

SB 343 NEW BROWN ACT REQUIREMENT

AVAILABILITY OF PUBLIC RECORDS DISTRIBUTED BEFORE MEETINGS

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SUMMARY

Senate Bill 343, signed by the Governor on October 5, 2007, amends California Government Code Section 54957.5 of the Ralph M. Brown Act to impose new requirements regarding the availability of public records distributed prior to meetings of the legislative body of a local agency. Beginning July 1, 2008, public records that relate to an open session item of a regular meeting that are distributed to a majority of the members of the legislative body less than 72 hours before that meeting also must be made available to the public at the same time.

BACKGROUND

Section 54957.5(a) provides that documents distributed to all or a majority 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 legislative body are public records subject to disclosure under the California Public Records Act [California Government Code Sections 6250 et. seq.]. Section 54957.5(a) further provides that those documents must be made available for public inspection upon request without delay. This disclosure requirement does not apply to records that are exempt from disclosure under the California Public Records Act.

SENATE BILL 343

SB 343 amends the Brown Act to provide that if public records regarding an open session item of a regular meeting are distributed to a majority of the legislative body less than 72 hours before that meeting, then those records also must be made available to the public at the same time as the records are distributed or made available to a majority of the legislative body at a public location designated by the local agency [Section 54957.5(b)(1)]. SB 343 also provides that the address of the public location where those records will be made available must be included on the agendas for all meetings of the legislative body [Section 54957.5(b)(2)]. This new law allows the local agency to post the document on its web site in a manner that makes clear that it relates to an agenda item for an upcoming meeting.

There seems to be an inconsistency in SB 343 regarding whether this new requirement also applies to records pertaining to an open session item of a special or emergency meeting. Section 54957.5(b)(1) specifically refers to records relating to an open session item of a "regular meeting of the legislative body" and the 72 hour time frame coincides with the agenda posting requirement for regular meetings. But Section

54957.5(b)(2) requires designating the location where these records will be available on agendas of “all meetings of the legislative body of that agency.” Because agendas for all meetings of the legislative body must designate the location where records relating to open session items are available for public inspection, it seems that it would be a better practice for local agencies to make records relating to an open session item for all meetings of a legislative body that are subject to the requirements of the Brown Act, including regular, special, and emergency meetings, available for public inspection at the same time those documents are distributed to a majority of the legislative body. This approach satisfies the spirit of SB 343, which is to make records that are distributed to the legislative body available to the public as well.

Section 54952 broadly defines “legislative body” as including all commissions, committees, and other bodies of the local agency, and therefore the agendas for public meetings of these bodies also should include a notice of availability of public records.

The following is an example of a notice that should be included on the agenda to satisfy the new Brown Act requirements:

“Availability of Public Records. All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at [Insert Address] at the same time that the public records are distributed or made available to the legislative body.”

If you have any questions regarding the implementation of Senate Bill 343 or compliance with the Brown Act, please contact:



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