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Effective January 1, 2009, California Legislature Amends Ralph M. Brown Act and California Public Records Act In Response To Court Of Appeal Decision

The Governor of California recently signed into law Senate Bill No. 1732 ("SB 1732"), which amends the Ralph M. Brown Act ("Brown Act") and the California Public Records Act ("Public Records Act"). These changes were made in response to a recent Court of Appeal decision concerning the Brown Act.

The Brown Act "requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized." The Brown Act prohibits the use of "direct communication, personal intermediaries, or technological devices" by a majority of a legislative body's members "to develop a collective concurrence" on an action to be taken, except in the case of an authorized teleconference. A California Court of Appeal recently held "that a violation of this prohibition occurs only if a series of meetings by members of a body results in a collective concurrence." See *Wolfe v. City of Fremont*, (2006) 144 Cal. App.4th 533.

In SB 1732, the Legislature expressly disapproves of the *Wolfe* decision "to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in" the Brown Act "to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the process of developing a collective concurrence as a violation of the prohibition." SB 1732 amends the Brown Act, specifically Government Code section 54952.2, to define a "meeting" as any congregation of the majority of a legislative body's members "at the same time and location, including teleconference location . . . to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body." The amendment also provides that a majority of a body's members shall not, outside of a meeting

Note:

For a discussion on the referenced *Wolfe* case, please see our Legal Alert entitled, "City Council Members' Reaching Consensus In Non-Public Discussions, Prior To Public Meeting, Violates Brown Act," January 10, 2007.

authorized under the Brown Act, "use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

However, these restrictions are not meant to be construed as preventing a local agency employee or official from having separate communications or conversations with members of the legislative body outside of a meeting regarding matters within the body's jurisdiction as long as "that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body." Also, the amendments do not prohibit contact or conversations between a body's members and other persons when those contacts do not violate the Brown Act's provisions. The amendment also does not impose its requirements on public gatherings, meetings, or social or ceremonial events where the members of the legislative body do not discuss legislative business among themselves that is outside the scope of the scheduled program.

The Public Records Act requires local and state agencies to make records available for public inspection. It also requires an agency to make copies of documents that are not exempt if the person requesting the documents pays the applicable fee. The Brown Act requires that, where agendas and other relevant writings are distributed to a majority of a legislative body's

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members, the writings must be disclosed under the Public Records Act. The Brown Act provides that the writings must be made available at or after a local legislative body's meeting for public inspection.

SB 1732 adds Government Code section 6252.7 to the Public Records Act and provides that, when the members of a local agency's legislative body are authorized by law to access a writing of that body or of the local agency, "the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is available."

Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

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