COUNSEL—ANTICIPATED LITIGATION

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

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

24 Initiation of litigation pursuant to subdivision (c) of Section
25 54956.9: (Specify number of potential cases)

26
27 (d) With respect to every item of business to be discussed in
28 closed session pursuant to Section 54956.95:

29
30 LIABILITY CLAIMS

31 Claimant: (Specify name unless unspecified pursuant to Section
32 54961)

33 Agency claimed against: (Specify name)

34
35 (e) With respect to every item of business to be discussed in
36 closed session pursuant to Section 54957:

37
38 THREAT TO PUBLIC SERVICES OR FACILITIES

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

4 PUBLIC EMPLOYEE APPOINTMENT

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

6 PUBLIC EMPLOYMENT

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

8 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

10 PUBLIC EMPLOYEE
11 DISCIPLINE/DISMISSAL/RELEASE

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

16
17 (f) With respect to every item of business to be discussed in
18 closed session pursuant to Section 54957.6:

19
20 CONFERENCE WITH LABOR NEGOTIATORS

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

27 Employee organization: (Specify name of organization
28 representing employee or employees in question)

29 or

30 Unrepresented employee: (Specify position title of
31 unrepresented employee who is the subject of the negotiations)

32
33 (g) With respect to closed sessions called pursuant to Section
34 54957.8:

35
36 CASE REVIEW/PLANNING

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

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

REPORT INVOLVING TRADE SECRET

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

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

HEARINGS

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

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

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

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

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

~~AUDIT BY STATE BUREAU OF AUDITS~~

~~SEC. 3.—~~

AUDIT BY BUREAU OF STATE AUDITS

SEC. 4. Section 54956.75 is added to the Government Code, to read:

54956.75. (a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency ~~from holding closed sessions to discuss issues relating to audit work currently being conducted by the Bureau of State Audits or a confidential draft audit report by the Bureau of State Audits.~~ *that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.*

- 1 (b) After the public release of an audit report by the Bureau of
- 2 State Audits, if a legislative body of a local agency meets to discuss
- 3 the audit report, it shall do so in an open session unless exempted
- 4 from that requirement by some other provision of law.

