

Upcoming Changes to California's Open Meeting Laws

New Voting Procedures to Take Effect in 2014

Three bills recently signed by the governor will bring changes to the Brown Act beginning January 1, 2014. The Brown Act governs the conduct of public agency meetings and imposes a variety of requirements to maintain openness and transparency in government. (See Govt. Code §54950, et seq.)

The first and most noteworthy change alters voting procedures. Senate Bill 751 will require that “[t]he legislative body of a local agency publicly report any action taken and the vote or abstention on that action of each member present for the action.” (To be added as Govt. Code §54953(c)(2).) Currently, many agencies record the vote of the legislative body on some actions only in terms of the ratio, such as 5 to 1 in favor or 4 to 1 against. SB 751 will require that the individual votes and abstentions of each member of the legislative body on each action be reported. The legislative history of the bill indicates that the primary reason for this change in the law is to prevent large agency legislative bodies from obscuring the votes of each member on actions taken in open session by only reporting the vote in blocks.

All public agencies should review their voting procedures to ensure compliance with the new law. The clerk should record in the meeting minutes the vote of each member on each action item. After the vote is taken, the clerk or presiding member of the legislative body should announce the action taken and the vote of each member. It should be sufficient to continue reporting votes in blocks so long as it is clear how each member voted. For example, if one member is absent and the vote is 3 to 1 in favor, reporting as follows should be sufficient: “The Council has adopted Ordinance No. 30 by a vote of 3 to 1, with Councilmember Shaw voting against and Councilmember Case absent.”

The next change comes from Assembly Bill 246 and makes an addition to statutes regarding closed sessions, which can be held only for certain purposes set forth in the Brown Act. One such purpose is to confer with state and local officials and consultants regarding threats to the security of public buildings, services and facilities. (Govt. Code §54957(a).) AB 246 would add the governor to the list of persons with whom the legislative body can confer in closed session.

Finally, AB 382 adds “alternative investments” to the types of documents that are exempt from disclosure under the Brown Act. Section 54957.5 provides that, with some exceptions, all documents provided to a majority of the members of the legislative body in connection with a matter to be discussed at an open meeting are disclosable public records. AB 382 brings the Brown Act into conformance with the California Public Records Act by exempting “alternative investments,” as defined in the Public Records Act, from the Brown Act’s disclosure requirement.

This document is intended to provide you with general information regarding upcoming changes to California’s open meeting laws. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to

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an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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