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# Status of the Brown Act

The reimbursable provisions of the Brown Act, California's open meetings law, were suspended by the Legislature in this year's budget and the California Department of Finance has officially notified special districts of the suspension. When a reimbursable mandate is suspended, local governments are no longer eligible for reimbursement, nor statutorily obligated to adhere to the mandate. In spite of this, special districts are rightly upholding all requirements of the Brown Act.

Although failing to follow the unfunded reimbursable mandates within the Brown Act is no longer a violation of state law, CSDA strongly advises all special districts to continue abiding by all Brown Act provisions in order to ensure public transparency and accountability. Our communities are accustomed to these requirements, which help ensure confidence in local service providers. For a more detailed explanation of the legal ramifications and the ability of districts to claim reimbursements for past years, please review the below contributions by experts in the fields of state mandated local requirements and reimbursements.

**Legal Impact of State Budget on Brown Act**
*By Jason Rosenberg and Steve Mattas, Meyers Nave*
The recently passed Assembly Bill 1464 suspends a long list of state mandates—including portions of the Ralph M. Brown Act that are unfunded mandates—for the 2012-2013 fiscal year. Another adopted bill, Senate Bill 1006, prolongs the suspension through the 2014-2015 fiscal year, therefore amounting to a three year suspension.

However, the suspension may be short-lived should voters pass Governor Jerry Brown's tax initiative, Proposition 30, at the upcoming November election. Specifically, the initiative states that any public agency that must comply with the Brown Act, "with respect to performing its Public Safety Services responsibilities, *or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B*." (emphasis added) Although "Public Safety Services" is a defined term that does not apply to the vast majority of Brown Act requirements, "any other matter" could be interpreted to include those suspended requirements.

While the language of AB 1464, which was signed into law on June 27, 2012, does not directly state which specific provisions of the Brown Act are suspended, the law references two prior Commission on State Mandate ("Commission") decisions. Those two decisions determined that the Brown Act requirements at issue were reimbursable mandates on local governments.

By referencing these two decisions, AB 1464 suspends the following Brown Act provisions:

- Preparation and posting at least 72 hours before a regular meeting of an agenda that contains a brief general description of each item of business to be transacted or discussed at the meeting. (See Gov. Code § 54954.2(a).)
- Inclusion on the agenda of a brief general description of all items to be discussed in closed session. (See Gov. Code § 54954.2(a).)
- Disclosure of each item to be discussed in closed session in an open meeting, prior to any closed session. (See Gov. Code § 54957.7 (a).)

- Report in open session prior to adjournment on the actions and votes taken in closed session regarding certain subject matters. (See Gov. Code §§ 54957.1(a)(l)-(4), (6); 54957.7 (b).)
- Provide copies to the public of certain closed session documents. (See Gov. Code § 54957.1 (b)-(c).)

The Legislature appears to have intended to suspend only these requirements. Accordingly, the remainder of the Brown Act remains in effect. Meetings of legislative bodies will have to continue to comply with the remainder of the Brown Act provisions. These same Brown Act requirements were suspended in 1990. During that suspension, most public agencies reported they would continue to comply with all requirements of the Brown Act regardless of the suspension.

CSDA advises its constituent members to continue to comply with all provisions of the Brown Act in an effort to encourage confidence in local government and transparency. The risks of non-compliance outweigh any benefits.

**Brown Act Reimbursements**
*By Andy Nichols, Nichols Consulting*
Despite the fact the California Legislature has suspended the provisions of the Ralph M. Brown Act, all California special districts (and all local agencies) are still able to file for SB 90/State Mandated Cost reimbursement for the preparation of regular meeting agendas for the two most recently completed fiscal years (FY 2010-2011 and FY 2011-2012)

Special districts may still file SB 90 Claims for FY 2010-2011 and FY 2011-2012
Locals are able to claim their eligible costs for the Open Meetings Act/Brown Act Reform program for FY 2011-2012 for the first-time ever, in February 2013. Additionally, if a special district did not file its FY 2010-2011 claim (originally due in February 2012), it is still able to submit those costs with a 10 percent late penalty by February 2013.

Brown Act reimbursement claims are not eligible for FY 2012-2013 costs (February 2014)
The effect of the FY 2012-2013 Budget suspension of the Brown Act will be realized in February 2014, when the Open Meetings Act/Brown Act Reform claim will not be an eligible program for the FY 2012-2013 annual claims deadline. Additionally, by suspending the Brown Act for FY 2012-2013, the State Legislature avoided the provision of Article XIIIB Section 6 of the State Constitution (as required by Proposition 1A) to provide immediate funding to Locals for previously filed claims. This suspension allows the State of California to defer approximately $30 million in reimbursement.

Payment of Previously Filed Open Meetings Act/Brown Act Reform Claims
Since the restoration of the SB 90 reimbursement program (September 2009), special districts have had an opportunity to file six (6) fiscal years worth of reimbursement claims. With the suspension of the Brown Act, the question has been asked, “Does the State still owe our district for the claims we have filed?”

The State of California must honor this obligation for payment of claims, as required by Article XIIIB, Section 6 of the California State Constitution. Additionally, since the State Legislature continues to defer payment, special districts’ claims will also accrue interest as required by Government Code § 17561.5.