

AMENDED IN ASSEMBLY MAY 4, 2004
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 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 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 consider its response to a confidential final draft audit report from the Bureau of State Audits, 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 *confidential final* draft audit
23 report as permitted 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



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

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

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

39 11126.2. (a) Nothing in this article shall be construed to
40 prohibit a state body that has received a confidential final draft

1 audit report from the Bureau of State Audits from holding closed
2 sessions to discuss its response to that report.

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

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

9 54954.5. For purposes of describing closed session items
10 pursuant to Section 54954.2, the agenda may describe closed
11 sessions as provided below. No legislative body or elected official
12 shall be in violation of Section 54954.2 or 54956 if the closed
13 session items were described in substantial compliance with this
14 section. Substantial compliance is satisfied by including the
15 information provided below, irrespective of its format.

16 (a) With respect to a closed session held pursuant to Section
17 54956.7:

18
19 LICENSE/PERMIT DETERMINATION
20 Applicant(s): (Specify number of applicants)
21

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

24
25 CONFERENCE WITH REAL PROPERTY NEGOTIATORS
26 Property: (Specify street address, or if no street address, the
27 parcel number or other unique reference, of the real property under
28 negotiation)

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

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

36 Under negotiation: (Specify whether instruction to negotiator
37 will concern price, terms of payment, or both)
38



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

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

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

or

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

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of 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)

1 PUBLIC EMPLOYMENT

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

3 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

5 PUBLIC EMPLOYEE

6 DISCIPLINE/DISMISSAL/RELEASE

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

11
12 (f) With respect to every item of business to be discussed in
13 closed session pursuant to Section 54957.6:

14
15 CONFERENCE WITH LABOR NEGOTIATORS

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

22 Employee organization: (Specify name of organization
23 representing employee or employees in question)

24 or

25 Unrepresented employee: (Specify position title of
26 unrepresented employee who is the subject of the negotiations)

27
28 (g) With respect to closed sessions called pursuant to Section
29 54957.8:

30
31 CASE REVIEW/PLANNING

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

34
35 (h) With respect to every item of business to be discussed in
36 closed session pursuant to Sections 1461, 32106, and 32155 of the
37 Health and Safety Code or Sections 37606 and 37624.3 of the
38 Government Code:

39
40 REPORT INVOLVING TRADE SECRET

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

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

4 HEARINGS

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

8
9 (i) With respect to every item of business to be discussed in
10 closed session pursuant to Section 54956.86:

11
12 CHARGE OR COMPLAINT INVOLVING INFORMATION
13 PROTECTED BY FEDERAL LAW

14 (No additional information is required in connection with a
15 closed session to discuss a charge or complaint pursuant to Section
16 54956.86.)

17
18 (j) With respect to every item of business to be discussed in
19 closed session pursuant to Section 54956.75:

20
21 AUDIT BY BUREAU OF STATE AUDITS

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

24 54956.75. (a) Nothing contained in this chapter shall be
25 construed to prevent the legislative body of a local agency that has
26 received a confidential final draft audit report from the Bureau of
27 State Audits from holding closed sessions to discuss its response
28 to that report.

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