

AMENDED IN SENATE JULY 12, 2004

AMENDED IN SENATE JUNE 16, 2004

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.

(1) 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.

(2) This bill would incorporate additional changes in Section 54954.5 of the Government Code, proposed by AB 2782, to become operative only if this bill and AB 2782 are enacted and become effective on or before January 1, 2005, and this bill is enacted last.

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.



1 (7) To consider an action on a loan or grant provided pursuant
2 to Division 31 (commencing with Section 50000) of the Health
3 and Safety Code.

4 (8) To consider its response to a confidential final draft audit
5 report as permitted by Section 11126.2.

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

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

1 unanimous vote of those members present. The finding shall be
2 made available on the Internet. Failure to adopt the finding
3 terminates the meeting.

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

6 11126.2. (a) Nothing in this article shall be construed to
7 prohibit a state body that has received a confidential final draft
8 audit report from the Bureau of State Audits from holding closed
9 sessions to discuss its response to that report.

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

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

16 54954.5. For purposes of describing closed session items
17 pursuant to Section 54954.2, the agenda may describe closed
18 sessions as provided below. No legislative body or elected official
19 shall be in violation of Section 54954.2 or 54956 if the closed
20 session items were described in substantial compliance with this
21 section. Substantial compliance is satisfied by including the
22 information provided below, irrespective of its format.

23 (a) With respect to a closed session held pursuant to Section
24 54956.7:

25

26 LICENSE/PERMIT DETERMINATION

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

28

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

31

32 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

36 Agency negotiator: (Specify names of negotiators attending the
37 closed session) (If circumstances necessitate the absence of a
38 specified negotiator, an agent or designee may participate in place
39 of the absent negotiator so long as the name of the agent or



1 designee is announced at an open session held prior to the closed
2 session.)

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

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

6
7 (c) With respect to every item of business to be discussed in
8 closed session pursuant to Section 54956.9:

9
10 CONFERENCE WITH LEGAL COUNSEL—EXISTING
11 LITIGATION

12 (Subdivision (a) of Section 54956.9)

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

15 or

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

18 CONFERENCE WITH LEGAL
19 COUNSEL—ANTICIPATED LITIGATION

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

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

27 Initiation of litigation pursuant to subdivision (c) of Section
28 54956.9: (Specify number of potential cases)

29
30 (d) With respect to every item of business to be discussed in
31 closed session pursuant to Section 54956.95:

32
33 LIABILITY CLAIMS

34 Claimant: (Specify name unless unspecified pursuant to Section
35 54961)

36 Agency claimed against: (Specify name)

37
38 (e) With respect to every item of business to be discussed in
39 closed session pursuant to Section 54957:

1 THREAT TO PUBLIC SERVICES OR FACILITIES

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

5 PUBLIC EMPLOYEE APPOINTMENT

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

7 PUBLIC EMPLOYMENT

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

9 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

11 PUBLIC EMPLOYEE
12 DISCIPLINE/DISMISSAL/RELEASE

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

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

20
21 CONFERENCE WITH LABOR NEGOTIATORS

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

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

30 or

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

33
34 (g) With respect to closed sessions called pursuant to Section
35 54957.8:

36
37 CASE REVIEW/PLANNING

38 (No additional information is required in connection with a
39 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 BUREAU OF STATE AUDITS

SEC. 3.5. 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

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

2
3 (b) With respect to every item of business to be discussed in
4 closed session pursuant to Section 54956.8:

5
6 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

19
20 (c) With respect to every item of business to be discussed in
21 closed session pursuant to Section 54956.9:

22
23 CONFERENCE WITH LEGAL COUNSEL—EXISTING
24 LITIGATION

25 (Subdivision (a) of Section 54956.9)

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

28 or

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

31 CONFERENCE WITH LEGAL
32 COUNSEL—ANTICIPATED LITIGATION

33 Significant exposure to litigation pursuant to subdivision (b) of
34 Section 54956.9: (Specify number of 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
38 subparagraphs (B) to (E), inclusive, of paragraph (3) of
39 subdivision (b) of Section 54956.9.)

1 Initiation of litigation pursuant to subdivision (c) of Section
2 54956.9: (Specify number of potential cases)

3
4 (d) With respect to every item of business to be discussed in
5 closed session pursuant to Section 54956.95:

6
7 LIABILITY CLAIMS

8 Claimant: (Specify name unless unspecified pursuant to Section
9 54961)

10 Agency claimed against: (Specify name)

11
12 (e) With respect to every item of business to be discussed in
13 closed session pursuant to Section 54957:

14
15 THREAT TO PUBLIC SERVICES OR FACILITIES

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

19 PUBLIC EMPLOYEE APPOINTMENT

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

21 PUBLIC EMPLOYMENT

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

23 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

25 PUBLIC EMPLOYEE
26 DISCIPLINE/DISMISSAL/RELEASE

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

31
32 (f) With respect to every item of business to be discussed in
33 closed session pursuant to Section 54957.6:

34
35 CONFERENCE WITH LABOR NEGOTIATORS

36 Agency designated representatives: (Specify names of
37 designated representatives attending the closed session) (If
38 circumstances necessitate the absence of a specified designated
39 representative, an agent or designee may participate in place of the

1 absent representative so long as the name of the agent or designee
2 is announced at an open session held prior to the closed session.)

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

5 or

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

8
9 (g) With respect to closed sessions called pursuant to Section
10 54957.8:

11
12 CASE REVIEW/PLANNING

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

15
16 (h) With respect to every item of business to be discussed in
17 closed session pursuant to Sections 1461, 32106, and 32155 of the
18 Health and Safety Code or Sections 37606 and 37624.3 of the
19 Government Code:

20
21 REPORT INVOLVING TRADE SECRET

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

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

25 HEARINGS

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

29
30 (i) With respect to every item of business to be discussed in
31 closed session pursuant to Section 54956.86:

32
33 CHARGE OR COMPLAINT INVOLVING INFORMATION
34 PROTECTED BY FEDERAL LAW

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

1 (j) With respect to every item of business to be discussed in
2 closed session pursuant to Section ~~54957.11~~ 54956.96:

3
4 CONFERENCE INVOLVING A JOINT POWERS AGENCY
5 (Specify by name)

6 Discussion will concern: (Specify closed session description
7 used by the joint powers agency.) Name of local agency
8 representative on joint powers agency board: (Specify name)

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

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

15
16 AUDIT BY BUREAU OF STATE AUDITS

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

19 54956.75. (a) Nothing contained in this chapter shall be
20 construed to prevent the legislative body of a local agency that has
21 received a confidential final draft audit report from the Bureau of
22 State Audits from holding closed sessions to discuss its response
23 to that report.

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

28 SEC. 5. Section 3.5 of this bill incorporates amendments to
29 Section 54954.5 of the Government Code proposed by both this
30 bill and AB 2782. It shall only become operative if (1) both bills
31 are enacted and become effective on or before January 1, 2005, (2)
32 each bill amends Section 54954.5 of the Government Code, and
33 (3) this bill is enacted after AB 2782, in which case Section 3 of
34 this bill shall not become operative.