

Date of Hearing: March 20, 2024

**ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT**

Juan Carrillo, Chair

AB 1852 (Pacheco) – As Introduced January 17, 2024

**SUBJECT:** Joint powers agencies: Clean Power Alliance of Southern California: meetings

**SUMMARY:** Extends, until January 1, 2030, the existing sunset date on provisions of law authorizing the Clean Power Alliance of Southern California (Clean Power Alliance) to allow specified alternate members of its legislative body to attend closed sessions of the agency.

**EXISTING LAW:**

- 1) Enacts the Joint Exercise of Powers Act (JPA law), which allows two or more public agencies to use their powers in common if they sign a joint powers agreement. (GOV § 6500-6539.9)
- 2) Allows federal agencies, state departments, counties, cities, special districts, school districts, federally recognized Indian tribes, and even other joint powers authorities to enter into joint powers agreements. (GOV § 6500)
- 3) Allows a JPA to specify its own mission, structure, and governing board, the financial obligations of each member agency, and the provisions for members to enter and exit the JPA, among other items. (GOV § 6500-6539.9)
- 4) Enacts the Ralph M. Brown Act (Brown Act), which requires meetings of the legislative body of a local agency, including a JPA, to be open and public, with exceptions authorizing closed sessions for specified matters. (GOV 54950-54963)
- 5) Requires local agencies to publicly report any action taken in closed session and the vote or abstention on that action of every member present. (GOV § 54957.1)
- 6) Allows a designated alternate member of a JPA to attend closed sessions of the JPA, provided that the alternate is a member of the legislative body of the JPA's member agencies. (GOV § 54956.96)
- 7) Allows, until January 1, 2025, the Clean Power Alliance (which is a JPA) to authorize a designated alternate member of the agency's legislative body who is not a member of the legislative body of a local agency member to attend closed sessions of the agency, as specified. (GOV § 54956.96)

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Bill Summary and Author's Statement.** This bill extends, until January 1, 2030, the existing sunset date of January 1, 2025, on provisions of law authorizing the Clean Power Alliance of Southern California to allow specified alternate members of its legislative body

to attend closed sessions of the agency. This bill is sponsored by the Clean Power Alliance of Southern California.

According to the author, “The Clean Power Alliance is governed by a Board of Directors composed of one elected official from each of its 35 member agencies, and up to two alternate directors. As a community-driven entity, alternate directors may be municipal agency staff or qualified members of the public, often former elected officials. The predecessor to AB 1852, SB 355 (Portantino, 2019), enabled CPA to amend its bylaws to allow a designated alternate director who is not a member of an agencies legislative body (e.g. an elected official) to participate in Closed Session meetings until a sunset date of January 1, 2025. AB 1852 will extend the repeal date to January 1, 2030 for these alternate directors to participate in Closed Session meetings when the primary board member is unable to attend. Extending this provision ensures that CPA can maintain continuity in its Board operations and contributes significantly to CPA’s ability to conduct business and govern operations effectively.”

- 2) **Background.** JPA law allows two or more public agencies to use their powers in common if they sign a joint powers agreement. Sometimes an agreement creates a new, separate government called a joint powers agency or joint powers authority (JPA). Agencies that can exercise joint powers include federal agencies, state departments, counties, cities, special districts, school districts, federally recognized Indian tribes, and even other JPAs.

Existing law allows a JPA to specify its own mission, structure, and governing board, the financial obligations of each member agency, and the provisions for members to enter and exit the JPA, among other items. An agreement typically delineates how member agencies are to be represented on the governing board of the JPA, usually by designating a member of the governing body of the member agency to sit on the board of the JPA. However, an agreement may allow member agencies to designate alternates who are not members of the governing body of the member agency, such as a staff member or member of the public with significant expertise in the policy area.

- 3) **The Brown Act and Closed Sessions.** The Brown Act generally requires the meetings of local governments’ legislative bodies to be “open and public.” This ensures public access to information so that the people of this state can retain control over the public agencies that serve them. The Brown Act prohibits private discussions among a majority of a legislative body, unless expressly authorized for closed sessions.

Legislative bodies are authorized to meet in closed sessions only for narrowly specified purposes, such as matters related to litigation, real estate negotiations, personnel issues, labor negotiations, threats to public security, and other subjects that have been determined to merit an exception to open meetings due to their sensitive nature, their potential risk to the agency or the public, the necessity to maintain privacy of personal information, and so forth. Closed session items must be described on a posted agenda and the description must identify the specific statutory exemption allowing the closed session. The legislative body must make a public announcement before a closed session begins, and must provide an oral or written report on certain actions taken and the vote of every elected member present after a closed session.

The state has traditionally treated closed sessions with great care and deference to protecting the confidentiality of communications that occur during these meetings. In 1997, the Attorney General issued an opinion finding that it is improper for officials to publicly disclose information received during a closed session regarding pending litigation. The Attorney General also opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. Subsequent Attorney General's opinions also favored the confidentiality of closed session information by concluding that board members of local agencies whose boards are appointed by and consist of other local agency members (such as JPAs) are restricted from sharing closed session information with the boards of the underlying member agencies.

The Legislature furthered the protections of closed session confidentiality by approving AB 1945 (Simitian), Chapter 1119, Statutes of 2002. AB 1945 amended the Brown Act to explicitly provide that a person may not disclose confidential information obtained by attending a closed session, unless the legislative body authorizes the disclosure. It also clarified that disclosure violations could be addressed as follows:

- a) Injunctive relief to prevent the disclosure of confidential information.
  - b) Disciplinary action against an employee who willfully discloses confidential information.
  - c) Referral to a grand jury of a member of a legislative body who has willfully disclosed confidential information.
- 4) **JPAs and Closed Sessions.** In the context of this generally protective approach to closed session information, a series of news articles in 2003 revealed that a JPA in Riverside County was involved in false documentation, illegal financial maneuvers, conflicts of interest, contract violations and audit irregularities. The JPA board held a series of closed session meetings regarding the situation. Because these discussions occurred in closed session and were confidential under the Brown Act, the primary source of information to the public – including local officials not on the JPA board – was the news media. Frustrated by their lack of access to information discussed in closed session of the JPA they created, some of the JPA's member agencies sought a legislative remedy to allow member agencies of a JPA to have access to the JPA's closed session information.

AB 2782 (Benoit), Chapter 784, Statutes of 2004, responded to this dilemma. In its analysis of the bill, the Senate Local Government Committee noted, "A JPA's member agencies are not responsible for contractual liabilities of the JPA, but case law has determined that they are responsible for tort liability." In seeking to balance the need to protect the information disclosed in closed sessions of a JPA and the need of JPA member agencies to protect their home agency's interests, AB 2782 clarified a number of issues. It expressly allowed a JPA to adopt a policy or bylaw or include in its joint powers agreement provisions that authorize the following:

- a) All information received by the legislative body of the local agency member in a closed session related to the information presented to the JPA in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

- i) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.
  - ii) Other members of the legislative body of the local agency present in a closed session of that member local agency.
- b) Any designated alternate member of the legislative body of the JPA who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the JPA in lieu of a local agency member's regularly appointed member to attend closed sessions of the JPA.

In the event that a JPA authorizes these provisions, AB 2782 clarified that the legislative body of the local agency member, upon the advice of its legal counsel, is then allowed to conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the JPA that has direct financial or liability implications for that local agency.

- 5) **Clean Power Alliance.** Clean Power Alliance is a community choice aggregator formed as a JPA in 2017. Founding members included Los Angeles County, Rolling Hills Estates, and South Pasadena. Clean Power Alliance has since grown to 35 members, including unincorporated areas of Los Angeles and Ventura Counties and the cities of Agoura Hills, Alhambra, Arcadia, Beverly Hills, Calabasas, Camarillo, Carson, Claremont, Culver City, Downey, Hawaiian Gardens, Hawthorne, Hermosa Beach, Malibu, Manhattan Beach, Monrovia, Moorpark, Ojai, Oxnard, Paramount, Redondo Beach, Rolling Hills Estates, Santa Monica, Santa Paula, Sierra Madre, Simi Valley, South Pasadena, Temple City, Thousand Oaks, Ventura, West Hollywood, Westlake Village, and Whittier. Clean Power Alliance serves approximately three million customers and one million customer accounts.

Pursuant to its joint powers agreement, Clean Power Alliance board meetings must have a majority of members present in order to conduct business. Each member agency must designate one regular director and two alternates. The regular director must be an elected or appointed member of the governing body of the member agency. Alternates may be one of the following:

- a) An elected or appointed member of the governing body of the member agency.
  - b) An appointed member of an advisory body of the member agency.
  - c) A staff member of the member agency.
  - d) A member of the public with demonstrated knowledge in energy-related matters through specified experience in one of several types of organizations, including private, governmental, non-profit, and academic entities.
- 6) **SB 355.** Given the range of people who may serve as designated alternates for the Clean Power Alliance board of directors, and the fact that not all alternates are members of the legislative body of its local agency members, the Clean Power Alliance sought further flexibilities under the Brown Act so that these alternates could attend closed sessions of the

agency. SB 355 (Portantino) Chapter 248, Statutes of 2019, authorized the Clean Power Alliance to allow all of these alternates to attend closed sessions of its governing body.

The bill imposed the same disclosure requirements on these alternates that apply to alternates who are members of a legislative body of a JPA's local agency member and attend a closed session of that JPA. The bill also required the Clean Power Alliance to establish policies to prevent conflicts of interest and address breaches of confidentiality that apply to these alternates if it elected to use the provisions of the bill. SB 355 contained a sunset date of January 1, 2025.

- 7) **Arguments in Support.** The Clean Power Alliance of Southern California, sponsor of this measure, writes, “CPA is governed by a Board of Directors composed of one elected official from each of its member agencies, and up to two alternate directors. As a community-driven entity, alternate directors may be municipal agency staff or qualified members of the public, often former elected officials. The predecessor to AB 1852, SB 355 (Portantino, 2019), enabled CPA to amend its bylaws to allow a designated alternate director who is not a member of an agencies legislative body (e.g. an elected official) to participate in Closed Session meetings until a sunset date of January 1, 2025. AB 1852 will extend the repeal date to January 1, 2030 for these alternate directors to participate in Closed Session meetings when the primary board member is unable to attend. Extending this provision ensures that CPA can maintain continuity in its Board operations and contributes significantly to CPA’s ability to conduct business and govern operations effectively.”

- 8) **Arguments in Opposition.** None on file.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Clean Power Alliance of Southern California [SPONSOR]  
City of Culver City

##### **Opposition**

None on file.

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