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News Clerks Should Know:

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[Please pass this along to your City Council Members, City Managers, and Labor Negotiators]

SB 711 (Leno) Proposed Revisions the Brown Act Regarding Closed Sessions for Labor Negotiations

In January we notified you of proposed legislation which would require disclosure of written communications prior to entering into closed session regarding labor negotiations. The proposal comes from the California Newspapers Publishers Association and it has now been authored (Leno) and introduced as SB 711.

CCAC has expressed the following concerns regarding SB 711:

- The proposed language would prejudice the negotiating position of the agency.
- The proposed language would stifle the negotiating ability of the agency and impede the effective operation of government.
- It would be misleading to the public to disclose proposals which have not been considered or authorized by the elected body.
- CCAC supports the disclosure of all agreements after they are final and have been accepted or ratified by all parties.

The CCAC Legislative Committee will continue to closely watch this legislation and will continue to provide support to the League in working with the sponsors to make amenable revisions. Attached is the proposed legislation with CCAC's comments noted.

BILL NUMBER: SB 711 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Leno

FEBRUARY 27, 2009

An act to amend Sections 54954.5, 54957.1, and 54957.6 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 711, as introduced, Leno. Public meetings: closed sessions: labor negotiations.

(1) The Ralph M. Brown Act requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Under the act, the legislative body of a local agency may hold a closed session with the local agencies' designated representatives regarding negotiations concerning employee compensation but is required, in an open and public session prior to those closed sessions, to disclose specified information identifying the agency's designated representatives.

Existing law prohibits a closed session from including any final action on the proposed compensation of unrepresented employees. The act also requires the legislative body of a local agency to publicly report any action taken in closed session, as prescribed, including the approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the other party. The act provides a legislative body or elected official is not in violation of certain provisions of the act if the agenda that describes a closed session item is in substantial compliance by including specified information.

This bill would additionally require a local agency, before holding a closed session regarding employee compensation, to identify the employee or class of employees that are the subject of the negotiations, the representatives of the employees, and all known matters within the scope of the negotiations, and to also make available to the public certain written proposals. The bill would require the legislative body, before commencing negotiations for a new collective bargaining agreement or initial proposal for an unrepresented employee, to present, in an open and public session, the new collective bargaining agreement or an initial proposal. The bill would additionally require any vote of the legislative body on the collective bargaining agreement or initial proposal to be taken at an open and public session.

The bill would revise the prohibition against a closed session including a final action on the proposed compensation of unrepresented employees to instead prohibit the closed session from including any final vote. The bill would require a final vote on any action taken pursuant to a closed session to be conducted during an open and public regular meeting of the legislative body, and only after disclosure of certain writings, cost projections, and methodology. The bill would also make a conforming change to delete the requirement that the legislative body publicly report the action taken in closed session after the agreement is final. The bill would also make conforming changes to the information required to be included in an agenda describing a closed session, for purposes of compliance with the act.

The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

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

or

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

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

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

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs

(B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section

54956.9: (Specify number of potential cases)

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

LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee.

Discipline includes potential reduction of compensation.)

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

CONFERENCE WITH LABOR NEGOTIATORS

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

The employee or class of employees that are the subject of the negotiations

Representative of the employee

(This is fine because the legislative body can disclose this orally when calling the meeting to order and prior to adjourning to closed session.)

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

or

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

All known matters within the scope of the negotiations

(This language is of some concern because it's difficult to ascertain what "all known matters" are. For example, are we talking about an oral statement that the legislative body will be discussing salary, benefits, etc. or are we talking about something more specific.)

Any written proposals communicated by the local agency to representatives of public employees and proposals received by the local agency from representatives of the public employees

(This language is of great concern because the public disclosure of written proposals formulated by either the legislative body or the labor groups, prior to being considered by the other side, if in fact they are considered at all, will effectively jeopardize the negotiations process by revealing to one side the strategies/approaches used by the other. Generally, there are numerous proposals made back and forth, although not all are considered, by either side prior to any final decisions being made.)

(g) With respect to closed sessions called pursuant to Section

54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a 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 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

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

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

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

(k) 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. 2. Section 54957.1 of the Government Code is amended to read:

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify

that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of, a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

~~—(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.~~

~~—(7)~~

(6) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 3. Section 54957.6 of the Government Code is amended to read:

54957.6. (a) (1) Notwithstanding any other ~~provision of~~ law, a legislative body of a local agency may hold a closed ~~sessions~~ session pursuant to this section with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

~~However, prior to the~~

(2) Before holding a closed session pursuant to paragraph (1), the legislative body of the local agency shall hold an open and public session in which it ~~identifies its designated representatives.~~ does all of the following:

(A) Identifies the agency's designated representatives, the employee or class of employees that are the subject of the negotiations, and the representatives of the employees.

(This is fine because the legislative body can disclose this orally when calling the meeting to order and prior to adjourning to closed session.)

(B) Identifies all known matters within the scope of the negotiations. (This language is of some concern because it's difficult to ascertain what "all known matters" are. For example, are we talking about a oral statement that the legislative body will be discussing salary, benefits, etc. or are we talking about something more specific.)

(C) Makes available to the public any written proposals communicated by the local agency to representatives of public employees and proposals received by the local agency from representatives of the public employees. (This language is of great concern because the public disclosure of written proposals formulated by either the legislative body or the labor groups, prior to being considered by the other side, if in fact they are considered at all, will effectively jeopardize the negotiations process by revealing to one side the strategies/approaches used by the other. Generally, there are numerous proposals made, although not all are considered, by either side prior to any final decisions being made.)

(3) The notice required by subparagraphs (A) and (B) of paragraph (2) may be given orally or as part of the meeting agenda.

(This is fine because the legislative body can disclose this orally when calling the meeting to order and prior to adjourning to closed session.)

(b) A legislative body of a local agency shall present a new collective bargaining agreement or an initial proposal for an unrepresented employee in an open and public session, before commencing negotiations regarding that new collective bargaining agreement or initial proposal. A vote of a legislative

body on the new collective bargaining agreement or initial proposal subject to this subdivision shall be taken at an open and public session.

(This language is of great concern because the public disclosure of a collective bargaining agreement/initial proposal prior to being considered by the other side, if in fact they are considered at all, will effectively jeopardize the negotiations process by revealing to one side the strategies/approaches used by the other. The public vote in open session is fine because many agencies currently take that vote in public/open session already.)

(c) A closed session of a legislative body of a local agency authorized pursuant to this section is subject to all of the following conditions:

~~Closed sessions of a legislative body of a local agency, as permitted in this section,~~

(1) The closed session shall be only for the purpose of reviewing its the position of the local agency and instructing the local agency's designated representatives.

~~Closed sessions, as permitted in this section,~~

(2) The closed session may only take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

(This revised language is fine because it appears to be consistent with current practices and procedures.)

~~Closed sessions~~

(3) The closed session with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

~~Closed sessions~~

(4) The closed session held pursuant to this section shall not include any final ~~action on the proposed compensation of one or more unrepresented employees~~ vote.

~~For~~

(d) A final vote on any action taken pursuant to this section shall be conducted during an open and public regular meeting of the legislative body, but only after disclosure, pursuant to subdivision (a) of Section 54957.5 of all writings associated with the proposed action, including any projections of the proposed action's costs and any assumptions and methodology used to calculate those costs.

(The language pertaining to the final vote in public and open session is fine because it is consistent with the current practices and procedures of most agencies. Any public disclosure of the writings would be subject to the prior concerns stated above.)

(e) For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

~~(b)~~

(f) For the purposes of this section, the term "employee" ~~shall include~~ includes an officer or an independent contractor who functions as an officer or an employee, but shall not include ~~any an~~ elected official, member of a legislative body, or other independent ~~contractors~~ contractor.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing

with Section 17500) of Division 4 of Title 2 of the Government Code.

(Final Note: Negotiations are conducted in private and in confidence so that the parties may have a more relaxed, free-flowing discussion in order to maximize problem solving in the Memorandum of Understanding process. If both parties are required to publicize their proposals in advance of concerted deliberation, both parties may temper their requests which would inhibit initiative and creativity. This would unnecessarily prolong the negotiation process and prevent the true goal negotiations, which is to have a frank, honest and constructive dialogue about issues related to management/labor relations, and to do so without fear that the exchange of these ideas at a such a preliminary stage would impede the dialogue and good faith needed for an effective resolution.)