

2004

Public Records, Open Meetings. Legislative Constitutional Amendment.

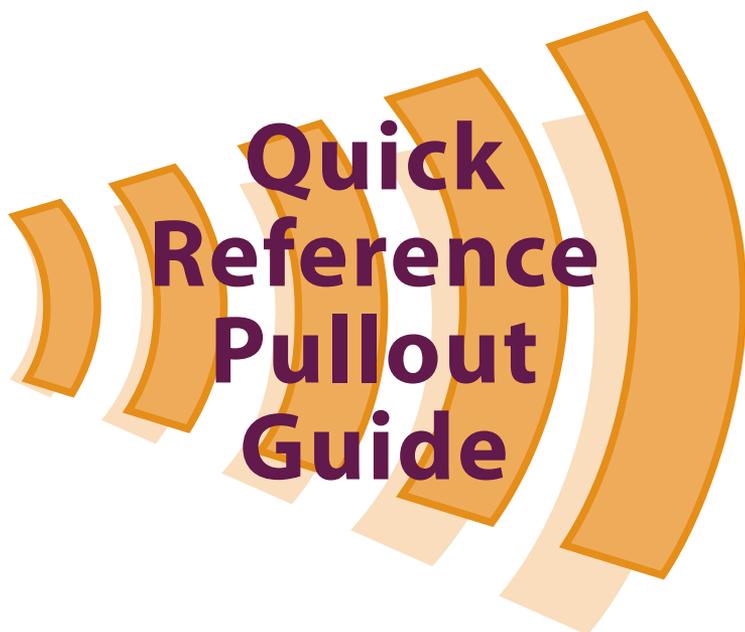
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MAKE YOUR VOICE HEARD



Take it with you to the Polls!

**Election Day
November 2, 2004**

PROP

59

**Public Records, Open Meetings.
Legislative Constitutional Amendment.**

Summary

Amends Constitution to include public's right of access to meetings of government bodies and writings of government officials. Preserves specified constitutional rights; retains existing exclusions for certain meetings and records. Fiscal Impact: Potential minor annual state and local government costs to make additional information available to the public.

What Your Vote Means

Yes

A **YES** vote on this measure means: Californians would have a constitutional right of access to government information. A government entity would have to demonstrate to a somewhat greater extent why information requested by the public should be kept private.

No

A **NO** vote on this measure means: Access to government information would continue to be governed by existing laws.

Arguments

Pro

California's government—all three branches, statewide and local—should be as transparent as possible to the public it asks for funding, power, and trust. But too often officials and judges choose secrecy over disclosure. Proposition 59 would make transparency a constitutional duty owed to the people, to whom officials are accountable.

Con

The press and public must, indeed, have access to the workings of state and local governments to help ensure accountability; however, the question is whether Proposition 59 goes far enough in guaranteeing that critical access.

For Additional Information

For

Terry Francke
Californians Aware
2218 Homewood Way
Carmichael, CA 95608
916-487-7000
terry@calaware.org
www.prop59.org

Against

Gary B. Wesley
Attorney at Law
707 Continental Circle
Mountain View, CA 94040
408-882-5070

PUBLIC RECORDS, OPEN MEETINGS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Public Records, Open Meetings. Legislative Constitutional Amendment.

Measure amends Constitution to:

- Provide right of public access to meetings of government bodies and writings of government officials.
- Provide that statutes and rules furthering public access shall be broadly construed, or narrowly construed if limiting access.
- Require future statutes and rules limiting access to contain findings justifying necessity of those limitations.
- Preserve constitutional rights including rights of privacy, due process, equal protection; expressly preserves existing constitutional and statutory limitations restricting access to certain meetings and records of government bodies and officials, including law enforcement and prosecution records.

Exempts Legislature's records and meetings.

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

- Potential minor annual state and local government costs to make additional information available to the public.

Final Votes Cast by the Legislature on SCA 1 (Proposition 59)

Assembly:	Ayes 78	Noes 0
Senate:	Ayes 34	Noes 0

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

The State Constitution generally does not address the public's access to government information. California, however, has a number of state statutes that provide for the public's access to government information, including documents and meetings.

Access to Government Documents. There are two basic laws that provide for the public's access to government documents:

- **The California Public Records Act** establishes the right of every person to inspect and obtain copies of state and local government documents. The act requires state and local agencies to establish written guidelines for public access to documents and to post these guidelines at their offices.

- **The Legislative Open Records Act** provides that the public may inspect legislative records. The act also requires legislative committees to maintain documents related to the history of legislation.

Access to Government Meetings. There are several laws that provide for the public's access to government meetings:

- **The Ralph M. Brown Act** governs meetings of legislative bodies of local agencies. The act requires local legislative bodies to provide public notice of agenda items and to hold meetings in an open forum.
- **The Bagley-Keene Open Meeting Act** requires that meetings of state bodies be conducted openly and that documents related to a subject of discussion at a public meeting be made available for inspection.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

- *The Grunsky-Burton Open Meeting Act* requires that meetings of the Legislature be open to the public and that all persons be allowed to attend the meetings.

Some Information Exempt From Disclosure. While these laws provide for public access to a significant amount of information, they also allow some information to be kept private. Many of the exclusions are provided in the interest of protecting the privacy of members of the public. For instance, medical testing records are exempt from disclosure. Other exemptions are provided for legal and confidential matters. For instance, governments are allowed to hold closed meetings when considering personnel matters or conferring with legal counsel.

PROPOSAL

This measure adds to the State Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to public scrutiny. The measure also requires that statutes or other types of governmental decisions, including those already in effect, be broadly interpreted to further the people's right to access government information. The measure, however, still exempts some information from disclosure, such

as law enforcement records. Under the measure, future governmental actions that limit the right of access would have to demonstrate the need for that restriction.

The measure does not directly require any specific information to be made available to the public. It does, however, create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private. Over time, this change could result in additional government documents being available to the public.

FISCAL EFFECT

Government entities incur some costs in complying with the public's request for documents. Entities can charge individuals requesting this information a fee for the cost of photocopying documents. These fees, however, do not cover all costs, such as staff time to retrieve the documents. By potentially increasing the amount of government information required to be made public, the measure could result in some minor annual costs to state and local governments.

PUBLIC RECORDS, OPEN MEETINGS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

ARGUMENT in Favor of Proposition 59

Proposition 59 is about open and responsible government. A government that can hide what it does will never be accountable to the public it is supposed to serve. We need to know what the government is doing and how decisions are made in order to make the government work for us.

Everyone needs access to information from the government. Why was a building permit granted, or denied? Who is the Governor considering for appointment to a vacancy on the County Board of Supervisors? Why was the superintendent of the school district fired, and who is being considered as a replacement? Who did the City Council talk to before awarding a no-bid contract?

People all across the State ask these questions—and dozens of others—every day. And what they find out is that answers are hard to get.

California has laws that are supposed to help you get answers. But over the years they have been eroded by special interest legislation, by courts putting the burden on the public to justify disclosure, and by government officials who want to avoid scrutiny and keep secrets. Proposition 59 will help reverse that trend.

What will Proposition 59 do? It will create a new civil right: a constitutional right to know what the government is doing, why it is doing it, and how. It will ensure that public agencies, officials, and courts broadly apply laws that promote public knowledge. It will compel them to narrowly apply laws that limit openness in government—including discretionary privileges and exemptions that are routinely invoked even when there is no need for secrecy. It will create a high hurdle for

restrictions on your right to information, requiring a clear demonstration of the need for any new limitation. It will permit the courts to limit or eliminate laws that don't clear that hurdle. It will allow the public to see and understand the deliberative process through which decisions are made. It will put the burden on the government to show there is a real and legitimate need for secrecy before it denies you information.

At the same time, Proposition 59 ensures that private information about ordinary citizens will remain just that—private. It specifically says that your constitutional right to privacy won't be affected.

You have the right to decide how open your government should be. That's why Proposition 59 was unanimously passed by the Legislature and it is the reason widely diverse organizations support the Sunshine Amendment, including the American Federation of State, County and Municipal Employees and the League of California Cities.

As James Madison, a founding father and America's fourth President, said: "Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives." Tell the government that it's ordinary citizens—not bureaucrats—who ought to decide what we need to know. Vote yes on Proposition 59.

MIKE MACHADO, *State Senator*

JACQUELINE JACOBBERGER, *President
League of Women Voters of California*

PETER SCHEER, *Executive Director
California First Amendment Coalition*

REBUTTAL to Argument in Favor of Proposition 59

As an attorney who has attempted for many years to use California laws to identify and weed out waste and corruption in local government, I am quite sympathetic to Proposition 59.

It is important, however, for voters to know what Proposition 59 would NOT do.

As written (by the State Legislature), Proposition 59 would continue to exempt from disclosure government records deemed "private" by the courts and would not apply at all to the "confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses . . .".

Voters should also consider that insofar as electing some top persons in government (i.e., having a representative democracy) is key to making career government bureaucrats more accountable, elections (especially for

State Assembly, State Senate, and Congress) have been undermined by:

- (1) the dependence on private, special interest campaign money (sometimes called "legalized bribes"); and
- (2) the self-serving creation (every 10 years) of gerrymandered legislative districts that protect incumbents from competition.

Moreover, anyone who blindly trusts a computer program to count votes (without any "paper trail" for potential verification) is foolish.

Sadly, we are a long way from having true representative democracy in California—and across America.

Government is getting bigger and becoming more wasteful, insular, and abusive. Proposition 59 would not do much to reverse that alarming trend.

GARY B. WESLEY, *Attorney at Law*

PUBLIC RECORDS, OPEN MEETINGS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

PROP

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ARGUMENT Against Proposition 59

This measure does not go far enough in guaranteeing the people access to information and documents possessed by state and local government agencies.

In fact, this measure only provides for a general “*right of access to information concerning the conduct of the people’s business*” and that laws in California “*shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.*”

Laws are construed (i.e., interpreted) by officials charged with following them—and by courts when asked. The rule of interpretation contained in this measure would probably have a very limited effect.

Indeed, this measure explicitly states that it does not supersede or modify any “*right to privacy guaranteed by Section 1*” of Article I of the California Constitution.

While a right to privacy—especially against government intrusion—is critical in today’s society—government employee groups are using the state constitution’s “right to privacy” to hide the amount of money, benefits, and perks they receive at public expense!

Proposition 59 may be better than nothing, but it does not go far enough. The question is whether to vote “yes” and hope for more or vote “no” and demand more.

GARY B. WESLEY, *Attorney at Law*

REBUTTAL to Argument Against Proposition 59

Mr. Wesley’s skepticism of open government laws is understandable. Several years ago, when he sued his city council under the open meeting law alleging it had illegally used a closed session to discuss a topic not mentioned on the agenda, the court would not let him question the council members about what they had discussed behind closed doors.

The court concluded that because the law did not expressly authorize such questioning and because it contained other provisions protecting closed session discussions, government officials could not be asked about what they discussed even to obtain evidence for trial, and even if there was no other way of proving a violation of the law.

In other words, he lost because the court applied the general rule of access narrowly, and the exception allowing secrecy broadly—precisely what Proposition 59 would reverse.

As for privacy, the constitution has never been interpreted to protect the abuse of official authority or the wasting of public resources by anyone, and Proposition 59 will not create a screen for anyone to use in hiding fraud, waste, or other serious misconduct.

On the contrary, Proposition 59 will add independent force to the state’s laws requiring government transparency. It will create a window on how all public bodies and officials conduct the public’s business, for well or ill, while sparing the dignity and reputations of ordinary people, public employees, and even high officials who have done nothing to merit public censure or concern.

MIKE MACHADO, *State Senator*

THOMAS W. NEWTON, *General Counsel*
California Newspaper Publishers Association

JOHN RUSSO, *City Attorney*
City of Oakland

Proposition 59

This amendment proposed by Senate Constitutional Amendment 1 of the 2003–2004 Regular Session (Resolution Chapter 1, Statutes of 2004) expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO SECTION 3 OF ARTICLE I

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.*

Proposition 60

This amendment proposed by Senate Constitutional Amendment 18 of the 2003–2004 Regular Session (Resolution Chapter 103, Statutes of 2004) expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE II

That Section 5 of Article II thereof is amended to read:

SEC. 5. (a) The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the

candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(b) *A political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party’s candidates.*

Proposition 60A

This amendment proposed by Senate Constitutional Amendment 18 of the 2003–2004 Regular Session (Resolution Chapter 103, Statutes of 2004) expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE III

That Section 9 is added to Article III thereof, to read:

SEC. 9. *The proceeds from the sale of surplus state property occurring on or after the effective date of this section, and any proceeds*

from the previous sale of surplus state property that have not been expended or encumbered as of that date, shall be used to pay the principal and interest on bonds issued pursuant to the Economic Recovery Bond Act authorized at the March 2, 2004, statewide primary election. Once the principal and interest on those bonds are fully paid, the proceeds from the sale of surplus state property shall be deposited into the Special Fund for Economic Uncertainties, or any successor fund. For purposes of this section, surplus state property does not include property purchased with revenues described in Article XIX or any other special fund moneys.

Proposition 61

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The people of the State of California do enact as follows:

SECTION 1. Part 6 (commencing with Section 1179.10) is added to Division 1 of the Health and Safety Code, to read:

PART 6. CHILDREN’S HOSPITAL BOND ACT OF 2004

CHAPTER 1. GENERAL PROVISIONS

1179.10. *This part shall be known and may be cited as the Children’s Hospital Bond Act of 2004.*

1179.11. *As used in this part, the following terms have the following meanings:*

(a) *“Authority” means the California Health Facilities Financing Authority established pursuant to Section 15431 of the Government Code.*

(b) *“Children’s hospital” means either:*

(1) *A University of California general acute care hospital described below:*

- (A) *University of California, Davis Children’s Hospital.*
- (B) *Mattel Children’s Hospital at University of California, Los Angeles.*
- (C) *University Children’s Hospital at University of California, Irvine.*
- (D) *University of California, San Francisco Children’s Hospital.*
- (E) *University of California, San Diego Children’s Hospital.*

(2) *A general acute care hospital that is, or is an operating entity of, a California nonprofit corporation incorporated prior to January 1, 2003, whose mission of clinical care, teaching, research, and advocacy*