

2014

PUBLIC RECORDS. OPEN MEETINGS.
STATE REIMBURSEMENT TO LOCAL
AGENCIES.

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42

PUBLIC RECORDS. OPEN MEETINGS. STATE REIMBURSEMENT TO LOCAL AGENCIES. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Requires local government agencies, including cities, counties, and school districts, to comply with specified state laws providing for public access to meetings of local government bodies and records of government officials.
- Eliminates requirement that the State reimburse local government agencies for compliance with these specified laws.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Reduced state payments to local governments in the tens of millions of dollars annually.
- Potential increased local government costs of tens of millions of dollars annually from possible additional state requirements on local governments to make information available to the public.

**FINAL VOTES CAST BY THE LEGISLATURE ON SCA 3 (PROPOSITION 42)
(Resolution Chapter 123, Statutes of 2013)**

Senate:	Ayes 37	Noes 0
Assembly:	Ayes 78	Noes 0

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

California Has Thousands of Local Governments. Californians receive services from thousands of local governments—counties, cities, school and community college districts, and special districts (such as fire districts, flood control districts, and water districts). Each local government has a local governing body (such as a city council or county board of supervisors) that makes decisions about its programs, services, and operations.

Public Access to Local Government Information. The State Constitution requires that meetings of governing bodies and writings of public officials and agencies be open to public scrutiny. Two state laws establish rules local

governments must follow to provide public access to local government information and meetings.

- **California Public Records Act.** This law allows every person to inspect and obtain copies of state and local government documents. It requires state agencies and local governments to establish written guidelines for public access to documents and to post these guidelines at their offices.
- **Ralph M. Brown Act.** This law governs meetings of the governing bodies of local governments. It requires local governing bodies to provide public notice of agenda items and to hold meetings in an open forum.

State Payments for Public Records and Brown Act Costs. Over the years, the Legislature has modified the Public Records Act and Brown Act from time to time. Some of these changes have increased local government responsibilities and costs. The state generally must pay local governments for their costs when it increases their responsibilities—a requirement that state officials consider when reviewing proposals that increase local government costs. Under current law, the state must pay local governments for their costs to implement certain parts of the Public Records Act (such as the requirement to assist members of the public seeking records and to tell individuals seeking records whether the records can be provided). The amount of money the state owes local governments for their Public Records Act costs is not known yet, but is estimated to be in the tens of millions of dollars annually. In addition, the state previously has paid local governments for their costs resulting from certain parts of the Brown Act. However, California voters amended the State Constitution in 2012 to eliminate the state’s responsibility to pay local governments for these Brown Act costs.

PROPOSAL

This measure:

- Adds to the State Constitution the requirement that local governments follow the Public Records Act and the Brown Act.

- Eliminates the state’s responsibility to pay local governments for their costs related to these laws. (As noted above, state responsibility to pay for local Brown Act costs was eliminated in 2012.)

The measure applies to the current requirements of these laws, as well as any future changes to either law that are made to improve public access to government information or meetings.

FISCAL EFFECTS

Effect on State Costs and Local Revenues. By eliminating the state’s responsibility for paying local government costs to follow the Public Records Act, the measure would result in savings to the state and comparable revenue reductions to local governments. The impact is likely in the tens of millions of dollars a year.

Potential Effect on Local Costs. The measure could also change the future behavior of state officials. This is because under Proposition 42, the state could make changes to the Public Records Act and it would not have to pay local governments for their costs. Thus, state officials might make *more* changes to this law than they would have otherwise. In this case, local governments could incur **additional costs—potentially in the tens of millions of dollars annually in the future.**

Visit <http://cal-access.sos.ca.gov> for details about financial contributions for this proposition.

★ ARGUMENT IN FAVOR OF PROPOSITION 42 ★

42

Everyone has heard the old saw “you can’t fight city hall.” It turns out it is flatly untrue. Millions of Californians seek answers from public officials and bureaucrats in cities, counties, school districts, water agencies, and every type of government agency, using the information they gain to enter the political process and positively affect public policy.

Powerful tools like the California Public Records Act give citizens and businesses the ability to obtain the records they need to be effective advocates and protect the interests of the community. The Ralph M. Brown Open Meeting Law gives us the right to be in the room and heard as policy is developed during city council, board of supervisor, school board, and special district meetings.

In 2004, these laws giving Californians the right to access public records and attend meetings of local public bodies were made even more powerful when over 82 percent of the voters approved an amendment to the state constitution that says, in part: “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.”

In the past few years, though, key provisions of these great laws have been threatened when the state suffers fiscal crisis. In short, the state and local governments have been in long disagreement about the amount and level of state financial support for the local costs of complying with the public’s civil right of access to government. At times key provisions of these laws have become optional for local government agencies by virtue of tough decisions made in the state budget process. While most governments

continued to comply during these short periods of fiscal stress, the public’s fundamental rights should not depend on the good graces of local officials.

Proposition 42 will clarify that local government agencies and not the state are responsible for the costs associated with their compliance with our access laws. It will ensure access to public records and meetings that are essential to expose and fight public corruption, like that experienced by the citizens of the City of Bell when public officials engaged in criminal acts and sacked the city’s coffers.

Proposition 42 will cement in the Constitution the public’s civil right to know what the government is doing and how it is doing it. It will add independent force to the state’s laws that require local governments to comply with open meeting and public record laws and future changes to those laws made by the Legislature.

Proposition 42 will eliminate the possibility that local agencies can deny a request for public information or slam a meeting door shut based on cost. As Thomas Jefferson said, “Information is the currency of democracy.” Tell the bureaucrats that the people—not the government—ought to decide what we need to know. Vote yes on Proposition 42.

MARK LENO, Member
California State Senate

THOMAS W. NEWTON, Executive Director
California Newspaper Publishers Association

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 42 ★

The proponents are basically right that “*Proposition 42 will eliminate the possibility that local agencies can [lawfully] deny a request for public information or slam a meeting door based on [the] cost*” of complying with these state laws. It would do so by imposing the cost of complying upon local governments. An alternative would be to require that the state government pay.

Over many years, I have provided arguments against state and local ballot measures so that voters will receive more information about the measures before voting.

I have also used the California Public Records Act and open meeting laws to attempt to positively influence decision-making at the local level. When those laws are violated, a civil lawsuit may be filed, and the official misconduct involved may be reported to the civil grand jury in the county.

However, the ability of individuals to make a difference—even at the local level—has been undermined in

recent years by the influence of *big money* and by the empowerment of various *regional agencies* throughout California headed by board members *never elected* to those regional positions.

For example, in the San Francisco Bay Area, regional agencies just adopted plans that will cram millions of new residents from around the world into existing metropolitan transportation corridors. Bus-only lanes are being created. HOV (high occupancy vehicle) lanes are being converted into “Express Lanes” that also allow toll-payers.

All lanes on freeways may become *toll lanes* in the years ahead. It is happening across the country.

GARY WESLEY

★ ARGUMENT AGAINST PROPOSITION 42 ★

Local governments are run by employees and politicians who may or may NOT want to share information or receive public input before making decisions.

In 2004, California voters approved an initiative state constitutional amendment designed to halt the rolling back of state laws that *guaranteed* access to many public records and *mandated* that meetings of local government legislative bodies usually be held in public and that decisions of local legislative bodies could be made only after an opportunity for public input (*California Constitution, article I, section 3(b)*).

Some local governments responded by objecting that the new constitutional provision did not supersede another provision of the State Constitution (*article XIII B, section 6*) which requires that the State pay to local governments the cost of implementing any new State mandates.

Proposition 42 would amend the California Constitution to clarify that the State need not pay a local government for the cost of complying with the open meeting law applicable to local governments (the *Brown Act*—Government Code sections 54950–54963) or with the *Public Records Act* (Government Code sections 6250–6270) as written or later changed—as long as any change “contains findings demonstrating that the statutory enactment further the purposes of” the constitutional guarantee of public access and input.

The main issue presented by this proposition is whether voters believe that the cost of complying with these important state laws should be borne by local governments or by the state government.

GARY WESLEY

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 42 ★

Our democracy depends upon informed and active participation in government. Proposition 42 is a simple measure that protects the basic right to know how government conducts our business.

Mr. Wesley’s primary argument against Proposition 42 recites a lot of facts—most of which we agree with—but doesn’t make much of an argument about why local government agencies should look to the state to pay their costs associated with compliance with your freedom of information laws like the California Public Records Act and Ralph M. Brown Open Meeting Law.

Compliance with our state and local laws requiring open meetings and access to public records is a matter of constitutional principle.

The fact is every state agency pays its own costs of compliance with the public records act and the Bagley-Keene Act, which is similar to the Brown Act and requires state boards and commissions to meet in open and public sessions.

When agencies pay their own costs of compliance, there is a built-in incentive to innovate to keep those costs down, like streamlining record request processes and putting commonly requested records online for easy public access. If the state pays local agencies for the purely local obligation of complying with these fundamentally important laws, though, there is no incentive to improve.

It’s simple; the state pays its own costs and local agencies should pay theirs.

Protect your civil right to know and vote YES on Proposition 42.

JAMES W. EWERT, General Counsel
California Newspaper Publishers Association

DONNA FRYE, President
Californians Aware

JENNIFER A. WAGGONER, President
League of Women Voters of California

41 *withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this article. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund*

42 *from proceeds received from the sale of bonds for the purpose of carrying out this article.*

998.552. *All money deposited in the fund that is derived from premium and accrued interest on bonds sold, in excess of any amount of premium used to pay costs of issuing the bonds, shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.*

998.553. *Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, all or a portion of the cost of bond issuance may be paid out of the bond proceeds, including any premium derived from the sale of the bonds. These costs shall be shared proportionally by each program funded through this bond act.*

998.554. *The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, including other authorized forms of interim financing that include, but are not limited to, commercial paper, in accordance with Section 16312 of the Government Code, for purposes of carrying out this article. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this article. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this article.*

998.555. *The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this article includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this article or any previously issued refunding bonds.*

998.556. *Notwithstanding any other provision of this article, or of the State General Obligation Bond Law, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or*

desirable under federal tax law or to obtain any other advantage under federal law on behalf of the funds of this state.

998.557. *The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.*

PROPOSITION 42

This amendment proposed by Senate Constitutional Amendment 3 of the 2013–2014 Regular Session (Resolution Chapter 123, Statutes of 2013) expressly amends the California Constitution by amending sections thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO SECTION 3 OF ARTICLE I AND SECTION 6 OF ARTICLE XIII B

First—That Section 3 of Article I thereof is amended to read:

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) 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.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) *In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.*

Second—That Section 6 of Article XIII B thereof is amended to read:

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(4) *Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.*

(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.