

State ends portions of Brown Act

July 24, 2012 — Legislative bodies across California are no longer legally required to provide public notice of their meetings or report the actions they take in closed session thanks to a provision in the California state budget approved by the legislature and signed into law by Governor Jerry Brown last month.

Rather than provide funding to reimburse government entities and special districts for the costs of preparing agendas as required by the California Constitution, the legislature and the governor suspended the funding mechanism for those claims, leaving the people without legal recourse should a legislative body refuse to honor its commitment to keep the people informed of its actions.

Jim Ewert, general counsel for the California Newspaper Publishers Association (CNPA), said the public's assurances of open and transparent government contained in California's Open Meeting Law, commonly known as the Brown Act, all arise from the posting of agendas in advance of meetings and reporting actions taken by the bodies.

"Everything in the Brown Act flows from the public having notice," Ewert said. "This is the first time the notice and reporting out provisions of the Brown Act have ever been suspended."

The public had no idea the legislature and the governor would suspend these provisions of the Brown Act, and the language was included as part of the state budget signed last month.

"It's a done deal," Ewert said. "We found out about it after the budget was signed, sealed and delivered."

Ewert said in the late 1980s or early 1990s the requirements to post agendas and report actions taken in closed session were determined to fall under the provision that the state reimburse legislative bodies for services it mandated they provide.

"When the notice and reporting out provisions (of the Brown Act) were considered a state mandate, claims were filed by all kinds of local government agencies with the state ... to the tune of upwards of \$50 million a year," Ewert said.

When the budget crisis first hit several years ago, the state began to defund that mandate, Ewert said.

“They zeroed out the amount the state would be required to pay,” Ewert said, “but what they didn’t realize was the amount each local agency was racking up continued to accrue. Even though the state zeroed it out, it didn’t mean that the costs ended. So it wasn’t until they actually suspended the Brown Act this time that those costs stopped accruing.”

According to Ewert, media watchdog groups and newspaper associations have concerns that while most legislative bodies will continue to conduct business openly and transparently, some smaller districts may not.

“In those instances, with the Brown Act suspended, the public has little legal recourse if an agency decides it’s not going to post agendas anymore,” Ewert said. “Until the Brown Act suspension is lifted, they’re not required to.”

The other components of the Brown Act remain intact, Ewert said — such as the requirement that they meet in open public session and meet narrowly in closed session on specific items.

The Brown Act provisions would not be considered a mandate by the state, if the governor’s tax provision is approved by the voters in November.

“(If the measure is approved) This problem would go away,” Ewert said. “CNPA hasn’t taken an official position on that, but some people are referring to it as extortion — not us, but some people aren’t too happy that has happened.”

Ewert said CNPA has sponsored SCA 7 — a proposed constitutional amendment written by Senator Leland Yee that is currently stalled in the Assembly Appropriations Committee — that would require, “Each public body shall provide public notice of its meetings and shall publicly disclose any action taken.”

