

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 1852 (Pacheco)  
Version: January 17, 2024  
Hearing Date: June 4, 2024  
Fiscal: No  
Urgency: No  
AM

**SUBJECT**

Joint powers agencies: Clean Power Alliance of Southern California: meetings

**DIGEST**

This bill extends the sunset on the authority of the Clean Power Alliance of Southern California to adopt a policy authorizing the legislative body of a local agency that is a member of the Clean Power Alliance to designate an alternate member to represent the local agency, even if that alternate member is not a member of the local legislative body, until January 1, 2030.

**EXECUTIVE SUMMARY**

The Ralph M. Brown Act (the Brown Act) protects public access to meetings of the legislative bodies of local agencies and generally requires all meetings to be open and accessible to the public. Under existing law, local legislative bodies can meet in closed session to discuss certain limited issues. In 2019, the Legislature enacted SB 355 (Portantino, Ch. 248, Stats. 2019) which allowed the Clean Power Alliance to adopt a policy authorizing the legislative body of local agency members to designate an alternate member to the governing board of the Clean Power Alliance to attend a closed session, even if that alternate member is not a member of the local legislative body itself (i.e., not an elected or appointed official of the local legislative body). SB 355 had a sunset date of January 1, 2025. This bill seeks to extend that sunset date until January 1, 2030. The bill is sponsored by the Clean Power Alliance of Southern California and supported by Lindsay P. Horvath, Los Angeles County Supervisor. This bill passed the Senate Local Government Committee on a vote of 7 to 0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Affirms that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and

the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., art. I, § 3(b)(1).)

- a) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 2) Establishes the Brown Act, which secures public access to the meetings of public commissions, boards, councils, and agencies in the state. (Gov. Code, tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.) The Brown Act defines the following relevant terms:
    - a) A "local agency" is 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 any other local public agency. (Gov. Code, § 54951.)
    - b) A "legislative body" is the governing board of a local agency or any other local body created by state or federal statute; a commission, committee, board, or other body of a local agency, as specified; a board, commission, or other multimember body that governs a private corporation, limited liability company, or other entity that is either created by an elected legislative body to exercise delegated authority or receives funds from a local agency and includes a member of the legislative body of the local agency; or the lessee of any hospital leased pursuant to Health and Safety Code section 21131, where the lessee exercises any material authority delegated by the legislative body. (Gov. Code, § 54952.)
  - 3) Requires all meetings of the legislative body of a local agency to be open and public, and all persons are to be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in the Brown Act. (Gov. Code, § 54953.)
    - a) Provides a legislative body can meet in closed session for various reasons, including, among others: to confer with, or receive advice from, its legal counsel regarding pending litigation; to discuss various personnel issues; to discuss real estate negotiations; and to discuss security threats. (Gov. Code §§ 54956.9, 54957, 54956.8, 54957.)
  - 4) Establishes the Joint Exercise of Powers (JPA) Act, which authorizes two or more public agencies to enter an agreement to jointly exercise any power held in common by the parties to the agreement, including, but not limited to, the authority to levy a fee, assessment, or tax, even though one or more of the contracting agencies may be located outside this state. (Gov. Code § 6500 et. seq.)
    - a) Defines "public agency" to include, but not be limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally

- recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies. (Gov. Code § 6500.)
- b) Allows a JPA to specify its own mission, structure, and governing board, the financial obligations of each member agency, and the provisions for members to enter and exit the JPA, among other items. (Gov. Code §§ 6500-6539.9)
- 5) Specifies that the Brown Act is not to be construed to prevent the legislative body of a JPA from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following provided in a) or b) below.
- a) 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 local agency member may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:
- i. legal counsel of that local agency member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that local agency member; and
  - ii. other members of the legislative body of the local agency present in a closed session of that local agency member.
- b) Any designated alternate member of the legislative body of the JPA who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the JPA in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency. (Gov. Code § 54956.96(a).)
- 6) Authorizes the Clean Power Alliance of Southern California, or its successor entity, to adopt a policy or a bylaw or include in its joint powers agreement a provision that authorizes both of the following provided in a) and b), below.
- a) A designated alternate member of the legislative body of the Clean Power Alliance, or its successor entity, who is not a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the Clean Power Alliance, or its successor entity, in lieu of a local agency member's regularly appointed member, to attend closed sessions of the Clean Power Alliance, or its successor entity.
- b) All information that is received by a designated alternate member of the legislative body of the Clean Power Alliance, or its successor entity, who is not a member of the legislative body of a local agency member, and that is presented to the Clean Power Alliance, or its successor entity, in closed session, is to be confidential. However, the designated alternate member may disclose information obtained in a closed session that has direct financial or liability implications for the local agency member for which the designated alternate member attended the closed session, to the following individuals:

- i. legal counsel of that local agency member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that local agency member; and
    - ii. members of the legislative body of the local agency present in a closed session of that local agency member.
  - c) If the Clean Power Alliance, or its successor entity, adopts a policy or bylaw or includes in its joint powers agreement a provision authorized pursuant to (a) and (b), above, the Clean Power Alliance, or its successor entity, must establish policies to prevent conflicts of interest and to address breaches of confidentiality that apply to a designated alternate member who is not a member of the legislative body of a local agency member who attends a closed session of the Clean Power Alliance, or its successor entity. (Gov. Code § 54956.96(b).)
  - d) Provides that this authority for the Clean Power Alliance, or its successor entity, is repealed on January 1, 2025. (Gov. Code § 54956.96(d).)
- 7) Authorizes the legislative body of the local agency member of a JPA to conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the JPA if the JPA adopts a policy or a bylaw or includes provisions in its agreement under 5) or 6) above. (Gov. Code § 54956.96(c).)

This bill extends the authority of the Clean Power Alliance of Southern California, or its successor entity provided for under Comment 6, above, until January 1, 2030.

### COMMENTS

#### 1. State need for the bill

The author writes:

The Clean Power Alliance is governed by a Board of Directors composed of one elected official from each of its 35 member agencies, and up to two alternate directors. As a community-driven entity, alternate directors may be municipal agency staff or qualified members of the public, often former elected officials. The predecessor to AB 1852, SB 355 (Portantino, 2019), enabled CPA to amend its bylaws to allow a designated alternate director who is not a member of an agencies legislative body (e.g. an elected official) to participate in Closed Session meetings if the primary board member is unable to attend, until a sunset date of January 1, 2025. AB 1852 will extend the repeal date to January 1, 2030 for these alternate directors to participate in Closed Session meetings when the primary board member is unable to attend. Extending this provision ensures that CPA can maintain continuity in its Board operations and contributes significantly to CPA's ability to conduct business and govern operations effectively.

## 2. JPA's, the Brown Act, and the Clean Power Alliance

### *a. JPAs and the Clean Power Alliance*

The JPA Act allows two or more public agencies to enter an agreement to jointly exercise power held in common by the public agencies to the agreement. Each public agency must independently possess the authority to perform the activity that is to be performed jointly pursuant to a joint powers agreement. Under the JPA Act, a JPA has authority to stipulate its own mission, structure, governing board, each member's financial obligations, and provisions for members to enter and exit the JPA. The Clean Power Alliance of Southern California is a JPA that was founded in 2017 to operate a community choice aggregator (CCA) for the region. A CCA is a governmental entity formed by cities and communities to serve the energy requirements of the residents and businesses. The Clean Power Alliance serves 35 communities across both Los Angeles County and Ventura County – serving roughly 3 million residents and businesses.<sup>1</sup> The governing board of the Clean Power Alliance is governed by a board made up of 35 representatives from each community it serves.

### *b. Brown Act*

The California Constitution enshrines the rights of the people to instruct their representatives and to access information concerning the conduct of government, and requires the meetings of public bodies to be accessible for public scrutiny.<sup>2</sup> The Brown Act provides guidelines and requirements for how state and local bodies must guarantee open and public access to their meetings.<sup>3</sup> The legislative intent of the Brown Act was expressly declared in its original statute, and has remained unchanged despite numerous amendments:

The Legislature finds and declares that the public commissions, boards and councils and 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

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<sup>1</sup> Clean Power Alliance, available at <https://cleanpoweralliance.org/about-clean-power-alliance/> (as of May 28, 2024).

<sup>2</sup> Cal. Const., art. I, § 3(a) & (b)(1).

<sup>3</sup> Ed. Code, tit. 3, div. 8, pt. 55, ch. 3, art. 1.5, §§ 89305 et seq.; Gov Code, tit. 2, div. 3, art. 9, §§ 11120 et seq., & tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.

informed so that they may retain control over the instruments they have created.<sup>4</sup>

The Brown Act generally requires that meetings of the legislative body of a local agency be open and accessible to the public, and requires local agencies to provide notice of the meeting, its agenda, and its location in advance of a meeting to ensure that the people have adequate notice and opportunity to attend. Under the Brown Act, a legislative body is allowed to meet in closed session for various purposes so long as certain requirements are met. The Brown Act specifies that it is not to be construed to prevent a JPA from adopting procedures that permit an alternate member be appointed to the legislative body of the JPA in lieu of the regularly appointed member for purposes of attending closed sessions so long as the alternate member is also a member of the legislative body of the local agency that is a member of the JPA. (Gov. Code § 54956.96(a)(2).) The Brown Act specifically provides that is not to be construed to prevent the legislative body of a JPA from adopting a policy in its joint powers agreement that authorizes a designated alternate member to attend closed session of the JPA in lieu of the local agency member's regularly appointed member so long as the designated alternate is also a member of the local agency that belongs to the JPA. (Gov. Code § 54956.96(a).)

*c. SB 355 (Portantino, Ch. 248, Stats. 2019.)*

In 2019, the Legislature enacted SB 355 to allow the Clean Power Alliance to adopt a policy authorizing the legislative body of local agency members to designate an alternate member to the governing board of the Clean Power Alliance for purposes of attending closed sessions even if that alternate member is not a member of the local legislative body. The Clean Power Alliance argued that due to the size of its board and its geographic breadth it faced the unique challenge of finding a time and place where all members of its governing board could meet. AB 355 provided for confidentiality of the information received by the alternate member and placed a sunset on this authority until January 1, 2025. This bill seeks to extend the sunset date until January 1, 2030. SB 355 was not heard by this Committee.

### 3. Statements in support

The Clean Power Alliance of Southern California, the sponsor of the bill, writes:

CPA is governed by a Board of Directors composed of one elected official from each of its member agencies, and up to two alternate directors. As a community-driven entity, alternate directors may be municipal agency staff or qualified members of the public, often former elected officials. The predecessor to AB 1852, SB 355 (Portantino, 2019), enabled CPA to amend its bylaws to allow a designated alternate

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<sup>4</sup> *Id.*, § 54950.

director who is not a member of an agencies legislative body (e.g. an elected official) to participate in Closed Session meetings until a sunset date of January 1, 2025. AB 1852 will extend the repeal date to January 1, 2030 for these alternate directors to participate in Closed Session meetings when the primary board member is unable to attend. Extending this provision ensures that CPA can maintain continuity in its Board operations and contributes significantly to CPA's ability to conduct business and govern operations effectively.

**SUPPORT**

Clean Power Alliance of Southern California (sponsor)  
Lindsey P. Horvath, Los Angeles County Supervisor

**OPPOSITION**

None received

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: AB 355 (Portantino, Ch. 248, Stats. 2019) *see* Comment 2c, above.

**PRIOR VOTES**

Senate Local Government (7 Ayes, 0 Noes)  
Assembly Floor (Ayes 70, Noes 0)  
Assembly Local Government Committee (Ayes 8, Noes 0)

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