

February 24, 2011

Open Meeting Act Mandate

L E G I S L A T I V E A N A L Y S T ' S O F F I C E

Presented to:
The Conference Committee on the Budget



Open Meeting Act Mandate: Background

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- Core Provisions of Act Are Not Mandates.*** In 1953, the Legislature enacted the Brown Act, declaring, “all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body.” Because this act *preceded* mandate law, its provisions are not state-reimbursable mandates.

- Mandate Reflects Procedural Requirements.*** Chapter 641, Statutes of 1986 (AB 2674, Connelly), modified the Brown Act to require local agencies to prepare and post agendas for public meetings. Chapter 1136, Statutes of 1993 (AB 1426, Burton) and Chapter 1137, Statutes of 1993 (SB 36, Kopp), clarified Chapter 641 and added provisions regarding closed sessions. These requirements are sometimes referred to as the “Open Meetings/Brown Act Reform” mandate.

Provisions Not Part of Open Meeting Act Mandate

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- Vote Requirement.** All votes, except for those cast in permissible closed session, must be cast in public. (Government Code 54953 [c])
- Local Meeting in Accessible Facilities.** A body must conduct its meetings within the boundaries of its jurisdiction unless it qualifies for a specific exemption. Meetings may not be conducted in a facility that excludes persons on the basis of their race, religion, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons. (Government Code 54954, 54953.2)
- Public Attendance and Testimony.** Public may comment on agenda items before or during consideration by legislative body. Time must be set aside for public to comment on any other matters under the body's jurisdiction. Public may not be asked to register or identify themselves or to pay fees in order to attend public meetings. (Government Code 54954.3, 54953.3, 54961)
- Public Records and Recordings.** Materials provided to a majority of a body that are not exempt from disclosure under the public records act must be provided, upon request, to members of the public. Public may obtain a copy, at cost, of an existing tape recording made by the legislative body of its public sessions. (Government Code 54957.5, 54953.5)
- Civil and Criminal Enforcement.** Individuals or the district attorney (DA) may file civil lawsuits for injunctive, mandatory, or declaratory relief, or to void action taken in violation of the act. The DA may seek misdemeanor penalties against a member of a body who attends a meeting where action is taken in violation of the act, and where the member intended to deprive the public of information which the member knew or has reason to know the public was entitled to receive. (Government Code 54960, 54960.1, 54959)

Open Meeting Act: Mandate Provisions

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- Required Notices and Agendas.** Agenda containing general description (approximately 20 words in length) of each matter to be considered or discussed must be posted at least 72 hours prior to meeting. (Government Code 54954.2)
 - **Exception:** Special procedures permit a body to proceed without an agenda in the case of emergency circumstances, or where a need for immediate action came to the attention of the body after posting of the agenda. (Government Code 54954.2 [b])

- Closed Sessions.** All items to be considered in closed session must be described in the notice or agenda for the meeting. Prior to each closed session, the body must announce the subject matter of the closed session. If final action is taken in closed session, the body generally must report the action at the conclusion of the closed session. (Government Code 54954.2, 54954.5, 54957.1, and 54957.7)

What Costs Are Reimbursable?

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- Agenda Preparation.** Prepare an agenda for each meeting of a “legislative body” of a local agency or school district. (Legislative body includes governing boards and many permanent, temporary, and advisory bodies.) The agenda must contain a description of each item to be discussed, items to be discussed in closed session, the time and location of the meeting, and a statement that the public may comment.
- Agenda Posting.** Post the agenda 72 hours before the meeting in an accessible location.
- Closed Session Disclosures.** Before holding a closed session, disclose each item to be discussed. Reconvene in open session before adjournment to disclose actions taken in the closed session relating to real estate negotiations, litigation, and labor negotiations. Provide copies of contracts, settlement agreements, and other documents approved or adopted in the closed session as requested.
- Training.** Prepare training materials and train members of legislative bodies that hold closed executive sessions on Open Meeting Act requirements for closed sessions.

Mandate Costs

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Over \$20 Million Annually

- Approximately \$17 million annually for noneducation local governments and \$6 million annually for K-14 districts. About \$63 million is due and payable to noneducation local governments in 2011-12.



Examples of Claims

- **County of Santa Barbara.** For 384 meetings in 2005-06, the county claimed \$78,044. The county claimed the “flat rate” (then \$134 per agenda) for most of the meetings. For 41 meetings with lengthy agendas, the county claimed 30 minutes of staff time (at a \$44.60 hourly rate) for each item on the agenda.
- **City of Vista.** For 109 meetings in 2005-06, the city claimed \$20,174. The city claimed the flat rate for 90 shorter agendas. The city claimed 30 minutes of staff time (at a \$46.17 hourly rate) to prepare each item on the other agendas. For example, the city council’s December 13, 2005 hearing included 35 agenda items; the city claimed \$808.
- **Mesa Consolidated Water District.** For 74 meetings in 2008-09, the district claimed \$12,852. Over half of the meetings were billed at the 2008-09 flat rate (\$155 per agenda). The district claimed 33 minutes of staff time (at a \$75.21 hourly rate) for each item on the other agendas. The district’s hourly rate includes costs for the general manager.

Governor's Budget

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Suspend Mandate. The administration proposes to “suspend” the mandated provisions of the Open Meeting Act Reform mandate. During the period of suspension, state law specifies that “no local agency shall be required to implement or give effect” to the suspended mandate. (Government Code Section 17581 [a])



LAO Assessment

- ***Confusing to the Public.*** Using the one-year budget act suspension process to change statutory requirements regarding public access to local government decision making reduces transparency in government.
- ***Sends Wrong Signals to Local Government.*** Suspending the provisions regarding agenda posting and closed session disclosure could be interpreted as the Legislature making these provisions optional. In fact, Proposition 59 (enacted by the voters in 2004) could require local agencies to post agendas and disclose actions taken in closed sessions—even in the absence of the Open Meeting Act mandate. This is because Proposition 59 broadly entitles the public access to local agency meetings, including the writings of government officials, and specifies that (1) existing statutes and laws that further public access should be broadly construed and (2) future government actions that limit the public’s access must be accompanied by findings that identify “the interest protected by the limitation and the need for protecting that interest.”

LAO Recommendation

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- Amend statute to recast mandated provisions as “best practices” for implementing Proposition 59.
- Require each local government to announce its policies for carrying out Proposition 59.
 - **Announce Policies at a Regularly Scheduled Public Hearing.** After making announcement, the local government may not alter its policies for at least one year, except to adopt the best practices policy.
- Eliminates mandate without creating a new mandate.
 - **State Requirements Necessary to Implement Voter-Approved Measures Are Not Mandates.** “The commission shall not find costs mandated by the state, . . . if, after a hearing, the commission finds . . . (f) The statute or executive order imposes duties that are necessary to implement . . . a ballot measure approved by the voters in a statewide or local election.” Government Code Section 17556
 - **Proposition 59 Needs Implementing Statutes.** While Proposition 59 gives people “right of access to information concerning the conduct of the people’s business” and specifies that the “meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny,” it leaves details regarding local implementation to local governments.

Assessment of LAO Alternative

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Strengths

- ***Reduces 2011-12 State Costs by About \$63 Million.*** Shifts cost of preparing and posting meeting agendas and disclosing actions taken in closed sessions to the governmental entity holding the meetings.
- ***Permanent.*** Unlike mandate suspension, no year-to-year uncertainty regarding state requirements associated with local public hearings.
- ***Transparent.*** Unlike mandate suspension, local government responsibilities would be clearly delineated in statute.



Limitation

- ***Reduced Uniformity in Local Agenda Posting/Closed Session Policies.*** While most local agencies probably would follow the existing public access policies, some local agencies could enact alternative policies. Given the requirements of Proposition 59, these alternative policies could not reduce public access to the decision making process. Even modest procedural changes in public access policies, however, could cause some short-term confusion, making it more difficult for Californians to oversee actions of their local agencies.