

Date of Hearing: May 1, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2715 (Boerner) – As Amended April 24, 2024

**SUBJECT:** Ralph M. Brown Act: closed sessions.

**SUMMARY:** Allows the legislative body of a local agency to hold closed sessions pursuant to the Ralph M. Brown Act (Brown Act) on matters pertaining to a threat to cybersecurity.

Specifically, **this bill:**

- 1) Adds “other law enforcement or security personnel” to the list of persons with whom a legislative body of a local agency may hold closed sessions on matters pertaining to specified threats, and adds “a threat to critical infrastructure controls or critical infrastructure information relating to cybersecurity” to those matters.
- 2) Provides the following definitions:
  - a) “Critical infrastructure controls” means networks and systems controlling assets so vital to the local agency that the incapacity or destruction of those networks, systems, or assets would have a debilitating impact on public health, safety, economic security, or any combination thereof.
  - b) “Critical infrastructure information” means information not customarily in the public domain pertaining to any of the following:
    - i) Actual, potential, or threatened interference with, or an attack on, compromise of, or incapacitation of critical infrastructure controls by either physical or computer-based attack or other similar conduct, including, but not limited to, the misuse of, or unauthorized access to, all types of communications and data transmission systems, that violates federal, state, or local law or harms public health, safety, or economic security, or any combination thereof.
    - ii) The ability of critical infrastructure controls to resist any interference, compromise, or incapacitation, including, but not limited to, any planned or past assessment or estimate of the vulnerability of critical infrastructure.
    - iii) Any planned or past operational problem or solution regarding critical infrastructure controls, including, but not limited to, repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to interference, compromise, or incapacitation of critical infrastructure controls.
- 3) Finds and declares that Section 1 of this bill imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

By authorizing closed sessions of legislative bodies relating to cybersecurity, this bill allows a legislative body to receive, confidentially discuss, and learn about cybersecurity risks, vulnerabilities, and threats facing the agency, thereby enabling the legislative body to make fully informed cybersecurity-related decisions in open session. The bill protects information and deliberations related to an agency's cybersecurity in order to protect against current or future cybersecurity attacks on the agency that can damage public facilities and services.

- 4) Finds and declares that Section 1 of this bill furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

By authorizing closed sessions of legislative bodies relating to cybersecurity, this bill allows a legislative body to receive, confidentially discuss, and learn about cybersecurity risks, vulnerabilities, and threats facing the agency, thereby enabling the legislative body to make fully informed cybersecurity-related decisions in open session. The bill protects information and deliberations related to an agency's cybersecurity in order to protect against current or future cybersecurity attacks on the agency that can damage public facilities and services.

#### **EXISTING LAW:**

- 1) Provides, pursuant to Article I, Section 3 of the California Constitution, the following:
  - a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.
  - b) 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.
  - c) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in b), above, each local agency is required to comply with the California Public Records Act, the Brown Act, and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of these constitutional provisions.
- 2) Provides, pursuant to the Brown Act, requirements for local agency meetings. [Government Code (GOV) §§ 54950 – 54963]
- 3) Requires, under the Brown Act, each legislative body of a local agency to provide the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public and all persons be permitted to attend unless a closed session is authorized. (GOV § 54953 and GOV § 54954)
- 4) Defines, for purposes of the Brown Act, a meeting to mean any congregation of a majority of the members of a legislative body at the same time and location, including teleconference, to

hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. (GOV § 54952.2)

- 5) Requires, at least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, to 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. (GOV § 54954.2 and GOV § 54954.50)
- 6) Authorizes a legislative body of a local agency to meet in closed session for a number of specified matters including litigation, real estate negotiations, personnel issues, labor negotiations, certain disciplinary matters related to schools, grand jury testimony, multi-jurisdictional drug cases, hospital peer reviews and related trade secrets. (GOV §§ 54956.5 – 54956.98, GOV § 4957.6, GOV § 54957.8, and GOV § 54957.10)
- 7) Authorizes the legislative body to hold closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities. (GOV §54957)
- 8) Requires the legislative body of any local agency to publicly report any action taken in closed session and the vote or abstention on that action of every member present, orally or in writing. (GOV § 54957.1)
- 9) Requires the legislative body to provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session, as specified. This documentation shall be available to any person on the next business day following the meeting or, in the case of substantial amendments, when any necessary retyping is complete. (GOV § 54957.1)
- 10) Requires, prior to holding any closed session, the legislative body of a local agency to disclose, in an open meeting, the item or items to be discussed in the closed session and requires the legislative body to consider only those matters covered in its statement, as specified. (GOV § 54957.7)
- 11) Requires, after any closed session, the legislative body to reconvene into open session prior to adjournment and make any disclosures required by 8) and 9), above, of action taken in the closed session, as specified. (GOV § 54957.7)
- 12) 54960. Allows a court to order a legislative body to audio record its closed sessions, as specified. (GOV § 54960)

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Bill Summary.** This bill allows the legislative body of a local agency to hold closed sessions on matters pertaining to a threat to critical infrastructure controls or critical infrastructure information relating to cybersecurity.

“Critical infrastructure controls” means networks and systems controlling assets so vital to the local agency that the incapacity or destruction of those networks, systems, or assets would have a debilitating impact on public health, safety, economic security, or any combination thereof.

“Critical infrastructure information” means information not customarily in the public domain pertaining to any of the following:

- a) Actual, potential, or threatened interference with, or an attack on, compromise of, or incapacitation of critical infrastructure controls by either physical or computer-based attack or other similar conduct, including, but not limited to, the misuse of, or unauthorized access to, all types of communications and data transmission systems, that violates federal, state, or local law or harms public health, safety, or economic security, or any combination thereof.
- b) The ability of critical infrastructure controls to resist any interference, compromise, or incapacitation, including, but not limited to, any planned or past assessment or estimate of the vulnerability of critical infrastructure.
- c) Any planned or past operational problem or solution regarding critical infrastructure controls, including, but not limited to, repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to interference, compromise, or incapacitation of critical infrastructure controls.

This bill is sponsored by the City of Carlsbad.

- 2) **Author’s Statement.** According to the author, “Currently, the Brown Act allows local bodies to meet in a closed session for threats to the security of public buildings, the security of essential public services, or the public’s right of access to public services or public facilities. In the digital age, we must ensure that sensitive information is protected and not leaked. AB 2715 is critical to ensuring local agencies can properly protect themselves and their citizens from cyberattacks.”
- 3) **Background.** The Brown Act was enacted in 1953 and has been amended numerous times since then. The legislative intent of the Brown Act was expressly declared in its original statute, which remains unchanged:

“The Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to

know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The Brown Act generally requires meetings to be noticed in advance, including the posting of an agenda, and generally requires meetings to be open and accessible to the public. The Brown Act also generally requires members of the public to have an opportunity to comment on agenda items, and generally prohibits deliberation or action on items not listed on the agenda.

The Brown Act defines a “meeting” as “any congregation of a majority of the member of a legislative body at the same time and location, including teleconference locations, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”

- 4) **Closed Sessions and the Brown Act.** Pursuant to the Brown Act, private discussions among a majority of a legislative body are prohibited, unless expressly authorized. Closed session items must be briefly described on the posted agenda and the description must identify the specific statutory exemption. The agenda must reference the authority for holding the closed session, and the body must make a public announcement before the closed session begins. After a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present.

Legislative bodies are authorized to meet in closed sessions only for specified reasons, such as litigation, real estate negotiations, personnel issues, labor negotiations, certain disciplinary matters related to schools, grand jury testimony, license applicants with criminal histories, multi-jurisdictional drug cases, hospital peer reviews and related trade secrets, and threats to public security.

The “public security” exemption permits the legislative body to hold closed sessions with “the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.”

- 5) **Related Legislation.** AB 817 (Pacheco) allows, until January 1, 2026, a subsidiary body of a local agency to use teleconferencing for its meetings without posting agendas at each teleconference location, identifying each teleconference location in the notice and agenda, making each teleconference location accessible to the public, and requiring at least a quorum of the subsidiary body to participate from within the local agency’s jurisdiction, subject to certain conditions. AB 817 is pending in the Senate.

AB 1855 (Arambula) allows, until January 1, 2026, a community college student body association to teleconference without meeting all of the teleconferencing requirements of the Brown Act. AB 1855 is pending in the Senate.

AB 2302 (Addis) revises the limits on the number of teleconference meetings specified in AB 2449 that any member of a legislative body can participate within a given period of time. AB 2302 is pending on the Assembly Floor.

AB 2350 (Hoover) allows notifications for emergency meetings required by Brown Act to be sent via email, instead of given by telephone, for an emergency meeting held by a school board. AB 2350 is pending in the Assembly Appropriations Committee.

- 6) **Previous Legislation.** AB 246 (Bradford), Chapter 11, Statutes of 2013, included the Governor in the list of individuals and agencies with which a local agency's legislative body may meet in closed session pursuant to the 'public security' exemption of the state's open meetings law.

AB 1736 (Smyth) of 2012 was substantially similar to AB 246. AB 1736 failed passage on the Senate Floor.

- 7) **Arguments in Support.** The City of Carlsbad, sponsor of this bill, writes, "This bill is necessary because although current law allows for the discussion of a pending specific threat during closed session, it does not expressly permit nonspecific cybersecurity matters to be discussed. Legislative bodies of local agencies therefore currently have no method of confidentially discussing general cybersecurity risks, vulnerabilities, and threats facing the agency. AB 2715 would allow for a legislative body to be more informed about potential threats and the extent of agency vulnerabilities.

"AB 2715 adds cybersecurity to the list of closed session exemptions so that the law is clear on allowing such discussions to occur, which will enable legislative bodies of local agencies to make fully informed decisions related to cybersecurity. The bill preserves local agency transparency and the intent of the Brown Act by providing that any action taken on cybersecurity matters be done in open session.

"The City's legislative platform supports this proposal and includes the following statement: Support legislation that would allow cities to conduct closed sessions on matters posing a threat to cybersecurity. It is for the reasons listed above that the City of Carlsbad is pleased to SPONSOR your Assembly Bill 2715 to allow cybersecurity matters to be discussed during closed session."

- 8) **Arguments in Opposition.** The First Amendment Coalition and Oakland Privacy write, "We appreciate proponents' stated goal of achieving greater clarity in the Brown Act's closed-session provisions related to cybersecurity threats. We do not dispute that legislative bodies may need to meet in closed session with law enforcement or security personnel to discuss specific threats to critical infrastructure controls or an agency's vulnerabilities when a cybersecurity attack is not imminent. But this need for confidentiality must be balanced with the public's right to be informed about official decision-making, including on the subject of whether public agencies are adequately prepared for and competently addressing cybersecurity threats.

"Specifically, we seek language to confirm that final decisions that could properly be made in closed session will be reported out in public session, and that decisions requiring a discussion and vote in open session, such as adding additional budget or staff or awarding a

contract to an outside vendor or consultant will in fact be made in open session, consistent with existing Brown Act protections.

“Additionally, the identities and titles of all security or other personnel who attend the closed session must be named on the agenda, and the agenda must cite to the specific provision of Government Code Section 54957 that is the basis for the closed session, which requires amending Section 54954.5’s agenda requirements. Finally, to aid the public in its understanding of the intent of the bill and to guide the courts in the event there is a dispute over whether a given closed session was proper, we urge you to include a statement of intent consistent with the narrow purpose of this bill.”

**REGISTERED SUPPORT / OPPOSITION:****Support**

City of Carlsbad [SPONSOR]  
Association of California School Administrators  
California Association of Recreation & Park Districts  
California State Association of Counties (CSAC)  
City Clerks Association of California  
City of Eastvale  
City of Rancho Cucamonga  
City of Redwood City  
Rural County Representatives of California (RCRC)  
San Diego County Water Authority  
Torrance Unified School District  
Urban Counties of California (UCC)  
Ventura County Employees' Retirement Association

**Opposition**

First Amendment Coalition  
Oakland Privacy

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958