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**The Brown Act
&
Overview of the
1937 Act**



COUNTY COUNSEL'S OFFICE
Dennis A. Marshall
County Counsel

**OUTLINE OF
THE BROWN ACT**

as amended through December 31, 2004

Prepared by
Barbara Booth Grunwald, Deputy County Counsel

**OUTLINE OF THE BROWN ACT
(As amended through Dec. 31, 2004)
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THE BROWN ACT

(Adapted and updated from *The Brown Act: Open Meetings for Local Legislative Bodies*, California Attorney General's Office, 2003¹)

I. INTRODUCTION

A. The Ralph M. Brown Act

Government Code section 54950 et seq.²

B. Purpose and Scope

To require multi-member local legislative bodies to conduct all aspects of the decision-making process, including discussion, debate, and the acquisition of information, in public.

II. BODIES SUBJECT TO THE BROWN ACT (§ 54952)

The Act applies to all "legislative bodies" of "local agencies."

A. Local Agencies

The term "local agency" means "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency." (§ 54951.)

B. Legislative Bodies

1. The governing body of a local agency.
2. Subsidiary bodies of the agency created by the governing body.

Exception: An ad hoc committee composed solely of less than a quorum of the board.

3. The governing body of a private entity, if the entity either (a) was created by a legislative body to exercise properly delegated authority, or (b) receives funds from the local agency, and its governing body includes a member of the legislative body of the

¹ Available on line at www.ag.ca.gov/publications/2003_Intro_BrownAct.pdf.

² All subsequent statutory references are to the Government Code, unless otherwise specified.

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local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

4. Certain hospital lessees.

III. MEETINGS

A. Meeting Defined (§ 54952.2)

1. Face to Face Meetings

Any congregation of majority of members at same time and place to hear, discuss, or deliberate on any item within subject matter jurisdiction of legislative body or local agency.

Expressly prohibited: use of telephone, etc. by majority of board members to develop concurrence on action to be taken.

Exception: teleconferencing appearance and voting at meeting is expressly allowed, if certain restrictions are met, such as all teleconferencing locations being public and listed on agenda. (§ 54953.)

2. Exceptions

- a. Individual board member discussions with constituents, etc.
- b. Conference attendance.
- c. Attendance at public meeting of some other entity (e.g., Neighborhood Watch).
- d. Attendance at public meeting of another legislative body of same agency, or of a legislative body of another agency.
- e. Attendance at social or ceremonial occasion.
- f. Attendance at public meeting of standing committee of body, provided extra board members attend only as observers.

Note: no huddling at exempt occasion to do agency business!

B. Location of Meetings (§ 54954)

1. Generally must meet within boundaries of territory over which local agency exercises jurisdiction.

2. Exceptions to:

- a. Comply with state or federal law or court order.
- b. Inspect real or personal property.
- c. Participate in multi-agency meeting.
- d. Meet in closest facility where no meeting facility within boundaries of territory over which local agency exercises jurisdiction, or at principal office of local agency if outside territory.
- e. Meet with federal or state officials to discuss legislative or regulatory issue.
- f. Meet in or near facility owned by agency, provided discussion limited to that facility.
- g. Visit office of legal counsel, if it would reduce legal fees or costs.

3. Special exceptions for school district governing boards and JPAs.

- 4. Presiding officer may change location if unsafe to meet in designated location, by providing notice to media as for special meeting.**

C. Adjournments and Continuances

1. Adjournments governed by § 54955.
2. Continuances governed by § 54955.1.

D. Special Procedures for Meeting on Tax or Assessment (§ 54954.6)

Special procedures apply to meetings regarding any new or increased general tax or any new or increased assessment.

E. Voting Requirements (§ 54953)

No secret ballots allowed.

IV. NOTICE AND AGENDA REQUIREMENTS

A. Regular Meetings (§ 54954.2)

Each legislative body (except advisory and standing committees) must set formal rule (ordinance, resolution, bylaw, etc.) for time and place of holding regular meetings.

1. Agenda requirement

- a. Post at least 72 hours before meeting, in location visible to public when office is closed.
- b. Must include brief general description of each item of business to be transacted or discussed.
- c. Must describe procedures and deadline for disabled person to request disability-related modification or accommodation, including auxiliary aids or services, in order to participate in meeting (see Public's Rights, below, for discussion of fees).
- d. No action on items not on posted agenda.

"Action" does not include questions for clarification, brief announcements, brief reports of individual activities, or requests for future agenda items.

- e. Agenda must be made available in appropriate alternative format for disabled person upon request (see Public's Rights, below, for discussion of fees).

2. Exceptions to agenda requirement

a. Emergency situation

- (1) Defined as work stoppage, crippling activity, or other activity which severely impairs public health, safety, or both, or crippling disaster, mass destruction, terrorist act, or threatened terrorist activity.
- (2) Determination of existence of emergency situation requires majority vote.

b. Need to take action that came to attention of agency after agenda posted

Requires approval by two-thirds vote of members present at meeting, or unanimous vote if less than two-thirds present.

c. Continued item

Item previously posted in connection with meeting which occurred no more than five calendar days prior to date of action, and at prior meeting item was continued to meeting at which action being taken.

B. Special Meetings (§ 54956)

1. May be called at any time by president or a majority.
2. Require written notice to each member of board and to all media requesting notice.
3. Notice must be received (and also posted) at least 24 hours before meeting.
4. Notice must state business to be transacted at meeting.
5. No other business may be considered at meeting.
6. Notice required even if meeting in closed session or if no action to be taken.
7. Member of board may waive failure to receive notice by filing written waiver or by being present at meeting.

C. Emergency Meetings (§ 54956.5)

1. General rules

- a. Authorized only when prompt action necessary due to disruption or threatened disruption of public facilities.
- b. All special meeting requirements apply except 24-hour notice and posting requirement.
- c. Most closed sessions prohibited. May meet in closed session only pursuant to section 54957 (with Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their deputies, or security consultant or security

operations manager, on matters posing threat to security of public buildings, to security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or to public's right of access to public services or public facilities).

d. Decision to meet in closed session requires two-thirds vote of members present, or, if less than two-thirds of members are present, unanimous vote of members present.

e. Special rules for reports of meeting and minutes.

2. "Ordinary" emergency

a. Defined as work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both.

b. Emergency must be determined by majority of members of board.

c. Must notify media at least one hour before meeting, unless telephone service is not functioning.

3. "Dire" emergency

a. Defined as crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring the board to provide one-hour notice before holding emergency meeting may endanger public health, safety, or both.

b. Existence of dire emergency must be determined by majority of members of board.

c. Need not give one-hour notice, but must notify media at or near time that presiding officer or designee notifies members of board of emergency meeting, unless telephone service is not functioning.

V. PUBLIC'S RIGHTS

A. Registration (§ 54953.3)

1. Cannot require registration as condition of attendance.

2. If registration document posted or circulated, it must contain statement that completion of document is voluntary.

B. Recording (§ 54953.5)

Audio or video taping of open session may not be prohibited absent reasonable finding that recording cannot continue without noise, etc., that disrupts proceedings.

C. Attendance (§ 54957.9)

1. Board may order individuals removed who are willfully disrupting meeting.
2. If meeting cannot be rendered orderly by removing small group, board may order all members of public removed except nondisruptive news media.

D. Documents

1. Open session agendas and board packets are public documents as soon as provided to board. (Excludes closed session items.) (§ 54957.5.)
2. May charge fee for copy.
3. Members of public also have right to be placed on mailing list for entire agenda packet (open session items). Agency may charge fee for calendar year subscription. (§ 54954.1.)
4. Documents for disabled: Americans with Disabilities Act prohibits charging greater fee to disabled for extra costs of making documents available in appropriate format. Agency's only option is to increase fee for all persons to cover extra costs.

E. Participation

1. Public comment (§ 54954.3)

a. When not on agenda

- (1) Agenda for regular meeting must provide opportunity for members of public to address board on items of interest within subject matter jurisdiction of board; no action may be taken unless exceptions to agenda requirement apply.

- (2) Public comment time need not be provided at special meeting.

b. Agenda items

Must allow opportunity for public comment on agenda items before or during board's consideration of item, at both regular and special meetings.

2. Regulations (§ 54954.3)

Board may adopt reasonable regulations to insure all members of public have opportunity to speak, such as limiting total time allocated to particular issue and limiting time allocated to individual speakers.

3. ADA requirements (§ 54953.2)

All open sessions must comply with Title II of the Americans with Disabilities Act (42 U.S.C. § 12132) – i.e., public agency must ensure that disabled persons not only may attend but also may participate. No special fee to disabled allowed.

4. Location requirements (§ 54961)

Meetings cannot be held in facility that prohibits admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of public may not be present without making a payment or purchase.

VI. CLOSED SESSION

A. Narrow Construction

1. No closed session unless expressly authorized by statute (§ 54962).
2. No "semi-closed" meetings; cannot admit certain members of public while excluding remainder.

B. General Procedures for Closed Session (§ 54957.7)

1. Agenda must list specific reason or reasons for closed session (§ 54954.5).
2. May only consider in closed session those matters included in agenda.

3. Must make public reports of certain actions taken.

4. All participants must maintain confidentiality of closed session. Confidentiality may be enforced by injunctive relief, disciplinary action (for employees), or referral of board member to grand jury for investigation of misconduct in office. (§ 54963.)

Exception: may not take action against person making confidential inquiry or complaint to DA or grand jury if person believes closed session was unauthorized or improper, or for expressing an opinion concerning propriety or legality of actions taken in closed session. (§ 54963.)

C. Authorized Exceptions

1. Personnel (§ 54957, subd. (b))

a. "[T]o consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public hearing."

b. Must be individual employee where concern is for privacy of employee or freedom of employer to discuss employee; cannot discuss generic personnel issues (e.g., layoffs) in closed session.

c. Definition of "employee" does not include elected official, member of legislative body, or most independent contractors.

d. May not discuss proposed compensation under this exception (but see below regarding labor negotiations with unrepresented employees).

2. Labor negotiations (§ 54957.6)

a. Authorized only to review board's position and instruct board's representative in negotiations with represented and unrepresented employees.

b. Subjects discussed may include salaries, salary schedules, fringe benefits, and collective bargaining items.

3. Pending litigation (§ 54956.9)

- a. Authorized only "when discussion in open session ... would prejudice the position of the local agency in the litigation."
- b. Must be to confer with or receive advice from legal counsel.
- c. Three categories:
 - (1) Formal adjudicatory proceeding to which agency is party has been initiated.
 - (2)(a) Based on existing facts and circumstances, there is significant exposure to litigation against local agency.
 - (b) Board is determining whether closed session authorized pursuant to paragraph (a).
 - (3) Based on existing facts and circumstances, board is deciding whether to initiate litigation or has decided to initiate litigation.

4. Real property negotiations (§ 54956.8)

- a. May meet with board's negotiator prior to purchase, sale, exchange, or lease of real property to instruct negotiator regarding price and terms of payment.
- b. Negotiator may be member of board.
- c. Eminent domain may be discussed under pending litigation exception.

5. Public security (§ 54957, subd. (a))

May meet with Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or security consultant or security operations manager, on matters posing threat to security of public buildings, to security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or to public's right of access to public services or public facilities.

6. Other

a. License applications (§ 54956.7)

To discuss and determine whether applicant for license or license renewal, who has criminal record, is sufficiently rehabilitated to obtain license.

b. Response to final draft audit report (§ 54956.75)

To consider response to confidential final draft audit report from Bureau of State Audits.

c. Retirement board investment (§ 54956.81)

To consider the purchase or sale of particular, specific pension fund investments.

d. Member of county Medi-Cal plan (§ 54956.86)

To hear charge or complaint from member of plan.

e. County-run health insurance provider (§ 54956.87)

To discuss health plan trade secrets.

f. JPA claims (§ 54956.95)

To discuss claim against joint powers agency for payment of tort liability losses, public liability losses or workers' compensation liability incurred by a JPA or local agency member.

g. JPA bylaw permitting closed sessions by participating agencies (§ 54956.96)

To allow participating agencies to discuss financial or liability implications for member agency.

h. Multijurisdictional drug law enforcement agency (§ 54957.8)

To discuss case records or hear testimony.

i. Request by employee for hardship withdrawal from deferred compensation account (§ 54957.10)

To consider application based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event.

j. Public hospital (§ 54962)

As authorized by Health and Safety Code.

k. School districts and community college districts (§ 54962)

As authorized by Education Code.

D. Minute Book (§ 54957.2.)

Optional closed session record may include record of topics discussed and decisions made.

VII. PENALTIES AND REMEDIES FOR VIOLATION

A. Criminal Penalties

Each member of board who attends meeting where action taken in violation of Act, where member intends to deprive public of information to which member knows or should know public is entitled, is guilty of misdemeanor (§ 54959).

B. Civil Remedies

1. Injunctive relief against future actions (§ 54960)

a. DA or any interested person may sue to stop or prevent violation or threatened violation of Act.

b. Injunction (if granted) may include requirements to audiotape future closed sessions, if court concludes legislative body violated certain closed session requirements.

2. Voidability of past actions (§ 54960.1)

a. DA or any interested person may sue to obtain determination that action taken in violation of rules for public attendance (§ 54953), regular meetings (§ 54954.2), closed session listings (§ 54954.5), notices for taxes and assessments (§ 54954.6),

special meetings (§ 54956), or emergency meetings (§ 54956.5) is null and void.

- b. Must demand that board cure or correct allegedly improper action.
- c. Demand must be made within certain number of days of action and person must then wait 30 days for board to act.
- d. If board does not act or interested person unhappy with action taken, must begin suit within 15 days thereafter.
- e. Board may cure or correct even after suit filed.
- f. Substantial compliance sufficient to avoid liability.

C. Potential Costs (§ 54960.5)

- 1. Potential costs and attorney's fees to plaintiff if challenge successful.
- 2. Potential costs and attorney's fees to agency if agency prevails and court finds suit "clearly frivolous and totally lacking in merit."



COUNTY COUNSEL'S OFFICE
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County Counsel

**TEXT OF
THE BROWN ACT**

As amended through December 31, 2004

Prepared by
Barbara Booth Grunwald, Deputy County Counsel

BROWN ACT
(as amended through Dec. 31, 2004)

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DEERING'S CALIFORNIA CODES ANNOTATED
GOVERNMENT CODE
TITLE 5. Local Agencies
DIVISION 2. Cities, Counties, and Other Agencies
PART 1. Powers and Duties Common to Cities, Counties, and Other Agencies
CHAPTER 9. Meetings

As amended through December 31, 2004

§ 54950. Declaration of public policy

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

HISTORY: Added Stats 1953 ch 1588 § 1.

§ 54950.5. Title of act

This chapter shall be known as the Ralph M. Brown Act.

HISTORY: Added Stats 1961 ch 115 § 1.

§ 54951. "Local agency"

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

HISTORY: Added Stats 1953 ch 1588 § 1. Amended Stats 1959 ch 1417 § 1.

§ 54951.1. [Section repealed 1994.]

§ 54951.7. [Section repealed 1994.]

§ 54952. "Legislative body"

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c)(1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

HISTORY: Added Stats 1953 ch 1588 § 1. Amended Stats 1961 ch 1671 § 1; Stats 1993 ch 1138 § 3 (SB 1140), operative April 1, 1994; Stats 1996 ch 1134 § 1 (SB 1504); Stats 2002 ch 1073 § 2 (AB 2937).

§ 54952.1. Conduct and treatment of electee

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

HISTORY: Added Stats 1993 ch 1137 § 1 (SB 36), operative April 1, 1994. Amended Stats 1994 ch 32 § 2 (SB 752), effective March 30, 1994, operative April 1, 1994.

§ 54952.2. [Meeting; prohibited devices for obtaining collective concurrence; exclusions from chapter]

(a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person.

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss

among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

HISTORY: Added Stats 1993 ch 1136 § 2 (AB 1426), operative April 1, 1994; ch 1137 § 2 (SB 36), operative April 1, 1994. Amended Stats 1994 ch 32 § 3 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1997 ch 253 § 1 (SB 138).

§ 54952.3. [Section repealed 1994.]

§ 54952.5. [Section repealed 1994.]

§ 54952.6. "Action taken"

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

HISTORY: Added Stats 1961 ch 1671 § 3.

§ 54952.7. Copy of chapter

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

HISTORY: Added Stats 1980 ch 1284 § 17. Amended Stats 1981 ch 968 § 27; Stats 1993 ch 1136 § 3 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 3 (SB 36), operative April 1, 1994; ch 1138 § 7 (SB 1140), operative April 1, 1994.

§ 54953. Requirement that meetings be open and public; Teleconferencing

(a) 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 of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

HISTORY: Added Stats 1953 ch 1588 § 1. Amended Stats 1988 ch 399 § 1; Stats 1993 ch 1136 § 4 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 4 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 4 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1997 ch 253 § 2 (SB 138); Stats 1998 ch 260 § 1 (SB 139).

§ 54953.1. Grand jury testimony

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

HISTORY: Added Stats 1979 ch 950 § 1.

§ 54953.2. Meetings to conform to Americans With Disabilities Act

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

HISTORY: Added Stats 2002 ch 300 § 5 (AB 3035).

§ 54953.3. Registration of attendance

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

HISTORY: Added Stats 1957 ch 85 § 1. Amended Stats 1981 ch 968 § 28.

§ 54953.5. Recording proceedings

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a video or tape player made available by the local agency.

HISTORY: Added Stats 1980 ch 1284 § 18. Amended Stats 1993 ch 1136 § 5 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 5 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 5 (SB 752), effective March 30, 1994, operative April 1, 1994.

§ 54953.6. Restrictions on broadcasts of proceedings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

HISTORY: Added Stats 1993 ch 1136 § 6 (AB 1426), operative April 1, 1994, ch 1137 § 6 (SB 36), operative April 1, 1994. Amended Stats 1994 ch 32 § 6 (SB 752), effective March 30, 1994, operative April 1, 1994.

§ 54953.7. Access to meetings beyond minimal standards

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

HISTORY: Added Stats 1981 ch 968 § 29.

§ 54954. Rules for conduct of business; Time and place of meetings

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

HISTORY: Added Stats 1953 ch 1588 § 1. Amended Stats 1993 ch 1136 § 7 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 7 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 7 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1997 ch 253 § 3 (SB 138); Stats 1998 ch 260 § 2 (SB 139); Stats 2004 ch 257 § 1 (SB 1771).

§ 54954.1. Request for notice; Renewal; Annual Fee

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

HISTORY: Added Stats 1973 ch 1070 § 1. Amended Stats 1990 ch 1198 § 1 (AB 4065); Stats 1997 ch 253 § 4 (SB 138); Stats 2002 ch 300 § 6 (AB 3035).

§ 54954.2. Posting of agenda

(a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

HISTORY: Added Stats 1986 ch 641 § 5. Amended Stats 1993 ch 1136 § 8 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 8 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 8 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1997 ch 253 § 5 (SB 138); Stats 2002 ch 300 § 7 (AB 3035).

§ 54954.3. Public testimony at regular meetings

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

HISTORY: Added Stats 1986 ch 641 § 6. Amended Stats 1991 ch 66 § 1 (SB 100); Stats 1993 ch 1136 § 9 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 9 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 9 (SB 752), effective March 30, 1994, operative April 1, 1994.

§ 54954.4. Legislative findings and declarations relating to reimbursements; Legislative intent; Review of claims

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

HISTORY: Added Stats 1991 ch 238 § 1 (AB 102).

§ 54954.5. Description of closed session items

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.)

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)

(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

HISTORY: Added Stats 1993 ch 1136 § 10 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 10 (SB 36), operative April 1, 1994. Amended Stats 1994 ch 32 § 10 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1996 ch 182 § 1 (SB 2092); Stats 1998 ch 260 § 2.5 (SB 139); Stats 1998 ch 876 § 11.1 (SB 1649); Stats 2002 ch 1120 § 1 (AB 2645); Stats 2004 ch 576 § 3 (AB 1827), ch 784 § 1.5 (AB 2782).

§ 54954.6. Public meeting on general tax or assessment; Notice

(a)(1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property

shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The estimated amount of the assessment per parcel. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5

of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

HISTORY: Added Stats 1992 ch 1234 § 2 (SB 1977). Amended Stats 1993 ch 1194 § 2 (SB 376), effective October 11, 1993; Stats 1994 ch 860 § 3 (SB 1286); Stats 1995 ch 258 § 1 (SB 725); Stats 1997 ch 38 § 6 (SB 919), effective July 1, 1997.

§ 54955. Adjournment of meetings

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is

to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

HISTORY: Added Stats 1953 ch 1588 § 1. Amended Stats 1955 ch 760 § 1; Stats 1959 ch 647 § 1.

§ 54955.1. Continuance of hearing

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

HISTORY: Added Stats 1965 ch 469 § 1.

§ 54956. Special meetings; Notice

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

HISTORY: Added Stats 1953 ch 1588 § 1. Amended Stats 1955 ch 760 § 2; Stats 1980 ch 1284 § 19; Stats 1986 ch 641 § 7; Stats 1994 ch 32 § 11 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1997 ch 253 § 6 (SB 138).

§ 54956.5. Emergency meetings; Notice

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses 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.

(b)(1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

HISTORY: Added Stats 1979 ch 223 § 1. Amended Stats 1981 ch 968 § 30; Stats 1986 ch 641 § 8; Stats 2002 ch 175 § 2 (SB 1643).

§ 54956.6. Fees

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

HISTORY: Added Stats 1980 ch 1284 § 20.

§ 54956.7. Closed sessions regarding application from person with criminal record

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

HISTORY: Added Stats 1982 ch 298 § 1.

§ 54956.75. Closed session for response to final draft audit report

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

HISTORY: Added Stats 2004 ch 576 § 4 (AB 1827).

§ 54956.8. Closed sessions regarding real property negotiations

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of

real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

HISTORY: Added Stats 1984 ch 1126 § 2. Amended Stats 1994 ch 32 § 12 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1998 ch 260 § 3 (SB 139).

§ 54956.81. Closed sessions regarding purchase or sale of pension fund investments

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

HISTORY: Added Stats 2004 ch 533 § 20 (AB 2234).

§ 54956.86. Closed session for health plan member

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

HISTORY: Added Stats 1996 ch 182 § 2 (SB 2092).

§ 54956.87. Disclosure of records and information; Meetings in closed session

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2

(commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

HISTORY: Added Stats 1999 ch 769 § 2 (AB 496). Amended Stats 2003 ch 424 § 2 (AB 171).

§ 54956.9. Closed sessions concerning pending litigation; Lawyer-client privilege

Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(a) Litigation, to which the local agency is a party, has been initiated formally.

(b)(1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(3) For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(F) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the subdivision of this section that authorizes the closed session. If the session is closed pursuant to subdivision (a), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

HISTORY: Added Stats 1984 ch 1126 § 3. Amended Stats 1987 ch 1320 § 5; Stats 1993 ch 1136 § 11 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 11 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 13 (SB 752), effective March 30, 1994, operative April 1, 1994.

§ 54956.95. Closed sessions regarding liability

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

HISTORY: Added Stats 1989 ch 882 § 3.

§ 54956.96. Disclosure of specified information in closed session of joint powers agency; Authorization of designated alternate to attend closed session; Closed session of legislative body of local agency member

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

HISTORY: Added Stats 2004 ch 784 § 2 (AB 2782).

§ 54957. Closed session regarding public security, facilities, employees, national security, examination of witness

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b)(1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

HISTORY: Added Stats 1953 ch 1588 § 1. Amended Stats 1957 ch 1314 § 1; Stats 1959 ch 647 § 2; Stats 1961 ch 1671 § 4; Stats 1971 ch 587 § 1; Stats 1975 ch 959 § 8; Stats 1980 ch 1284 § 21; Stats 1982 ch 298 § 2; Stats 1993 ch 1136 § 12 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 12 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 14 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2002 ch 1120 § 2 (AB 2645).

§ 54957.1. Public report of action taken in closed session; Form; Availability; Construction; Actions for injury to interests

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, 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 specified below:

(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 specified below:

(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) 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 paragraph (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.

HISTORY: Added Stats 1975 ch 959 § 9. Amended Stats 1977 ch 89 § 1; Stats 1980 ch 181 § 1, ch 1284 § 22; Stats 1993 ch 1136 § 13 (AB 1426), operative April 1, 1994, ch 1137 § 13 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 15 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2004 ch 533 § 21 (AB 2234).

§ 54957.2. Minute book for closed sessions

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

HISTORY: Added Stats 1976 ch 1363 § 1. Amended Stats 1980 ch 1284 § 23; Stats 1981 ch 968 § 31.

§ 54957.5. Agendas and other writings as public records

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253,

except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

HISTORY: Added Stats 1980 ch 1284 § 24. Amended Stats 1981 ch 968 § 32; Stats 1993 ch 1136 § 14 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 14 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 16 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1998 ch 260 § 4 (SB 139); Stats 1999 ch 769 § 3 (AB 496); Stats 2002 ch 300 § 8 (AB 3035).

§ 54957.6. Closed sessions regarding employee matters

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions 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 closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions 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 held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

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

HISTORY: Added Stats 1968 ch 1272 § 2. Amended Stats 1980 ch 1284 § 25; Stats 1984 ch 62 § 1; Stats 1985 ch 366 § 1; Stats 1986 ch 248 § 97; Stats 1993 ch 1138 § 8 (SB 1140), operative April 1, 1994; Stats 1994 ch 32 § 17 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1998 ch 260 § 5 (SB 139).

§ 54957.7. Disclosure of items to be discussed at closed session

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

HISTORY: Added Stats 1980 ch 1284 § 26. Amended Stats 1981 ch 968 § 33; Stats 1993 ch 1136 § 15 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 15 (SB 36), operative April 1, 1994.

§ 54957.8. Closed sessions of multijurisdictional drug law enforcement agencies

Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional drug law enforcement agency, or an advisory body of a multijurisdictional drug law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional drug law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

"Multijurisdictional drug law enforcement agency," for purposes of this section, means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, which provides drug law enforcement services for the parties to the joint powers agreement.

The Legislature finds and declares that this section is within the public interest, in that its provisions are necessary to prevent the impairment of ongoing law enforcement investigations, to protect witnesses and informants, and to permit the discussion of effective courses of action in particular cases.

HISTORY: Added Stats 1988 ch 55 § 1.

§ 54957.9. Authorization to clear room where meeting willfully interrupted; Readmission

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

HISTORY: Added Stats 1970 ch 1610 § 2. Amended Stats 1981 ch 968 § 34.

§ 54957.10. Closed sessions regarding application for early withdrawal of deferred compensation plan funds

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

HISTORY: Added Stats 2001 ch 45 § 1 (SB 671).

§ 54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

HISTORY: Added Stats 1953 ch 1588 § 1.

§ 54959. Criminal penalty for violation of chapter

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

HISTORY: Added Stats 1961 ch 1671 § 5. Amended Stats 1993 ch 1136 § 16 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 16 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 18 (SB 752), effective March 30, 1994, operative April 1, 1994.

§ 54960. Proceeding to prevent violation of chapter; Recording closed sessions; Procedure for discovery of tapes

(a) The district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency which has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording.

(ii) An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

HISTORY: Added Stats 1961 ch 1671 § 6. Amended Stats 1969 ch 494 § 2; Stats 1993 ch 1136 § 17 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 17 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 19 (SB 752), effective March 30, 1994, operative April 1, 1994.

§ 54960.1. Proceeding to determine validity of action; Demand for correction

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c)(1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period

to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5 .

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

HISTORY: Added Stats 1986 ch 641 § 9. Amended Stats 1987 ch 1327 § 2; Stats 1992 ch 1234 § 3 (SB 1977); Stats 1993 ch 1136 § 18 (AB 1426), operative April 1, 1994 Stats 1993 ch 1137 § 18 (SB 36), operative April 1, 1994; Stats 1994 ch 32 § 20 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 2002 ch 454 § 23 (SB 1326).

§ 54960.5. Costs and attorney fees

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a legislative body of the local agency has violated this chapter. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

HISTORY: Added Stats 1975 ch 959 § 10. Amended Stats 1981 ch 968 § 35; Stats 1986 ch 641 § 10.

§ 54961. Meeting place with discriminatory admission policies; Identification of victim of sexual or child abuse

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

HISTORY: Added Stats 1970 ch 383 § 2. Amended Stats 1981 ch 968 § 36; Stats 1993 ch 1136 § 19 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 19 (SB 36), operative April 1, 1994; Stats 1993 ch 1138 § 9 (SB 1140), operative April 1, 1994; Stats 1994 ch 32 § 21 (SB 752), effective March 30, 1994, operative April 1, 1994.

§ 54962. Prohibition against closed sessions except as expressly authorized

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

HISTORY: Added Stats 1987 ch 1320 § 6. Amended Stats 1988 ch 1346 § 1, effective September 24, 1988; Stats 1993 ch 1136 § 20 (AB 1426), operative April 1, 1994; Stats 1993 ch 1137 § 20 (SB 36), operative April 1, 1994; Stats 1993 ch 1138 § 10 (SB 1140), operative April 1, 1994; Stats 1994 ch 32 § 22 (SB 752), effective March 30, 1994, operative April 1, 1994; Stats 1995 ch 529 § 6 (SB 614), effective October 4, 1995.

§ 54963. Disclosure of confidential information acquired in closed session prohibited; Disciplinary action for violation

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

**Overview On
County Employees' Retirement Law of 1937
("1937 Act")
Retirement Systems**

**Presented by John R. Descamp, CEO
Sacramento County Employees'
Retirement System**

"SCERS"

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INTRODUCTION

The information presented is intended to serve as an overview for persons such as plan administrators, trustees, members of boards of supervisors, legislators, labor and management representatives, plan participants and other interested parties, who are, to varying degrees, familiar with the County Employees' Retirement Law of 1937 ("the 1937 Act") and retirement systems enacted pursuant to its provisions.

In some instances information presented is described in general terms and is not intended or suggested to be definitive, specific, or complete and may not even be current for some systems.

The information is presented to generally familiarize the reader with the 1937 Act and 1937 Act systems.

Recent developments such as the approval by California voters of the "California Pension Protection Act of 1992" may have profound impact upon the 1937 Act and the administration and management of 1937 Act and other California retirement systems, i.e., it may fundamentally alter relationships between retirement boards and respective executive and legislative branches of California state and local governments. At this writing, it is uncertain as to exactly what this impact will be. For the reader's information, a copy of the Act is provided as Exhibit A.

Notes on a presentation "The Implications Of Proposition 132, The California Pension Protection Act For California Public Pension Systems" made before the spring conference of the State Association Of County Retirement Systems on May 7, 1993, by Joe Wyatt and Michael Tourmanoff of Hufstедler, Kaus and Ettinger, a law partnership, are provided as Exhibit B.

MATERIALS PRESENTED

Each reader is presented with the following material:

- This booklet explaining general descriptions of the 1937 Act, its enacted systems, how they are organized, how they are funded, what benefits are provided, etc.

Each reader is recommended to acquire:

- A copy of Sacramento County Employees' Retirement System's ("SCERS") Retirement Handbook or similar document from some other 1937 Act retirement system.

These materials, presented with or without narration, should provide a satisfactory overview.

Each reader is advised to review copies of his/her retirement system summary plan description or member's handbook for more specific information regarding idiosyncrasies of the retirement plan of interest or of which (s)he is a member, trustee, administrator, etc. While reading this material, remember that as trustees and administrators, we are governed by the 1937 Act and it is the basis of all our decisions. The statements in this booklet and in systems' member handbooks and summary plan descriptions are general and have been made as simple as possible while still being accurate. The law is sometimes very complex, but when a conflict arises, any decision will be based on the law and not on booklets or handbooks.

COUNTY RETIREMENT SYSTEMS

Initial Authorization

The Legislature initially authorized a retirement system for county employees with the enactment of the County Employees' Retirement Law of 1919. This law was replaced by the 1937 Act, and was eventually repealed in 1947.

Existing Law

Under existing law a county may provide retirement benefits to its employees in three ways. It may: (1) establish an independent system, (2) contract with the California Public Employees' Retirement System (CalPERS), or (3) establish a system under the 1937 Act.

Independent Systems

Article XI, Section 1 of the State Constitution authorizes general law counties to provide for the number, compensation, tenure and appointment of employees. In addition, Article XI, Sections 4 and 6, authorizes charter counties and charter cities and counties to establish independent retirement systems if their charters so provide. Two general law counties (San Luis Obispo and Trinity) and one charter city and county (San Francisco) currently have independent systems. Trinity County also is a contracting agency with CalPERS for providing benefits to its "safety" members.

CalPERS System

In 1939 the Legislature authorized employees of counties (and other public agencies) to join CalPERS at the county's option. Currently 37 counties participate in this system. Table I on page 13 shows, for each participating county, the total number of CalPERS members for each county.

THE 1937 ACT SYSTEMS

Current Systems

The 1937 Act provides for retirement systems for county and district employees in those counties adopting its provisions. All changes, additions, or deletions to retirement systems established under this law require action by the State Legislature. Twenty California counties operate retirement systems under the provisions of the 1937 Act.

The 20 counties are: Alameda, Contra Costa, Fresno, Imperial, Kern, Los Angeles, Marin, Mendocino, Merced, Orange, Sacramento, San Bernardino, San Diego, San Joaquin, San Mateo, Santa Barbara, Sonoma, Stanislaus, Tulare and Ventura. Los Angeles, in 1938, was the first county to adopt the 1937 Act provisions. Imperial was the last, establishing its system in 1951. Most of the member counties created their systems in the middle 1940's.

The memberships of the systems parallel the size of the sponsoring counties. Los Angeles has the largest system with in excess of 124,000 members and beneficiaries, while Mendocino has the smallest system with slightly more than 2,000 members. Taken together, as of June 1998, the 1937 Act systems have in excess of 313,000 members and represent approximately \$55 billion in assets. These systems together constitute the third largest public employees' "system" in the state, ranking behind only the Public Employees' Retirement System and the State Teachers' Retirement System. Table II on page 14 shows, for each participating county, the date on which the retirement system went into effect, and total membership.

Stated Purpose

The 1937 Act was enacted to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefits as additional elements of compensation for future service and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting a hardship upon the employees removed^a.

Complexity Of The 1937 Act

Although the 1937 Act as originally written was intended to be a system of benefits applicable to all systems enacted pursuant to its provisions, through legislative constitutional amendments, legislative statutory amendments, and ambiguous language subjected to a multitude of interpretations by boards, administrators, legal advisors and courts, administration of the 1937 Act systems has become complex, complicated, and difficult.

The 1937 Act is now replete with provisions which are stated to be only applicable in counties of a certain "class" as determined by population. It is also replete with provisions which are only applicable in certain counties if specifically adopted by the county's board of supervisors or the board of retirement, or both. These provisions enable counties to provide levels of benefits to members which are appropriate for county resources and acceptable politically. These reasons aside, without intimate knowledge of a specific system's history with respect to population size and past actions of the board of supervisors and board of retirement, and without a system's plan summary description, it is virtually impossible for a reader of the 1937 Act itself to determine, with reasonable certainty, plan membership or benefit eligibility criteria and prospective benefit amounts for a particular 1937 Act system. Further complications arise out of the authority of the retirement boards to adopt provisions and make regulations which

specific activities are not apparent in the 1937 Act itself⁴.

Establishing A System

The 1937 Act provides two methods by which a county may establish a 1937 Act retirement system: (1) an affirmative vote by a majority of the electors voting on the proposition at a general or special election, or (2) by a four-fifths vote of the board of supervisors⁵. Once a county elects to come under the 1937 Act, the Act's provisions become operative on either the following January 1, or July 1, but not sooner than 60 days after the appropriate election. A system established pursuant to the 1937 Act supersedes any previously established county retirement system.

Board of Retirement

Each county has a board of retirement which is charged with managing the system⁶. These boards make administrative regulations, which must be approved by the board of supervisors. These boards must have nine members and; in systems having both law enforcement and fire suppression members, one alternate safety member, each serving a term of three years. Composition of each board is determined by statute as follows⁷:

- 1 county treasurer
- 4 qualified electors not in any way connected with county government, except one may be a county supervisor. These four members are appointed by the board of supervisors.
- 2 general members of the retirement association as elected by its general members.
- 1 safety member (and one alternate safety member) of the retirement association elected by its safety members.
- 1 retired member of the retirement association elected by its retired members.*

(*exception for Santa Barbara County - add one alternate retiree member)

Board of Investments

A county in which the assets of the retirement system exceed eight hundred million dollars (\$800,000,000), the board of supervisors may, by resolution, establish a board of investments which shall be responsible for all investments of the retirement system⁸. Its composition and terms of office are basically the same as the board of retirement except appointed members of the board must have had significant experience in institutional investing. As of this writing, only Los Angeles County Employees' Retirement Association has a board of investments.

Retirement Board's Fiduciary Duties

The 1937 Act specifies certain fiduciary duties of each board. Generally, with respect to investments, the board may invest in any form or type of investment deemed prudent by the board(s)⁹.

The board has exclusive control over the investment of the employees' retirement fund and is obligated to maintain the trust fund for the exclusive purposes of providing benefits to participants and beneficiaries.

The board and its officers and employees must discharge their duties with respect to the system:

- 1. Solely in the interest and for the exclusive purposes of providing benefits to participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system;
- 2. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and must
- 3. Diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

Administrative Costs and Personnel

Retirement system administrative, technical and clerical staff may be either appointed by the county treasurer or appointed by the respective board of retirement or board of investment¹⁰. When staff is appointed by the county

treasurer, the cost of administration is paid out of county funds¹¹.

When staff is appointed by respective boards, the cost of administration is paid out of retirement system earnings. The maximum administrative expenditure (excluding cost of investment) is statutorily set at .18 percent of system assets¹².

System personnel are county employees are subject to civil service or merit system rules of the county in which the retirement system is located. A board-appointed administrator, a chief investment officer and assistant administrator, however, may not be subject to civil service or merit system rules but may serve at the pleasure of the board¹³.

In all cases, personnel salaries are included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees¹⁴.

Attorney For The Board

Generally, the district attorney, or the county counsel if there is one, is the attorney for the board¹⁵ (in a county of the first class (Los Angeles), the respective boards may elect to secure legal representation from other than the County Counsel¹⁶). However, the board may contract for the legal services of an attorney in private practice when the board determines, after consultation with the county counsel, that the county counsel cannot provide the board with legal services due to a conflict of interest or other compelling reason¹⁷. This provision notwithstanding, the board may employ an attorney in private practice in carrying out its investment powers and duties¹⁸.

Board Medical Advisor

The county health officer or designee advises the board on medical matters¹⁹. The board may also secure such medical, investigatory and other service and advice as is necessary to make determinations on applications for disability retirement or continuing disability of members previously retired for disability²⁰.

Hearing Officer

Whenever, in order to make a determination, it is necessary to have a hearing, the board may appoint either: one of its members; or, a member of the State Bar of California; to serve as a referee²¹.

Upon receiving the proposed findings of fact and recommendations of the referee, the board has several options which may include: approve and adopt the proposed findings and recommendations; or, require a transcript or summary of all the testimony, plus all other evidence considered by the referee; or, refer the matter back with or without instructions; or, set the matter for hearing before itself²².

Funding

Funding of benefits is provided from three sources: (1) investment income, (2) employee contributions, and (3) county and special district contributions.

Investment Earnings

Investment income generally refers to earnings derived from the investment of system assets and consists of interest, dividends, rentals, and capital appreciation.

Investment earnings are usually expressed as a percentage of the amount invested. Because of this, the manner in which the value of these assets is reported can have a significant impact on the reported yield. There are two common methods for reporting the value of the assets: (1) book value, or the value of the asset based upon its original purchase price or acquisition cost, and (2) the market value, or the asset's current value. Although market value is generally considered to be the more accurate way to report asset value for purposes of determining investment yield, for purposes of valuing investments and reporting earnings, the book value is generally used because: (1) it provides a simpler method of accounting, and (2) it does not fluctuate as does market value.

Prior to June 5, 1984, investment of assets was limited and controlled pursuant to Government Code Sections 31595 through 31595.6, and by Sections 1372 of the California State Financial Code.

Authorized investments included:

1. Securities which were legal for savings bank investments.
2. Deposits at interest in banks (if secured or collateralized at 110 percent of deposit).
3. Deposits in savings and loan associations (if secured or collateralized at 110 percent of deposit).
4. Registered warrants of municipalities.
5. Real property leased to counties in the State.
6. Deeds of trust and mortgages (not to exceed 25 percent of all funds invested).
7. Real property or improvements if acquired for sale or lease to a county board of education.
8. Bonds issued pursuant to the Improvement Bond Act of 1915.
9. The purchase of the right to receive rent from leases of real property to a railroad company.
10. Common stocks (not to exceed 25 percent of the fund's assets, subject to restrictions).
11. Preferred stocks (not to exceed 5 percent of the fund's assets subject to restrictions).
12. Mutual funds (not to exceed 25 percent of the fund's assets, accumulative with common stock totals).
13. Real estate and leases for business or residential purposes (not to exceed 10 percent of the fund's assets and must have been approved by a unanimous vote of the retirement board).
14. Bonds, debentures, and notes legal for investment in savings banks in the state of New York or Massachusetts or in securities in which commercial banks were authorized to invest their funds.

On June 5, 1984, however, California voters approved Proposition 21, a legislative constitutional amendment, that significantly altered the constitutional limitations on investments by public employee retirement funds. Amendments to the 1937 Act were enacted on September 30, 1984, to reflect the changes approved by the passage of Proposition 21. These amendments, which were enacted in Assembly Bill No. 3508, Chapter 1738, Statutes of 1984, replaced the restrictions on 1937 Act funds' investments with more flexible guidelines.

These guidelines are primarily stated in Government Code Section 31595 as follows: "Except as otherwise expressly restricted by the California Constitution and by law, the board may, in its discretion, invest, or delegate the authority to invest, the assets of the fund through the purchase, holding, or sale of any form or type of investment, financial instrument, or financial transaction when prudent in the informed opinion of the board." (Emphasis added)

The 1937 Act requires retirement boards to employ an investment counsel, trust company, or trust department of a bank to render services to the investment program².

The future yield of the system's investments must be projected in order to determine the level of employee and employer contributions necessary to fund the system.

Actuarial Evaluations

Government Code Section 7507 requires counties to secure the services of an enrolled actuary to provide actuarial evaluations of future annual costs before authorizing increases in public retirement plan benefits. Section 31453 of the 1937 Act requires that an actuarial valuation be made at least every three years to cover the mortality, service, compensation, and experience of the members and beneficiaries, and to evaluate the assets and liabilities of the retirement fund. Upon the basis of the investigation, valuation, and recommendations of the actuary, the board of retirement must adopt an assumed rate of return on system's investments for purposes of determining the level of required contributions and must recommend to the board of supervisors such changes in the rates of interest applied to employee accounts, the rates of contributions of members, and changes in county and district appropriations as are necessary to fund the system.

Employee Contributions

With recent exceptions for "new" employees hired into the counties of the 1st, 10th, 13th, 16th, 20th and 25th classes, retirement systems established pursuant to the 1937 Act are contributory. Under this principle, a portion of the cost of the benefits to be derived is paid directly by the employees in the form of a deduction from each salary warrant. The contributions made by the members are held in reserve and credited with interest to purchase an annuity at retirement. These contributions are known as "basic" contributions.

The 1937 Act specifies that certain basic rates of contributions be dependent upon the basic benefit formula adopted. Those rates are set by the actuary to provide for an average annuity at a specified age as a percent of final compensation (the highest compensation earnable by a member over a specified period of time). Basic rate formulas may be established under the 1937 Act to provide an average annuity at specified ages equal to fractions of final compensation for each year of service²⁴.

For the defined benefit plans, generally only three things affect the employee basic rate:

1. **Interest assumption.** Used to discount the value of the basic benefit at retirement to present date. The interest rate includes two components: the anticipated future rate of inflation and the "real" rate of return, which is the investment earnings in excess of inflation. The higher the interest assumption — whether due to inflation or real returns — the bigger the discount and the lower the employee contribution rate. The inflation component also affects future salaries as noted below.
2. **Mortality after service retirement.** Projected future costs of service retirement are directly related to the number of years for which payments are to be made. Longer life expectancies tend to increase employee contribution rates.
3. **Salary scale.** Like the interest assumption, the salary scale includes two components: the anticipated future rate of inflation and the "real" rate of salary increases, which are salary increases in excess of inflation. This means that a higher inflation assumption will increase both the interest assumption and the salary scale assumption. The higher the salary scale assumption, the higher the projected future final compensation for retiring members, and the higher the employee contribution rate.

In addition to funding the basic annuity, employee contributions are needed to fund annual cost-of-living increases²⁵. This projected cost is considered by the actuary in determining appropriate employee rates.

Unlike the basic rate, the cost-of-living rate is affected by future experience, i.e., future service and disability retirements, withdrawals, deaths before retirement, etc.

In many counties, contributions are a flat percentage of the employee's entire salary. However, if the benefit formula is integrated with Social Security benefits, the employee contributions may be set at different rates on portions of the employee's earnings above and below the Social Security integration level. Typically, two-thirds of the rate is applied below the Social Security integration level, the full rate is applied to the excess.

Employer Contributions

After projecting the income from retirement system investments and employee contributions, the system's actuary determines the amount of employer contributions necessary to properly fund the system. The actuary first projects the level and timing of benefit payments and then recalculates the difference between the projected benefit payments and the sum of existing assets plus estimated future employee contributions. Employer contributions are dependent upon five factors: (1) the basic design of the plan, (2) funding method used, (3) actuarial assumptions used by the plan actuary in conjunction with the funding method; (4) experience of the plan relative to the actuarial assumptions used by the actuary; and (5) the maturity status of the active employees, i.e., average age and service.

Basic Design of the Plan

Although systems under the 1937 Act provide their members with income from service retirement, nonservice-connected disability, service-connected disability, cost-of-living increases, and death and survivor benefits, employee contribution rates, as stated earlier, are calculated only with consideration of providing annuity payments at specified ages of retirement, and in consideration of subsequent cost-of-living increases on all continuing benefits. All other costs of the system are borne by the employer, i.e., the county and member

districts. Therefore, the greater the benefit provided to members and/or survivors, the greater the current and projected liability to the employer. Also, the earlier the benefit is provided, the greater is the current and projected liability to the employer. The retirement benefits, once vested, become contractual obligations of the counties and must be paid.

Funding Method

To determine the level of required contributions, the system's actuary must determine the value of all future benefits, and then allocate that value to the members' years of service to determine both the cost for the current year (the "normal cost") and the liability for past service (the "accrued liability"). The level of system assets is an important part of this process as well. This allocation is done using a "funding method" which is adopted by the board as part of the system's funding policy. There are three general types of funding methods which may be used:

1. The aggregate cost method assumes that all past and future benefits which are not covered by current assets will be funded as a level percentage of salary over the future working lifetimes of the active members. This future working lifetime is typically about 15 years. That percentage of salaries is the normal cost rate for the year, and makes up the entire contribution requirement for the year. There is no unfunded accrued liability under the aggregate cost method.
2. The projected unit credit method determines the normal cost for each year of service as the value of the benefit earned during that year, but based on salaries "projected" to retirement age. Similarly, the accrued liability is the value of benefits for service up to the valuation date, but again based on projected salaries, not current salaries. If this accrued liability is greater than system assets, the difference is the unfunded accrued liability. The contribution requirement for the year is in two parts: the normal cost, plus an additional payment to fund or "amortize" the unfunded accrued liability (if any).
3. The entry age normal method starts by determining what percentage of salary would be needed to fund the member's benefit, assuming that percentage is paid from hire ("entry age") to retirement age. That percentage is the normal cost rate. The accrued liability is just the value today of the normal cost for all past years. Just with the projected unit credit method, the contribution requirement for the year is in two parts: the normal cost, plus an additional payment to amortize any unfunded accrued liability.

Compared to the projected unit credit method, the normal cost under the entry age normal method is higher in the early years of service, and lower in the later years. The accrued liability is always larger under the entry age normal method than under projected unit credit.

For the projected unit credit and entry age normal methods, part of the system's funding policy is to set an amortization period, that is, to decide how fast to fund any unfunded accrued liability. Historically, most systems have used amortization periods of 20 to 30 years. For such systems, generally the total contribution requirement will be lowest using the projected unit credit method, and highest using the aggregate method, with the entry age normal method in the middle.

Most 1937 Act counties use the entry age normal method, while a few use the project unit credit method.

Actuarial Assumptions

The system actuary is required at least every three years to perform an evaluation of the system and to recommend to boards of retirement the adoption of an assumed rate of investment return and an assumed rate of salary increases²⁸. Generally, the higher the assumed rate of investment return, the lower the required employee and employer contributions. Similarly, because retirement benefits and amounts are calculated based upon final compensation, and therefore are reflected in salary scales (percentage increases by attained age which is used in projecting salaries), these projected salaries are in turn used for estimating the amounts of pension payable at retirement. They are also used for estimating the projected liability on account of other occurrences, i.e., disability, death, and withdrawal.

Experience of the Plan

In determining projected liabilities and assets necessary to fund the system, the actuary analyzes the experience of the system to determine the probabilities of members leaving the system because of nonvested withdrawal, death, disability retirement, service retirement, and vested withdrawal. These probabilities depend

on the others, for example, if there is more turnover, there will be fewer retirements, etc.

Average Age and Service

Generally, the younger the age of a member at entry, and the greater the years of service at retirement, the longer the employee and employer will have to contribute to the system in order to finance his/her future benefits. However, the younger the member, the longer the period between entry and the payment of system benefits.

Source of Funds

Employer contributions to the fund are usually provided from the county general fund which sources include property tax revenues, various state and/or federal subventions, and special funds.

Property tax revenues represent the major funding source.

Retirement Benefits

General Information

Systems established pursuant to the 1937 Act (with the noted exception of LACERA's General Plan F and Safety Plan F), offer defined benefit plans. Under a defined benefit plan, the sponsoring governmental unit undertakes to provide a stipulated set of benefits, as articulated in a benefit formula, to employees who meet certain age and service requirements.

Benefits provided include income for service retirement, nonservice-connected and service-connected disability retirement, active duty and retired member death and survivor benefits, and funded and/or ad hoc cost-of-living increases.

Reciprocal retirement benefits are provided to members who are entitled to retirement rights and benefits from two or more retirement systems established pursuant to the 1937 Act and the Public Employees' Retirement System²⁷. This is to encourage career public service.

Benefits provided are expressed as a percentage of the employee's final compensation during a one-year or three-year consecutive period in which earnings were at their highest level. This is described as a final average salary formula. The period length is made part of the plan provisions and is set by resolution of the board of supervisors.

Some systems under the 1937 Act are integrated with Social Security. This combination provides not only a retirement allowance from the county retirement system, but also Social Security benefits upon meeting certain criteria and minimum quarters of coverage. The combination of retirement incomes from both systems is designed to provide a replacement percentage of pre-retirement income.

Service Retirement Benefits

With recent exceptions for "new" employees hired into the counties of the 1st, 10th, 13th, 16th, 20th and 25th classes, and voluntary transfers from some previously hired employees in those counties, there are six predominantly available service retirement allowance formulas for non-safety members and one for safety²⁸. Each county retirement system adopts the benefit formula(s) approved by the board of supervisors. That formula remains in effect for new members until another benefit formula is adopted. The terms of a retirement plan cannot be changed with respect to present members unless the change is necessary to protect the integrity of the system or is accompanied by comparable new advantages to its members.

As of 1991, the boards of supervisors of 13 counties had adopted at least 2 mandatory formulas for their existing miscellaneous membership: Alameda, Contra Costa, Los Angeles, Marin, Mendocino, Orange, Sacramento, San Diego, San Mateo, Santa Barbara, Stanislaus, Tulare, and Ventura. Mendocino, Los Angeles, Stanislaus and San Mateo have adopted three.

Santa Barbara "Two," Stanislaus "Three," San Mateo "Three," and Los Angeles "E" are either optional or noncontributory.

Service retirement formulas differ in three ways: (1) overall benefit level, (2) normal retirement age, and (3) maximum benefit level.

Overall Benefit Level

A specified percentage of final compensation is provided for each year with which the member is entitled to be credited at retirement. Service retirement formulas are commonly referred to according to the Section of the 1937 Act in which they are described, e.g., Sections 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, and 31676.15 for non-safeties, and 31664 for safety. It happens that for non-safety, the higher the decimal number, the higher overall percentage of final compensation payable per year of service at retirement.

Maximum Benefit Level

Percentages of final compensation provided within each benefit formula are higher at increments of quarter-years of age at retirement, until reaching an age at which the percent is maximized. This point is reached pursuant to Sections 31676.12, 31676.13, and 31676.14, at age 62. Pursuant to Sections 31676.1, 31676.11, and 31676.15, the age of maximization is 65.

Normal Retirement Age

Normal retirement age is the lowest age specified in a plan at which the employee may retire without the consent of the employer and receive retirement benefits based on service to date or retirement at the full rate for such service set forth in the plan. Normal retirement ages are as follows:

<u>Section</u>	<u>Age</u>
31676.1	57
31676.11	55
31676.12	57
31676.13	54-1/2
31676.14	52
31676.15	55

Disability Retirement

As stated earlier, the purpose of the 1937 Act is: to recognize a public obligation to employees who become incapacitated by age or long service and its accompanying physical disability; and, to provide a means by which public employees who become incapacitated may be replaced without prejudice and without inflicting a hardship upon the employees removed.

To promote this objective, the 1937 Act provides for disability retirement when employees are incapacitated by injury or disease. There are two kinds of disability retirement: (1) nonservice-connected disability, and (2) service-connected disability²⁰.

Nonservice-Connected Disability

There is no age requirement for nonservice-connected disability retirement. However, a member must have over five years of credited service to qualify.

A member must also prove the existence of a permanent disability which renders him/her incapable of performing the substantial portion of his/her duties as listed in the position class specification for which employed (under one plan for Contra Costa County only, "substantial portion of duties" is replaced by "gainful employment").

In most instances, the benefit is calculated pursuant with either Section 31727 or Section 31727.7 of the 1937 Act.

Pursuant to Section 31727, the normal benefit for "non-safety" members is the product of 1.5 percent of final compensation multiplied by the number of years of credited service, if the product is equal to or greater than one-third of final compensation. If the product is less than one-third of final compensation,

the normal benefit is the product of 1.5 percent of final compensation multiplied by the number of years which would be creditable to the member were his/her service to continue until attainment of age 65, but in such case the allowance may not exceed one-third of final compensation. For "safety" members, the 1.5 percent above is 1.8 percent, and age 65 is 55.

Pursuant to Section 31727.7, the normal benefit is in accordance with a graduated scale corresponding to the number of years of credited service, as indicated in Table III, on page 15.

Service-Connected Disability

There is no age or years of service requirement. The member must prove the existence of a permanent, disabling condition and that such condition exists as a result of illness or disease either caused by the job or aggravated to the point of significantly contributing to the resulting disability. Case law now requires job causation to be at least "real and measurable."

The normal benefit to a service-connected disability retiree is one-half of final compensation or the member's service retirement allowance, whichever is greater. The service-connected disability retiree also can provide without penalty, for a higher allowance to be provided to a surviving spouse upon the retiree's death.

Cost-of-Living Provisions³⁰

Various post-retirement adjustments are provided under the 1937 Act. In general, these provide for an annual increase in retirement allowance for retired members and future retired members and beneficiaries, equal to the change in the Consumer Price Index, but these changes may not exceed a fixed percentage established by the county board of supervisors. If the index is in excess of this fixed percentage, the excess is accumulated and applied to future changes. Under no circumstances may the allowance be reduced below that initially paid to the retiree on the effective day of retirement.

Survivor's Benefits

Upon the death of a member while an active employee³¹ or as a retiree³², certain benefits may become payable to a surviving spouse or minor children or to whomever may be designated beneficiary. These benefits may be in the form of a lump sum payment or a continuing periodic payment, or both. Lifetime continuing payments are calculated as a percentage of the member's final compensation.

Membership Criteria

Generally speaking, membership is mandatory for permanent employees for all systems. Not all systems include permanent part-time employees in retirement system membership, and the retirement board in its regulations may exclude from membership temporary, seasonal and intermittent employees.

SUMMARY

You can characterize the 1937 Act and its systems as being somewhat like moving targets. Just as you think you know enough to shoot the "BULL'S EYE" out of any question asked of you, someone "moves the target" by amending the 1937 Act, passing a federal bill with new compliance requirements, exhorting a new or novel interpretation, or by perpetrating some other unstated but similarly dastard, deed. Sometimes, however, you simply forget. By this presentation, I hope to provide you with the overview intended. However, before acting on this information or when in doubt, refer to the 1937 Act, your fellow trustees, or your retirement system administrator and counsel.

- John R. Descamp

NOTES

- ¹ Chapter 3, Title 3, Division 4 of the California Government Code. All article and section references are to the Government Code unless otherwise indicated.
- ² State of California Legislative Analyst, A Review of Retirement Systems Established Under The County Employees' Retirement Law of 1937 (Sacramento, California: 1979).
- ³ Section 31451.
- ⁴ Section 31525.
- ⁵ Section 31500.
- ⁶ Section 31520.
- ⁷ Section 31520.1., Section 31520.3 and Section 31520.5.
- ⁸ Section 31520.2.
- ⁹ Section 31595.
- ¹⁰ Section 31522.1.
- ¹¹ Section 31580.
- ¹² Section 31580.2.
- ¹³ Section 31522.2. and Section 31522.3.
- ¹⁴ Ibid., Section 31522.1, Section 31522.2, and Section 31522.3.
- ¹⁵ Section 31529.
- ¹⁶ Section 31529.1.
- ¹⁷ Section 31529.5.
- ¹⁸ Section 31607.
- ¹⁹ Section 31530.
- ²⁰ Section 31732.
- ²¹ Section 31533.
- ²² Section 31534.
- ²³ Section 31596.
- ²⁴ Article 6 and Article 6.8.
- ²⁵ Article 16.5 and Article 16.6.
- ²⁶ Section 31453.
- ²⁷ Article 15.
- ²⁸ Section 31676.1, Section 31676.11, Section 31676.12, Section 31676.13, Section 31676.14, Section 31676.15 and Section 31664.

TABLE I**Counties Contracting With The California
Public Employees' Retirement System**

<u>County</u>	<u>No. of Members</u>
Alpine	- 86
Amador	- 536
Butte	- 2,022
Calaveras	- 443
Colusa	- 351
Del Norte	- 508
El Dorado	- 1,857
Glenn	- 510
Humboldt	- 1,993
Inyo	- 463
Kings	- 1,323
Lake	- 905
Lassen	- 443
Madera	- 1,188
Mariposa	- 315
Modoc	- 398
Mono	- 308
Monterey	- 4,338
Napa	- 1,229
Nevada	- 977
Placer	- 2,381
Plumas	- 457
Riverside	- 13,084
San Benito	- 454
San Francisco City & County	- 1,261
Santa Clara	- 14,888
Santa Cruz	- 2,767
Shasta	- 1,857
Sierra	- 132
Siskiyou	- 808
Solano	- 2,984
Sutter	- 987
Tehama	- 891
Trinity	- 542
Tuolumne	- 1,009
Yolo	- 1,788
Yuba	- 847
TOTALS	37 67,328*

*Out of a total 776,333 active and inactive CalPERS members. Total number of retirees, survivors and beneficiaries is 337,416.

- Excerpted from CalPERS "1998 Annual Report."

TABLE II**1937 ACT RETIREMENT SYSTEMS**

<u>County</u>	<u>Act Adopted</u>	<u>Active/Inactive</u>	<u>Recipients</u>	<u>Total</u>	<u>Fund Balance</u>
Alameda	01-01-48	10,104	5,202	15,306	\$ 3 Billion
Contra Costa	07-01-45	8,091	4,955	13,046	2.5 Billion
Fresno	01-01-45	5,899	3,068	8,967	1.3 Billion
Imperial	07-01-51	1,304	535	1,839	238 Million
Kern	01-01-45	7,550	4,126	11,676	1.4 Billion
Los Angeles	01-01-38	82,734	42,000	124,734	25 Billion
Marin	07-01-50	2,658	1,502	4,160	799 Million
Mendocino	01-01-48	1,363	611	1,974	142 Million
Merced	07-01-50	2,296	1,136	3,432	291 Million
Orange	01-01-45	20,189	6,912	27,101	4.2 Billion
Sacramento	07-01-41	10,547	6,029	16,576	3 Billion
San Bernardino	01-01-45	13,871	5,243	19,114	3 Billion
San Diego	07-01-39	16,910	7,916	24,826	3.6 Billion
San Joaquin	07-01-46	4,630	2,558	7,188	1.2 Billion
San Mateo	07-01-44	4,400	3,500	7,900	1.2 Billion
Santa Barbara	01-01-44	4,008	1,900	5,908	1 Billion
Sonoma	01-01-46	3,996	1,971	5,967	757 Million
Stanislaus	07-01-48	3,458	1,652	5,110	828 Million
Tulare	07-01-45	3,551	1,346	4,897	514 Million
Ventura	01-04-47	6,530	3,025	9,555	1.9 Billion
TOTALS		214,089	105,187	319,276	\$ 55 Billion

- Excerpted from State Association of County Retirement Systems 1998-99 Membership Roster.

TABLE III**Nonservice-Connected Disability Retirement
Benefits Pursuant to Section 31727.7****Years of Credited Service****% of Final
Compensation**

Five years, but less than six years	20.0
Six years, but less than seven years	22.0
Seven years, but less than eight years	24.0
Eight years, but less than nine years	25.0
Nine years, but less than ten years	28.0
Ten years, but less than eleven years	30.0
Eleven years, but less than twelve years	32.0
Twelve years, but less than thirteen years	34.0
Thirteen years, but less than fourteen years	36.0
Fourteen years, but less than fifteen years	38.0
Fifteen or more years	40.0

Section One. Title. This act shall be known and may be cited as "The California Pension Protection Act of 1992."

Section Two. Findings and Declarations. The People of the State of California hereby find and declare as follows:

(a) Retired citizens depend upon their pension benefits to meet basic necessities such as food and shelter during their retirement years. For many elderly citizens who are not eligible to participate in Social Security, pension benefits are their sole source of financial support and security.

(b) Teachers, firefighters, police officers and other local, school and state employees depend on promised pension benefits, which must be protected from political abuse and misappropriation.

(c) Politicians have undermined the dignity and security of all citizens who depend on pension benefits for their retirement by repeatedly raiding their pension funds.

(d) Political meddling has driven the federal Social Security system to the brink of bankruptcy. To protect the financial security of retired Californians, politicians must be prevented from meddling in or looting pension funds.

(e) Raids by politicians on public pension funds will burden taxpayers with massive tax increases in the future.

(f) To protect pension systems, Retirement Board Trustees must be free from political meddling and intimidation.

(g) The integrity of our public pension systems demands that safeguards be instituted to prevent political "packing" of Retirement Boards, and encroachment upon the sole and exclusive fiduciary powers or infringement upon the actuarial duties of those Retirement Boards.

(h) In order to protect pension benefits and to avoid the prospect of higher taxes, the People must act now to shield the pension funds of this state from abuse, plunder and political corruption.

Section Three. Purpose and Intent. The People of the State of California hereby declare that their purpose and intent in enacting this measure is as follows:

(a) To protect pension funds so that retirees and employees will continue to be able to enjoy a basic level of dignity and security in their retirement years.

(b) To give voters the right to approve changes in the composition of Retirement Boards containing elected retiree or employee members.

(c) To protect the taxpayers of this state against future tax increases, which will be required, if state and local politicians are permitted to divert public pension funds to other uses.

(d) To ensure that the assets of public pension systems are used exclusively for the purpose of efficiently and promptly providing benefits and services to participants of these systems, and not for other purposes.

(e) To give the sole and exclusive power over the management and investment of public pension funds to the Retirement Boards elected or appointed for that purpose, to strictly limit the Legislature's power over such funds, and to prohibit the Governor or any executive or legislative body of any political subdivision of this state from tampering with public pension funds.

(f) To ensure that all actuarial determinations necessary to safeguard the competency of public pension funds are made under the sole and exclusive direction of the responsible Retirement Boards.

(g) To affirm the legal principle that a Retirement Board's duty to its participants and their beneficiaries takes precedence over any other duty.

Section Four. Section 17 of Article XVI of the California Constitution is hereby amended to read as follows:

Section 17. The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the state and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purposes of furnishing a supply of water for public, municipal or governmental purposes, and the holding of the stock shall entitle the holder thereof to all the rights, power and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.

Notwithstanding any other provision of law or this constitution to the contrary the retirement system shall have plenary authority and fiduciary responsibility for investment of monies and administration of the system, subject to all of the following:

(a) The Retirement Board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The Retirement Board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

(b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A Retirement Board's duty to its participant and their beneficiaries shall take precedence over any other duty.

(c) The members of the Retirement Board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The members of the Retirement Board of a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(e) The Retirement Board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

(f) With regard to the Retirement Board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the Retirement Board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

(g) The Legislature may by statute continue to prohibit certain investments by a Retirement Board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a Retirement Board pursuant to this section.

(h) As used in this section, the term "Retirement Board" shall mean the Board of Administration, Board of Trustees, Board of Directors, or other governing body or board of a public employees' pension or retirement system; provided, however, that the term "Retirement Board" shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees' pension or retirement system.

Section Five. Liberal Interpretation. The provisions of this act shall be liberally interpreted to effect their purpose.

Section Six. Conflicting Law. In the event that this measure and another measure or measures relating to the public pension and retirement systems of this state, or any of them, shall appear on the statewide general election ballot on November 3, 1992, the provisions of said measures shall be deemed to be in conflict. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety and the provisions of said other measure or measures shall be null and void. In the event that said other measure or measures shall receive a greater number of affirmative votes, the provisions of this measure shall take effect to the extent permitted by law.

Section Seven. Severability. If any provision of this act shall be found or held a court of competent jurisdiction to be invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not affect the remaining provisions of this measure, and to this end the provisions of this measure are severable.

Section Eight. Effective Date. This act shall take effect immediately upon certification of the official measures by the Secretary of State.

THE IMPLICATIONS OF PROPOSITION 162, "THE CALIFORNIA PENSION PROTECTION ACT" FOR CALIFORNIA PUBLIC PENSION SYSTEMS

Presentation made before the Spring SACRS Conference on May 7, 1993, at South Lake Tahoe, California, by Joe Wyatt and Michael Toumanoff of Hufstedler, Kaus and Ertinger.

INTRODUCTION

Of the twenty County Systems, fifteen have agreed to share the cost of this study regarding the implications of the initiative passed by the California voters in November, 1992. Proposition 162, "The-California Pension Protection Act", is a hot topic among politicians as well as plan administrators and beneficiaries. Those who fought against its passage are watching carefully, waiting for us to make a mistake and, if we do, there is the distinct possibility of another voter's initiative which could take away any of the current language -- and more.

The purpose of this presentation is to shed some light on the provisions of the Proposition in "plain talk" rather than in legalese. I note that many of you have not had the opportunity to read our draft report, so we will proceed to review its major findings with you.

It is helpful to remember the title of the voter's initiative which is Proposition 162, "The California Pension Protection Act".

THE SEARCH FOR THE UNIFYING PRINCIPLE

As we studied the specific language, we found two important phrases:

- 1) **PLENARY AUTHORITY**, which is limited by, or tied to, **FIDUCIARY RESPONSIBILITY** to others. In other words, as plan boards and administrators exercise their plenary or ultimate authority, they must do so responsibly.
- 2) **DUTY OF LOYALTY** - this duty takes precedence over (that is, it is the first among) a procession of duties for those who have the authority and responsibility for administering the systems.

A SUMMARIZATION OF OUR FACT-FINDING

- Voters want **NO MORE POLITICAL INTERFERENCE** with the administration and operation of public pension funds and investments.
- This does not extend to the Judicial issues. These are left with the courts. Traditional court review of trustee actions remains unaffected by "The California Pension Protection Act" language.

- In general, plan administrators are independent and with this increased freedom comes more responsibility.
- For others to oversee actions of plan administrators is acceptable; for them to overrule is not. Remember, "People will be watching you", and this is as it should be.
- Before passage of "The California Pension Protection Act", public pension plan administration was governed by the body of decision law along with the statutes. After its passage, they are governed by the body of decision law, the applicable statutes and, first and foremost, the State Constitution. Remember, the '37 Act law still exists.

WHAT ABOUT THE CONSTITUTION?

The courts like to avoid Constitutional issues, or tests of constitutionality. If they must address such issues, they will try to harmonize the Constitution with the statutes. Two ideas should be kept in mind -

- First, the claim that a statute is facially (i.e., on its face) unconstitutional must meet a very high standard -- if there is any set of facts on which the courts can find that it can stand, it is not unconstitutional on its face. For example, if there is a statute which seeks to take away the Board's final decision-making authority, it doesn't meet the Constitutional test.
- Second, there is the test of "application invalidity". If the statute would "unduly burden the Board in carrying out its fiduciary duty, it can be found to be unconstitutional to that extent as applied. (See Page 33 of the opinion.)

The burden of proving either of these two conclusions will be upon you, should you choose to test the constitutional validity of any statute. That means that you must pick your case carefully. For example, take the provision in statute which limits your administrative expenditures to .18% of assets. If you are going to test the statutory limit, do it (for example) on a need to make disability determinations in less than two years. Don't test it by paying someone a big salary.

A REVIEW OF SPECIFIC ISSUES AND STATUTES

A. Budget Authority

Some county retirement systems are subject to annual appropriation (Government Code Section 31580), while others are funded from their own retirement fund earnings (Government Code Section 31580.2). This second group of retirement systems already had a greater degree of budgetary independence, even before passage of "The California Pension Protection Act".

Any statute which gives the county treasurer final control over the budget for the system falls into Category 1 because it seeks to take away the retirement board's final authority. The treasurer may participate in the budget process but cannot have final authority.

However, the board's budget authority is not unconstrained — the board may pay only reasonable expenses. Costs which do not pass the test of reasonability cannot be incurred under the provisions of "The California Pension Protection Act".

A public pension board cannot use the excuse of the .18% cap on expenditures for non-compliance — "it ain't no excuse for non-performance". If you have to spend more than .18% in order to accomplish required work, you may be forced to exceed the cap. You must focus on PROCESS. Establish the necessity of your actions and expenditures, then proceed. Prove, through an accountable process, that the application of maintaining the .18% cap is an unreasonable burden and that it is, therefore, unconstitutional.

When I speak of "process", I don't mean lots of paper or a ritualistic process. Make the process reasonable. A realistic process will guide you to a proper resolution.

From general trust law, there is a general principle that a trustee is not given a duty without access to the necessary tools. However, it is your duty to show, through an appropriate process, that you have a need for the tools — in this instance, the tool is dollars.

B. and C. Custodial and Expenditure Issues

Under the law, the county treasurer has custody of the assets of the retirement fund, subject to board approval. Under the provisions of the proposition, this is invalidated only if the custodian tries to interfere with the board decision.

For example, if a state officer should refuse to write checks to pay for (say) international investments, which have been ordered by the board, this inaction would be inappropriate under "The California Pension Protection Act" and, therefore, unconstitutional. However, it would be much better to work such disagreements out through negotiation rather than to take the argument to the courts.

There is no constitutional problem until the board's final authority is "not only ticked, but trampled upon". The courts will always try to "make the mesh work" when authorities clash.

Remember, once again, that a strong attention to meaningful process will not only enhance your legal position as trustees; it is more likely to guide you to an appropriate resolution. We're learning, as we are in a state of evolution.

D. Audit Provisions

The requirement in Government Code Section 31593 that the county auditor complete an annual audit of the retirement system is not facially invalid. The purpose of the section is to safeguard the system, which achieves the same goals as those of the administrators and board members. You may use a new device if you can prove that it is a preferred way to go. Again, focus on the process you use to reach your conclusion. The purpose of the audit requirement is in harmony with "The California Pension Protection Act" and, in order to not use it, you must show that it gets in the way of administering the system. If you see a problem, it is best dealt with by negotiation. Topics to address if you want to change the way the audit is completed would be to show that a new process saves money, minimizes contributions, or expedites member services -- all part of your constitutional duties.

E. Hiring Legal Counsel

Government Code Section 31529 makes the district attorney or the county counsel the attorney for the retirement board. Leave it that way, until there is a conflict. Always consult with the designated attorney -- you should consult, but you don't have to obey. If, after consultation, you don't agree, make the decision yourself. This might occur after you consult an independent counsel. If you've got a good working relationship with county counsel, you shouldn't give this up. If there is conflict, seek independent counsel to receive an unbiased opinion. **THIS IS YOUR RESPONSIBILITY.**

"Don't go running off to the courts for every dispute. You never know about judges. Seek always to harmonize!"

F. Civil Service

It was not the intention of "The California Pension Protection Act" to throw aside civil service. Again, you must prove that the particular constraints of a particular aspect of the civil service process are burdensome. Then, make an exception, but maintain the body of the civil service procedure.

FINAL COMMENTS ABOUT BUDGET CRUNCHES

Remember, Boards have the sole, highest responsibility. Hire good help and consider carefully. Then act. Again, **PROCEDURE IS KEY**. Decisions may become difficult. For example, if, as in New York City, you are required to make an investment, it may be in the best interest of the plan participants to do so -- if in not doing so, you are jeopardizing the future of the plan.

You must watch for political interference or political backfires, which the Constitution now prohibits. But, **PICK YOUR CASE** with care, in consultation with SACRS. Communicate through SACRS with the other retirement systems and hang together.

Prepared by

Sandra C. Lund
Secretary, SACRS

GLOSSARY

Accumulated Interest

The total amount of interest which has accumulated in the members' account as a result of semi-annual interest crediting from date of entry into membership.

Active Employee

An individual who is currently in membership employment and is a participating member of the plan.

Actuarial Valuation

An examination of a pension plan to determine whether contributions are being accumulated at a rate sufficient to provide the funds out of which the promised benefits can be paid when due. The valuation shows the actuarial liabilities of the plan and the applicable assets. [SCERS valuations are, pursuant to board policy, performed annually.]

Actuary

A person trained in mathematics, statistics and legal accounting methods and in the principles of sound operation of insurance, annuities and pension plans, who employs life expectancy projections, financial projections, and related data in the funding and management of a retirement plan.

Annuity

A series of periodic payments for a fixed period or for life. That portion of a SCERS retirement allowance made from funds contributed by the member.

Beneficiary

The person formally designated by a member, retiree or statute to receive benefits or payments upon the death of the member or retiree.

Beneficiary Receiving Allowance

A person who is receiving a continuing monthly allowance following the death of a member before or after the member's retirement.

Benefit

Rights of the member or beneficiary to either cash or services after meeting the eligibility requirements of the pension plan.

CalPERS - California Public Employees' Retirement System

The public retirement system enacted into law according to the Public Employees' Retirement Law ("PERL") for State of California employees and employees of agencies contracting with CalPERS.

Contribution

Any payment made by the employer or member under a retirement plan to provide benefits.

Compensation Earnable

Compensation as determined by a board of retirement based on the average number of days ordinarily worked by persons in the same grade or class of positions at the same rate of pay.

Deferred Retirement

A type of delayed retirement whereby a member, who leaves membership service after completing five years of service or who leaves County or member district service and within 180 days becomes a member of another system under reciprocity, may elect in writing to leave member contributions in the retirement fund and be granted a deferred service retirement allowance to become effective after the member first becomes eligible and elects to receive a retirement allowance.

Defined Benefit Plan

A retirement plan that promises a specified benefit amount at retirement or death calculated in accordance with a formula which takes into consideration a members' age at retirement, years of credited plan service and final compensation.

Employer Contributions

An amount based upon an actuarially determined percentage rate which is applied to a members' retirement deductible pay ("compensation earnable") and provided by membership employers in order to fund benefits provided by the plan.

Fiduciary

Indicates the relationship of trust and confidence where one person (the fiduciary) holds or controls property for the benefit of another person. For example, the relationship between the Members of the SCERS Board and SCERS Members and retirees. Members of the SCERS Board and staff who have discretionary authority or responsibility in the administration of the system are considered fiduciaries.

Fiduciary Responsibility

A legal requirement that a fiduciary execute duties with care, skill, prudence, diligence and in the exclusive interest of plan participant's and beneficiaries

Final Compensation

The average annual compensation earnable earned over a one or three year period which serves as the basis for determining retirement benefits.

Inactive Vested Member

A member who has terminated from membership employment but who is eligible for and chose to leave her/his member contributions on deposit with SCERS.

Interim Service Retirement

A type of retirement wherein a disability retirement applicant who has met the eligibility requirements for a service retirement has opted to irrevocably accept a service retirement allowance pending the outcome of his/her disability retirement claim.

Member Contributions

An amount based upon an actuarially determined percentage rate which is applied to a members' retirement deductible pay ("compensation earnable") for current service credit or paid into the retirement system for purchasable service in a lump sum or through payroll deductions.

Members' Annual Statement

A statement issued annually to each 1937 Act system member usually indicating the members' accumulated contributions, accumulated interest, credited service and accounts receivable balance, among other information.

Miscellaneous Member

SCERS member who is in membership in one of the Miscellaneous categories, First Tier, Second Tier or Third Tier of SCERS membership. Generally, a member who is not employed in active law enforcement or active fire suppression. In some systems "Miscellaneous" is referred to as "General."

Inservice-Connected Disability Retirement

Generally, a type of retirement wherein an eligible member is found to be permanently incapacitated (disabled) from performing the substantial portion of her/his duties.

Pension

Payments for life derived from contributions made from funds controlled by the board of supervisors, or from funds of a member district.

Qualified Plan

plan, such as SCERS, that the Internal Revenue Service approves as meeting the requirements of Section 401(a) of the Internal Revenue Code. Such plans receive tax advantages for the employer and employees, such as the nontaxability of plan earnings on investments, and nontaxability of contributions and interest credited to member accounts until benefits are paid.

Retiree

member who has met eligibility requirements for a service retirement or disability retirement and is receiving a continuing monthly retirement allowance.

Retirement Allowance

continuing monthly allowance paid to a retiree consisting of a current service annuity, a current service pension, and, where applicable, a cost-of-living increase.

Safety Member

member who is in membership in one of the eligible Safety categories. Generally, a member who is employed in active law enforcement or active fire suppression.

SCERS

Sacramento County Employees' Retirement System. Synonymously referred to as the "system," the "plan," and the "fund."

SCERS Board

Sacramento County Employees' Retirement System Board. Synonymously referred to as the Sacramento County "Board of Retirement," "Retirement Board," the "plan trustees," and the "plan fiduciaries."

Service-Connected Disability Retirement

type of retirement granted by the Board after a member has provided proof to the Board's satisfaction that (s)he was permanently incapacitated from performing the substantial portion of her/his duties and that the incapacity (disability) arose in the course and scope of the member's employment and was substantially caused by the job. Synonymously referred to as an "Industrial" disability retirement.

Service Credit

An hour of credit in the retirement system for membership service performed or for purchasable service and for which a member's retirement contribution has been made. Generally, for Sacramento County employees who work full-time, there are eighty service credits earned in a bi-weekly pay period, one hundred seventy-four in a representative month, and two thousand eighty-eight in a representative year. Total service credit is used in establishing eligibility for retirement benefits and the amount of such benefits.

Service Retirement

A type of retirement granted by the SCERS Board after a member has met the age and service eligibility requirements and has submitted an application for service retirement.

Temporary Annuity

A SCERS member who retires for service prior to the age of becoming eligible for retirement benefits under the federal system (Social Security) and who at time of retiring for service is fully matured under the federal system may, with the approval of the SCERS Board, elect to have her/his retirement allowance increased prior to such eligible age and reduced after such age by amounts which have equivalent actuarial values. This modification is for the purpose of coordinating a member's retirement allowance with benefits receivable from the federal system.

Trustee

An elected or appointed member of a board empowered to manage the funds and direct the policy of an institution.

Vesting

A benefit plan provision that a participant will, after meeting certain requirements, retain a right to the benefits (s)he has accrued (or some portion of them) even if employment under the plan terminates before retirement. Employee contributions are fully vested.