

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1736**

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**Introduced by Assembly Member Smyth**

February 16, 2012

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An act to amend ~~Section 54950~~ *Sections 54954.5 and 54957* of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1736, as amended, Smyth. Local government: open meetings.

The Ralph M. Brown Act requires each legislative body of a local agency to provide the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public ~~and~~. *Under the act, all persons be are permitted to attend any meeting of the legislative body of a local agency, unless a closed session is authorized. The act makes a statement of intent in this regard. Under the act, the legislative body of a local agency is authorized to hold closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, as specified, or a threat to the public's right of access to public services or public facilities.*

~~This bill would make technical, nonsubstantive changes to these provisions:~~

*This bill would authorize the legislative body of a local agency to hold these closed sessions with the Governor. The bill would make a conforming change to a related provision.*

*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: no.  
State-mandated local program: no.

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

1 SECTION 1. Section 54954.5 of the Government Code is  
2 amended to read:

3 54954.5. For purposes of describing closed session items  
4 pursuant to Section 54954.2, the agenda may describe closed  
5 sessions as provided below.—~~Not~~ A legislative body or elected  
6 official shall *not* be in violation of Section 54954.2 or 54956 if the  
7 closed session items were described in substantial compliance with  
8 this section. Substantial compliance is satisfied by including the  
9 information provided below, irrespective of its format.

10 (a) With respect to a closed session held pursuant to Section  
11 54956.7:

12 LICENSE/PERMIT DETERMINATION

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

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

16 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

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

3 CONFERENCE WITH LEGAL COUNSEL—EXISTING  
4 LITIGATION

5 (Subdivision (a) of Section 54956.9)

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

8 or

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

11 CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED  
12 LITIGATION

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

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

20 Initiation of litigation pursuant to subdivision (c) of Section  
21 54956.9: (Specify number of potential cases)

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

24 LIABILITY CLAIMS

25 Claimant: (Specify name unless unspecified pursuant to Section  
26 54961)

27 Agency claimed against: (Specify name)

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

30 THREAT TO PUBLIC SERVICES OR FACILITIES

31 Consultation with: (Specify name of *executive or* law  
32 enforcement agency and title of officer, or name of applicable  
33 agency representative and title)

34 PUBLIC EMPLOYEE APPOINTMENT

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

36 PUBLIC EMPLOYMENT

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

38 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

40 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

1 (No additional information is required in connection with a  
2 closed session to consider discipline, dismissal, or release of a  
3 public employee. Discipline includes potential reduction of  
4 compensation.)

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

7 CONFERENCE WITH LABOR NEGOTIATORS

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

14 Employee organization: (Specify name of organization  
15 representing employee or employees in question)

16 or

17 Unrepresented employee: (Specify position title of unrepresented  
18 employee who is the subject of the negotiations)

19 (g) With respect to closed sessions called pursuant to Section  
20 54957.8:

21 CASE REVIEW/PLANNING

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

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

28 REPORT INVOLVING TRADE SECRET

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

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

32 HEARINGS

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

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

38 CHARGE OR COMPLAINT INVOLVING INFORMATION  
39 PROTECTED BY FEDERAL LAW

1 (No additional information is required in connection with a  
2 closed session to discuss a charge or complaint pursuant to Section  
3 54956.86.)

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

6 CONFERENCE INVOLVING A JOINT POWERS AGENCY  
7 (Specify by name)

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

10 Name of local agency representative on joint powers agency  
11 board: (Specify name)

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

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

17 AUDIT BY BUREAU OF STATE AUDITS

18 *SEC. 2. Section 54957 of the Government Code is amended to*  
19 *read:*

20 54957. (a) ~~Nothing contained in this~~ *This* chapter shall *not* be  
21 construed to prevent the legislative body of a local agency from  
22 holding closed sessions with the *Governor*, Attorney General,  
23 district attorney, agency counsel, sheriff, or chief of police, or their  
24 respective deputies, or a security consultant or a security operations  
25 manager, on matters posing a threat to the security of public  
26 buildings, a threat to the security of essential public services,  
27 including water, drinking water, wastewater treatment, natural gas  
28 service, and electric service, or a threat to the public's right of  
29 access to public services or public facilities.

30 (b) (1) Subject to paragraph (2), ~~nothing contained in this~~ *this*  
31 chapter shall *not* be construed to prevent the legislative body of a  
32 local agency from holding closed sessions during a regular or  
33 special meeting to consider the appointment, employment,  
34 evaluation of performance, discipline, or dismissal of a public  
35 employee or to hear complaints or charges brought against the  
36 employee by another person or employee unless the employee  
37 requests a public session.

38 (2) As a condition to holding a closed session on specific  
39 complaints or charges brought against an employee by another  
40 person or employee, the employee shall be given written notice of

1 his or her right to have the complaints or charges heard in an open  
2 session rather than a closed session, which notice shall be delivered  
3 to the employee personally or by mail at least 24 hours before the  
4 time for holding the session. If notice is not given, any disciplinary  
5 or other action taken by the legislative body against the employee  
6 based on the specific complaints or charges in the closed session  
7 shall be null and void.

8 (3) The legislative body also may exclude from the public or  
9 closed meeting, during the examination of a witness, any or all  
10 other witnesses in the matter being investigated by the legislative  
11 body.

12 (4) For the purposes of this subdivision, the term “employee”  
13 shall include an officer or an independent contractor who functions  
14 as an officer or an employee but shall not include any elected  
15 official, member of a legislative body or other independent  
16 contractors. ~~Nothing in this~~ This subdivision shall *not* limit local  
17 officials’ ability to hold closed session meetings pursuant to  
18 Sections 1461, 32106, and 32155 of the Health and Safety Code  
19 or Sections 37606 and 37624.3 of the Government Code. Closed  
20 sessions held pursuant to this subdivision shall not include  
21 discussion or action on proposed compensation except for a  
22 reduction of compensation that results from the imposition of  
23 discipline.

24 *SEC. 3. The Legislature finds and declares that Section 2 of*  
25 *this act, which amends Section 54957 of the Government Code,*  
26 *imposes a limitation on the public’s right of access to the meetings*  
27 *of public bodies or the writings of public officials and agencies*  
28 *within the meaning of Section 3 of Article I of the California*  
29 *Constitution. Pursuant to that constitutional provision, the*  
30 *Legislature makes the following findings to demonstrate the interest*  
31 *protected by this limitation and the need for protecting that*  
32 *interest:*

33 *Without some freedom to protect sensitive information, security*  
34 *is compromised. Therefore, the health and safety of the people of*  
35 *California is enhanced by giving governing bodies the authority*  
36 *to meet with the Governor in closed meetings to discuss security*  
37 *matters that may include sensitive information.*

38 ~~SECTION 1. Section 54950 of the Government Code is~~  
39 ~~amended to read:~~

1     ~~54950. In enacting this chapter, the Legislature finds and~~  
2 ~~declares that the public commissions, boards and councils, and the~~  
3 ~~other public agencies in this state exist to aid in the conduct of the~~  
4 ~~people's business. It is the intent of the law that their actions be~~  
5 ~~taken openly and that their deliberations be conducted openly.~~

6     ~~The people of this state do not yield their sovereignty to the~~  
7 ~~agencies that serve them. The people, in delegating authority, do~~  
8 ~~not give their public servants the right to decide what is good for~~  
9 ~~the people to know and what is not good for them to know. The~~  
10 ~~people insist on remaining informed so that they may retain control~~  
11 ~~over the instruments they have created.~~