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Brown Act Update

Recent Legislative Developments

Legislative Changes To California's State And Local Open Meeting Acts

The Legislature recently passed four bills concerning both local and state open meeting and public records acts: (1) Assembly Bill 3035, makes notices and agendas of public meetings, under both the Ralph M. Brown Act and the Bagley-Keene Open Meeting Act, subject to the Americans with Disabilities Act (ADA), 42 U.S.C. Section 12132; (2) Assembly Bill No. 1945 prohibits some disclosure of confidential information learned during closed sessions under the Brown Act; (3) Senate Bill No. 1643 authorizes local legislative bodies, in some emergency situations, to meet in closed session and to forego one-hour notice and posting requirements; and (4) Assembly Bill No. 2645 permits local legislative bodies, under certain circumstances, to hold closed sessions with security consultants or security operations managers on matters regarding security. All of these bills are effective as of January 1, 2003.

AB 3035: Notices, agendas, and other writings for public meetings must be made available in alternative formats for disabled persons in compliance with the ADA.

This bill affects legislative bodies of local agencies, under the Brown Act, and state bodies, pursuant to the Bagley-Keene Act, and subjects all meetings of these bodies to the protections and prohibitions contained in Section 12132 of the ADA. (Section 12132 provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.")

Pursuant to the Brown Act and the Bagley-Keene Act, legislative bodies of local and State agencies must provide notice of their meetings and must also make available agendas and other writings that are distributed to all, or a majority of

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all, of the members of a local or State body and that pertain to any item to be considered during the meeting. AB 3035 would further require these bodies to make the notice, agendas, and other writings “available in appropriate alternative formats, as required by [Section 12132 of the ADA].” The public meeting notices would be required to include “information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.” Although local and State bodies may generally charge a fee for a copy of a public record, the bill would prohibit imposition of a surcharge in violation of section 12132 of the ADA for providing documents in an alternative format.

Lastly, AB 3035 amends Government Code Section 11135 to add race and national origin to the list of classes that are protected from discrimination with regard to access to the benefits of any program or activity that is conducted by the State or its agencies, or that is funded or financially assisted by the State.

AB 1945: Disclosure of “confidential information” is generally prohibited under the Brown Act.

This bill adds section 54963 to the Government Code and applies only to the Brown Act. It prohibits disclosure of “confidential information” acquired during a closed session, unless the legislative body authorizes the disclosure. “Confidential information” means “a communication made in a closed session that is specifically related to the basis for . . . [the] closed session.” However, the following acts would not be considered violations of the Act: (1) making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law; (2) expressing an opinion regarding the propriety or legality of actions taken by a local legislative body in closed session; and (3) disclosing information that is not “confidential information.” Also, section 54963 would not prohibit disclosures under certain whistleblower statutes.

Violations of section 54963 could be addressed by (1) injunctive relief to prevent the disclosure of the confidential information; (2) disciplinary action against an employee who willfully discloses confidential information, if the employee has been trained and notified of the requirements of section 54963; and (3) referral to the grand jury of a member of a legislative body who willfully discloses confidential information.

SB 1643: To deal with terrorism issues, Legislature loosens notice and disclosure requirements.

The Brown Act currently authorizes a legislative body to hold an emergency meeting without complying with 24-hour notice and posting requirements, but requires the local body to notify local media one hour prior to the emergency meeting. An emergency is defined as “a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined

Emergency and *dire* emergency are defined for purposes of one-hour notice requirement.

by a majority of the members of the legislative body.” Government Code § 54956.5.

SB 1643 amends § 54956.5 to distinguish between an “emergency” and a “dire emergency,” defining the latter as “a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses a peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.” In the case of a *dire emergency*, the local governing body may dispense with even the one-hour notice requirement, but must notify local media by telephone “at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting.” If telephone services are not functioning, notice must be given “as soon after the meeting as possible.”

The amendments under SB 1643 also give local legislative bodies the authority, in emergency and dire emergency situations, to meet in closed session if agreed to by two-thirds of the members of the legislative body. If two-thirds of the members are not present, a closed session may be held upon a unanimous vote of the members present.

SB 1643 also amends Government Code § 6254 of the California Public Records Act regarding disclosure of public records. Under the amendment, a local agency is not required to disclose a document that it has prepared to assess “vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency’s operations and that is for distribution in a closed session.”

AB 2645: Under the Brown Act, local legislative bodies may meet in closed session with security consultants and security operations managers.

Currently under the Brown Act, local legislative bodies may hold closed sessions with law enforcement personnel on matters posing threats to the security of public buildings or the public’s access to public services or facilities. AB 2645 amends Government Code § 54957 to permit the attendance in closed sessions of a security consultant or security operations manager. According to the amendment, “essential public services” include water, drinking water, wastewater treatment, natural gas service, and electric service.

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