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May 25, 2010

Open Meeting Act Mandate

LEGISLATIVE ANALYST'S OFFICE

Presented to:
Assembly Budget Subcommittee No. 4 on State Administration

Hon. Warren T. Furutani, Chair

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☑ Background

- ***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 collectively known as the "Open Meetings/Brown Act Reform" mandate.

☑ What's Reimbursable?

- ***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.

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- ***Training.*** Prepare training materials and train members of legislative bodies that hold closed executive sessions on Brown Act requirements for closed sessions.

☑ Mandate Costs

- Approximately $17 million annually for non-education local governments, however only $362,000 is due and payable in 2010-11.

☑ Examples of Claims in 2000-01 and 2001-02

- ***Community College Districts (CCD).*** During the two years, Coast, Palomar, and Saddleback CCDs each claimed more than $3,000 per board meeting. These claims assumed that mandate compliance for each agenda item required 45-minutes of staff time, at an average hourly labor cost of $40 to $74.
- ***County of Kern.*** For Board of Supervisors meetings in 2000-01, the County of Kern claimed reimbursement for over 4,900 agenda items. The County claimed 30 minutes per agenda item and an hourly labor cost of $43, or a cost per agenda of over $2,500.
- ***City of Fresno.*** During both years, the City claimed over $1,000 per City Council agenda. The City's claims (over $50,000 per year) included reimbursement for time spent on mandate compliance by the city manager, department directors, city attorney, and others.

☑ May Revision

- Administration proposes to "suspend" the mandated provisions of the Open Meeting/Brown Act Reform mandate, making compliance with these provisions optional in 2010-11.

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☑ Proposition 59 of 2004

- Proposition 59 of 2004 amended the California Constitution to specify that *"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*
- While Proposition 59 does not mention public agendas or summaries of closed session discussions, this information is integral to local agency Proposition 59 responsibilities.

☑ LAO Recommendation

- The Constitution does not impose a state mandate reimbursement requirement when *voters* impose obligations on local agencies.
- Amend the statute to require each local agency to annually announce at a regularly scheduled public hearing the policies it will follow to comply with the requirements of Proposition 59.
- Amend Government Code Sections 54954.2 and 54957.1 (the sections of law requiring preparation of short agendas and disclosure of items discussed in closed sessions) to specify that these provisions are reasonable guidelines for a local agency to implement Proposition 59 of 2004. A local agency may follow other standards, however, if they are announced at the annual public hearing, comply with Proposition 59, and are consistently adhered to.
- Delete funding for the mandate.