




CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION  
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January 25, 2011

Honorable Leland Yee  
California State Senate  
State Capitol Room 205  
Sacramento, California

**RE: SCA 7 -- Proposed Senate Constitutional Amendment**

Dear Senator 

The California Newspaper Publishers Association is proud to sponsor your Senate Constitutional Amendment 7 to guarantee, once and for all, the public's right under the Ralph M. Brown Act to reasonable notice of the meetings of local public legislative bodies and to public reports of action taken in closed sessions of those bodies.

Since 1986 the Brown Act has required local legislative bodies to post a single copy of a descriptive agenda 72 hours before a regular meeting and 24 hours before a special meeting. Beginning April 1, 1994, the Act has also required local bodies to report out in open meeting decisions a body made in closed session. These common sense rules are essential to give the public enough information to determine whether to attend the meeting or at least seek more information and to be informed about decisions made behind closed doors.

As you know, even though last minute amendments to the 2010/2011 State Budget reinstated the Brown Act requirements, it did not appropriate funds for these "state mandated local programs." Because of this anomaly, the Legislative Analysts Office takes the position that local government agencies are currently not required to comply with the agenda posting and reporting out requirements. Whether this is the legally correct interpretation or not, the current status of the law has created intolerable confusion.

CNPA has argued the duties to post a single copy of an agenda in a public place and to orally report decisions made in closed session create no meaningful costs that should be reimbursed by the State. The Commission on State Mandates, though, has found these statutes require state reimbursement to local agencies at an annual cost of about \$20 million.

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Since the agenda posting law was authored by then-Assemblyman Lloyd Connelly in 1986 (Ch. 641), it has been repeatedly threatened by incredibly large claims for reimbursement, on the one hand, and suspension of the law through the state budget process during tight fiscal times, on the other. During the 1991 budget crisis, faced with a \$14.5 billion deficit, the legislature and Gov. Pete Wilson actually did suspend the agenda posting section for one year. After a public outcry, the agenda requirement was reinstated by urgency legislation. Since then, the legislature has considered suspending the Brown Act on several occasions and in this last adopted Budget, it appears to have succeeded.

Shortly after Prop 59 – the Constitutional Sunshine Amendment -- was approved in 2004, the Legislature, frustrated with the continued impact of the Brown Act on the general fund and with CNPA's endorsement, amended the agenda posting law as follows:

“This section is necessary to implement and reasonably within the scope of paragraph (1) of Subdivision (b) of Section 3 of Article I of the California Constitution.”

That section of the Constitution says:

“(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.”

Thereafter, the Commission on State Mandates reconsidered the open meeting claim and found that, following the amendment to the Constitution, the Act did not create a reimbursable local program. Unfortunately, in 2007, a court reinstated the mandate on technical grounds, again subjecting the Brown Act to a new threat of suspension in the budget process. By explicitly requiring notice of meetings in the State Constitution, the Brown Act's provisions could be re-imposed on local agencies as an implementation of the Constitution, not subject to reimbursement.

CNPA asserts the Brown Act's agenda requirement is as important to the open and public functioning of local bodies as the Daily File is for the functioning of the legislature. Suspending the Brown Act during times of fiscal crisis places the public's Constitutional right to open and public government at risk.

The main function of the agenda-posting requirement is to prevent surprise action (See, Carlson v. Paradise Unified School District (1971) 18 Cal.App.3d 196). It was surprise action -- a “coded” agenda item that turned out to be a secret council pay raise, adopted without discussion -- that prompted the legislature in 1986 to enact the agenda requirements. The central requirement of the Brown Act that meetings be open to the public means nothing if the public does not have adequate notice of the time, place and subjects of discussion at the meeting. This right to know before “it” happens must be enforceable.

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Although Assemblyman Connelly, the Legislature and CNPA fought long and hard to eliminate or at least reduce the high level of reimbursement adopted by the Commission on State Mandates (See, for example, Government Code Section 54954.4), the fact is that unless the legislature approves an SCA for the ballot, one of two outcomes appear certain: either the legislature will agree to continue to pay the bogus local agency claims putting continued stress on other funding choices; or, more likely, it will continue to suspend the Brown Act, making it optional to local agencies and unenforceable by the public.

Nearly eighty three percent of the voters approved Prop 59. CNPA believes these same voters would again support a modest change in the Constitution to add the concept of reasonable notice of meetings and public reporting of actions taken. These simple changes, approved by the people, would, once and for all, make the Brown Act provisions not subject to state reimbursement.

On behalf of the nearly 850 daily, weekly and student newspaper members of the CNPA and the millions of Californians who depend on the meeting notices required by the Brown Act, we look forward to working with you to protect and secure into the future the public's fundamental interest in open and public government. Thank you for introducing SCA 7.

Sincerely,



Thomas W. Newton  
CNPA General Counsel

cc:

Ron Redfern, CNPA President, President and Publisher, Riverside Press-Enterprise  
Karlene Goller, CNPA Governmental Affairs Committee Chairwoman, Vice President and Deputy  
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