

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

AB 2715 (Boerner)
Version: April 24, 2024
Hearing Date: June 25, 2024
Fiscal: No
Urgency: No
AM

SUBJECT

Ralph M. Brown Act: closed sessions

DIGEST

This bill would authorize a legislative body to hold a closed session with specified governmental officials, law enforcement, and security personnel on matters pertaining to a threat to critical infrastructure controls or critical infrastructure information, as defined, relating to cybersecurity.

EXECUTIVE SUMMARY

The Ralph M. Brown Act (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, including with certain specified persons on matters posing a threat to the security of public buildings, security of essential public services, or the public's right of access to public services or public facilities. This bill seeks to expand this authorization to also include a threat to critical infrastructure controls or critical infrastructure information relating to cybersecurity. This bill is sponsored by the City of Carlsbad and is supported by numerous local governments. The bill is opposed by the First Amendment Coalition and Oakland Privacy. The 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.)¹ 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. (§ 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. (§ 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. (§ 54953.)
- a) Provides a legislative body can meet in closed session for various reasons, including, with the Governor, 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. (§ 54957.)

This bill:

- 1) Expands the people the legislative body of a local agency can meet in closed session with in 3), above, to include other law enforcement or security personnel.
- 2) Authorizes the reasons a legislative body of a local agency can meet in closed session under 3), above, to include a threat to critical infrastructure controls or critical infrastructure information relating to cybersecurity.

¹ All further references are to the Government Code unless specified otherwise.

- 3) Defines “critical infrastructure controls” as networks and systems controlling assets so vital to the local agency that the incapacity or destruction of those networks, systems, or assets would have a debilitating impact on public health, safety, economic security, or any combination thereof.
- 4) Defines “critical infrastructure information” as information not customarily in the public domain pertaining to any of the following:
 - a) actual, potential, or threatened interference with, or an attack on, compromise of, or incapacitation of critical infrastructure controls by either physical or computer-based attack or other similar conduct, including, but not limited to, the misuse of, or unauthorized access to, all types of communications and data transmission systems, that violates federal, state, or local law or harms public health, safety, or economic security, or any combination thereof;
 - b) the ability of critical infrastructure controls to resist any interference, compromise, or incapacitation, including, but not limited to, any planned or past assessment or estimate of the vulnerability of critical infrastructure; or
 - c) any planned or past operational problem or solution regarding critical infrastructure controls, including, but not limited to, repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to interference, compromise, or incapacitation of critical infrastructure controls.

COMMENTS

1. Stated need for the bill

The author writes:

Currently, the Brown Act allows local bodies to meet in a closed session for threats to the security of public buildings, the security of essential public services, or the public’s right of access to public services or public facilities. In the digital age, we must ensure that sensitive information is protected and not leaked. AB 2715 is critical to ensuring local agencies can properly protect themselves and their citizens from cyberattacks.

2. Brown Act and authorization to meet in closed session to address matters posing a threat to the security of public buildings, a threat to the security of essential public services, or a threat to the public's right of access to public services or public facilities

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.² The Brown Act provides guidelines and requirements for how state and local bodies must guarantee open and public access to their meetings.³ 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 informed so that they may retain control over the instruments they have created.⁴

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. One specific authorization relates to meeting with the Governor, 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, or a threat to the public's right of access to public services or public facilities.

The Brown Act provides various requirements that must be met when meeting in closed session. The legislative body must briefly describe all closed session items in the posted agenda and describe which exception applies. (§ 54954.2(a) & 54954.5(a).) The

² Cal. Const., art. I, § 3(a) & (b)(1).

³ 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.

⁴ *Id.*, § 54950.

legislative body must announce to the public that the body is entering closed session before the closed session begins. (§ 54954.5.) Upon the end of the closed session, the legislative body is required to publicly report any action taken in closed session and the vote or abstention on that action of every member present. (§ 54957.1(a).) They must also 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, 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. (*Id.* at (b).) This documentation must be available to any person on the next business day following the meeting or, in the case of substantial amendments, when any necessary retyping is complete. (*Id.* at (c).)

This bill is sponsored by the City of Carlsbad. The city argues that this “bill is necessary because, although current law allows for the discussion of a pending specific threat during closed session, it does not expressly permit nonspecific cybersecurity matters to be discussed.” The City of Carlsbad states that this will allow local public agencies “to be more informed about potential threats and the extent of agency vulnerabilities.” Cyber security threats have become an ever present problem for public and private entities alike. In 2023, the San Bernardino Sheriff’s Office was attacked with ransomware, and to regain control of its computer system, the Sheriff’s office paid a \$1.1 million ransom in cryptocurrency.⁵ In 2020, the University of California paid \$1 million in ransom following a cyber attack.⁶

The Legislature enacted AB 1841 (Irwin, Ch. 508, Stats 2016) in 2016 to require the California Department of Technology, in combination with the Office of Emergency Services, to update the Technology Recovery Plan, which is activated immediately after a disaster strikes and focuses on getting critical systems back online. The plan includes cybersecurity strategy incident response standards for each state agency to secure its critical infrastructure controls and information. AB 1841 defined the terms “critical infrastructure controls” and “critical infrastructure information.” This bill uses the same definition for those terms.

⁵ Brian Rokos, *San Bernardino County paid \$1.1 million ransom to hacker of Sheriff’s Department computers*, The Sun, (May 5, 2023), available at <https://www.sbsun.com/2023/05/04/san-bernardino-county-paid-1-1-million-ransom-to-hacker-of-sheriffs-department-computers/>.

⁶ Davey Winder, *The University of California Pays \$1 Million in Ransom Following a Cyber Attack*, Forbes, Jun. 29, 2020, available at <https://www.forbes.com/sites/daveywinder/2020/06/29/the-university-of-california-pays-1-million-ransom-following-cyber-attack/>.

3. Statements in support

The League of California Cities writes in support, stating:

In an age of continuously evolving technology and growing cyber security threats, it is important that state law is abundantly clear that local governments can discuss general cybersecurity risks, vulnerabilities, and threats facing the agency with the appropriate personnel in closed session. As targets of cybercrime, local governments are especially at risk of threatened interference to both economic security and overall public safety. A digital attack to a local government's network could compromise operational functions that local agencies are responsible for providing, including emergency response services that are essential to keeping individuals and our communities safe.

Local officials must be able to be informed about potential threats and agency vulnerabilities in a secure manner in line with existing open meeting laws. For these reasons, Cal Cities supports AB 2715. Section 54954.2 of the Government Code requires a public local agency to describe all closed session items in the posted agenda and describe which exception applies.

4. Statements in opposition

The First Amendment Coalition and Oakland Privacy write in opposition unless amended, stating:

We appreciate proponents' stated goal of achieving greater clarity in the Brown Act's closed-session provisions related to cybersecurity threats. We do not dispute that legislative bodies may need to meet in closed session with law enforcement or security personnel to discuss specific threats to critical infrastructure controls or an agency's vulnerabilities when a cybersecurity attack is not imminent. But this need for confidentiality must be balanced with the public's right to be informed about official decision-making, including on the subject of whether public agencies are adequately prepared for and competently addressing cybersecurity threats.

Specifically, we seek 1) language to confirm that final decisions that could properly be made in closed session will be reported out in public session, and that decisions requiring a discussion and vote in open session, such as adding additional budget or staff or awarding a contract to an outside vendor or consultant will in fact be made in open session, consistent with existing Brown Act protections; 2) language requiring the identities and titles of all security or other personnel who attend the closed session to be named on the agenda; and 3) a requirement that agencies cite in the agenda the specific provision of Government Code Section 54957 that is the basis for the closed session, which requires amending Section 54954.5's agenda requirements. Finally, to aid the public in its understanding of the intent of the bill

and to guide the courts in the event there is a dispute over whether a given closed session was proper, we urge you to include a statement of intent consistent with the narrow purpose of this bill.

Existing law seems to address some of the concerns raised by the opposition. Section 54954.2 of the Government Code requires an agenda to describe all closed session items in the posted agenda and describe which exception applies. Additionally, Section 54954.5 provides that its provisions apply to the requirement in Section 54954.2 and requires the name of the law enforcement agency and title of any officer or representative be included. The opposition would like this section expanded to require the name and title of all individuals in the closed session, including those of security consultants or security operations managers.

The Brown Act currently requires an action taken in closed session and the vote or abstention on that action of every member present to be publically reported and requires reports to be provided to those who request them on specified matters, including, among others:

- 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;
- approval given to its legal counsel of a settlement of pending litigation
- action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session under the provision of the bill;

The opposition wants information on actions taken pursuant to the bill's provisions to be reported out, and clarification that that decisions related to budget, staff, or awarding a contract to an outside vendor or consultant will in fact be made in open session.

SUPPORT

Association of California School Administrators
California Association of Recreation & Park Districts
California IT in Education
City Clerks Association of California
City of Carlsbad
City of Eastvale
City of Rancho Cucamonga
City of Rancho Palos Verdes
City of Redwood City
City of Thousands Oaks
League of California Cities

Small School Districts Association

OPPOSITION

First Amendment Coalition
Oakland Privacy

RELATED LEGISLATION

Pending Legislation: AB 1852 (Pacheco, 2024) 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. AB 1852 is currently pending on the Senate Floor.

Prior Legislation: AB 1841 (Irwin, Ch. 508, Stats 2016), *see* Comment 2, above.

PRIOR VOTES

Senate Local Government Committee (Ayes 7, Noes 0)
Assembly Floor (Ayes 69, Noes 0)
Assembly Local Government Committee (Ayes 8, Noes 0)
