

DEPARTMENT: Administration

BY: Rick Benson
PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Authorize the Chairman of the Board of Supervisors to sign a letter opposing AB 392 (Alejo) - Ralph M. Brown Act; Posting Agendas. AB 392 would require that all staff generated documents associated with an agenda item to be posted on-line. Mariposa County currently does not have the technical sophistication necessary to meet this requirement and given the precarious financial situation, identifying additional funding may have to come at the expense of other more critical needs. The additional workload this will place on our limited staff will also have a negative effect of county operations.

Hard copies of all supporting documentation are already made available at various public locations and copies are readily provided upon request. Mariposa County continues to strive for enhance government transparency, but given the limited financial resources and personnel, staff believes that meeting this requirement will come at the expense of other critical needs.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has authorized the Chairman of the Board of Supervisors to sign letters opposing proposed legislation that they believe are not in the best interests of the County.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not authorize the Chairman of the Board of Supervisors to sign the letter opposing AB 392. Individual Board members may write their own letters, which may not have the same weight as a letter endorsed by the entire Board.

Financial Impact? () Yes (X) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		Draft Letter
Source:		Text of AB 392
Internal Transfer		
Unanticipated Revenue	_____ 4/5's vote	
Transfer Between Funds	_____ 4/5's vote	
Contingency	_____ 4/5's vote	
() General () Other		

CLERK'S USE ONLY:

Res. No.: 11-176 Ord. No. _____
Vote - Ayes: 5 Noes: _____
Absent: _____
AWJ Approved
() Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: _____
Deputy

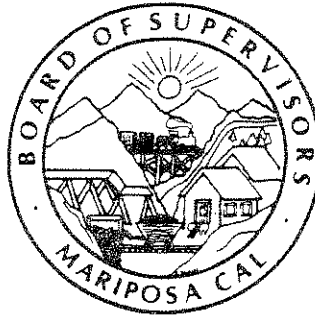
COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
Comments:

CAO: *[Signature]*

Mariposa County Board of Supervisors

District 1 LEE STETSON
District 2 LYLE TURPIN
District 3 JANET BIBBY
District 4 KEVIN CANN
District 5 JIM ALLEN



RICHARD J. BENSON
County Administration Officer

MARGIE WILLIAMS
Clerk of the Board

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May 3, 2011

The Honorable Luis Alejo
California State Assembly Member
State Capitol, Room 2137
Sacramento, California 95814

RE: AB 392 (Alejo) – Ralph M. Brown Act; Posting Agendas

OPPOSE

Dear Assembly Member Alejo:

The Mariposa County Board of Supervisors respectfully opposes your Assembly Bill 392, which requires local agencies to post on-line staff-generated documents that are associated with a noticed agenda item. Enacted SB 343, ensures that documents associated with an agenda item are made available to the public when those documents are given to a majority of the members of the Board. We believe that in the three years since this requirement became operational that the public has been well-served in having sufficient access to these documents.

The Mariposa County Board of Supervisors supports the concept of AB 392, but believes that the requirements are too cumbersome and create an undue burden for a small entity. Mariposa County currently does not have the technical sophistication necessary to meet this requirement and given the precarious financial situation, identifying additional funding may have to come at the expense of other more critical needs. The additional workload this will place on our limited staff will also have a negative effect of county operations. Mariposa County already provides a hard copy of all supporting documents at various physical locations and to our local newspaper, and copies are readily available upon request.

Mariposa County Board of Supervisors applauds your effort to enhance transparency in government, but given the reasons above, must respectfully oppose AB 392. We believe that at this time, our limited discretionary funding can be put to a more productive use especially in areas of health and safety. We appreciate your time and consideration, and are available to assist in developing less burdensome methods of government transparency.

Sincerely,

JIM ALLEN
Chairman

JA/mbh

cc: Honorable Assembly Member Smyth
Honorable Assembly Member Olsen
Honorable Senator Berryhill
CSAC
RCRC

bcc: Margie Williams

BILL NUMBER: AB 392 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 14, 2011

INTRODUCED BY Assembly Member Alejo

FEBRUARY 14, 2011

An act to amend Sections 54954.2 and 54957.5 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 392, as amended, Alejo. Ralph M. Brown Act: posting agendas.

(1) Existing law, the Ralph M. Brown Act, requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Existing law requires that the legislative body of a local agency post an agenda, as specified, at least 72 hours before a regular meeting of that body, and prohibits the legislative body from acting on or discussing any item not appearing on the agenda, except as provided.

Existing law requires that agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of the legislative body of a local agency in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act. Existing law establishes a procedure for the disclosure of any writings that are distributed less than 72 hours prior to the meeting.

~~This bill would additionally require the legislative body of the local agency, at least 72 hours before a regular meeting of that body, to post the writings that relate to an agenda item for the open session of that regular meeting.~~ This bill would require the legislative body of a local agency to post the agenda and ~~the writings~~ specified staff generated reports that relate to items on the agenda on its Internet Web site, if any, as specified. The bill would require the legislative body of the local agency, if it does not have an Internet Web site, to disclose on the posted agenda a public location where the agency would make an applicable staff generated report available for copying and inspection by a member of the public for at least 72 hours prior to the meeting. The bill would ~~repeal the procedure for the disclosure of any writings that are distributed less than 72 hours prior to the meeting and would instead~~ prohibit the legislative body from acting on or discussing an item on the agenda for which a related ~~writing~~ staff generated report was not properly disclosed at least 72 hours prior to the meeting, except as provided. By expanding the duties of local agencies, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these

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statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) (1) (A) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed ~~session, and shall post any writing, as described in subdivision (a) of Section 54957.5, that relates to an agenda item for the open session of that regular meeting of the legislative body of the local agency.~~ session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be ~~posted, along with the writings in a manner that makes it clear to which agenda items the writings relate, on the local agency's~~ posted on the local agency's Internet Web site, if any, and in a location that is freely accessible to members of the public. Each local agency shall list the address of the publicly accessible location on the agendas for all meetings of the legislative body of that agency. If requested, the agenda or ~~writing~~ an applicable staff generated report described in subparagraph (B), shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(B) In addition to the requirements of subparagraph (A), at least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post on its Internet Web site, if any, any staff generated report that is a writing, as described in subdivision (a) of Section 54957.5, and that relates to an agenda item for an open session of the regular meeting of a legislative body of a local agency. The agency shall post the meeting agenda and the applicable staff generated reports on the Internet Web site, if any, in a manner that makes it clear to which agenda item a staff generated report relates. If the local agency does not have an Internet Web site, then the posted agenda shall disclose a public location where the agency shall make any applicable staff generated report available for copying and inspection by a member of the public for at least 72 hours prior to the meeting.

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda or any item for which a related ~~writing was not disclosed pursuant to subdivision (a)~~

staff generated report was not disclosed in the manner described in this subdivision, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or

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in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda or items for which a related ~~writing was not disclosed pursuant to~~ staff generated report was not disclosed in the manner described in subdivision (a), under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) 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.

SEC. 2. Section 54957.5 of the Government Code is amended to read:

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

(b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency

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also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) Compliance with subdivision (b) or (c) shall not be construed to modify or eliminate the requirement, pursuant to Section 54954.2, that no action or discussion be undertaken by the legislative body of a local agency at a meeting on any item not appearing on the posted agenda or for which a staff generated report was not properly disclosed in the manner described in that section.

~~(b)~~

(e) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

~~(c)~~

(f) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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