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**Date:** January 15, 2014

**To:** David W. Twa, County Administrator,  
Attn: Tiffany Lennear, Chief Clerk of the Board of Supervisors,  
County Boards, Commissions, and Committees and their Administrative  
Officers and Secretaries

**From:** Sharon L. Anderson, County Counsel  
By: Mary Ann McNett Mason, Assistant County Counsel

*M.A.M.*

**Re: Ralph M. Brown Act Amendment Requires Detailed Public Report of  
Individual Votes**

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For your information, we discuss a recent amendment to the Ralph M. Brown Act, the open meeting law, Statutes of 2013, Chapter 257, effective January 1, 2014. Government Code section 54953, subsection (c) (2) now provides:

“The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.”

Previously, the law prohibited public bodies from voting by secret ballot, but did not expressly require that individual votes be reported on open session items, unless the meeting involved a teleconference location.<sup>1</sup> Thus, some agencies would state in their minutes that an item passed, without specifying how the various board members voted. This made it hard for members of the public either not attending the meeting, or watching the meeting of a very large body, to know with certainty how individual members voted on any given item. Government Code section 54953 (c) (2) was added to improve public accountability by requiring agencies to clearly report the vote or abstention of each member present at the meeting.<sup>2</sup>

#### **A. Specificity in Minutes/Record of Actions Now Required**

To comply with this new public reporting requirement, each time a board, committee, or commission votes on an agenda item, the minutes or record of actions must

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<sup>1</sup> Gov. Code, § 54953 (b) (2).

<sup>2</sup> Senate Floor, Bill Analysis, SB 751 (5/28/13); Assembly Committee on Appropriations, Bill Analysis, SB 751 (7/3/13).

state how each individual board or committee member voted. If the member did not vote, the minutes/record of actions must specify whether the member was absent or abstained. To do this, include the following information in the minutes/record of actions for every vote:

AYES: (list names of members voting aye)  
NOES: (list names of members voting no)  
ABSENT: (list names of members absent)  
ABSTAIN: (list names of members who abstained)

A written record of the body's actions must be made available for public review. This is usually done by posting approved minutes or a record of actions.

If bodies pass resolutions or otherwise reflect their actions by annotating individual board orders, these documents must detail the vote in the form shown above. A simple statement of the number of votes pro and con on a resolution or an annotated board order will not suffice. Each board member's name and vote, absence, or abstention also must be listed on the resolutions or board orders.

#### **B. Enhancing Transparency in Open Session**

Sometimes when a vote taken in open session is not unanimous, it can be difficult for members of the public attending the meeting to follow. To enhance transparency in this circumstance, it is a good practice to publicly announce the vote immediately after it occurs. After a vote in open session that either is not unanimous or from which a member abstains, the chair may summarize the vote and action taken as follows:

"The motion passes 3-2, with Smith and Jones dissenting. Item x is approved." or

"The motion passes 4-0, with Smith abstaining. Item x is approved."

"The motion fails 3-2, with Smith, Jones, and Black voting against. Item x is not approved."

#### **C. Report of Vote following Closed Session**

Not all boards, committees, and commissions are authorized by the Brown Act to meet in closed session. Legal counsel must always be consulted before listing a closed session item on an agenda. When a closed session is authorized, and the body reports an

action taken in closed session in the minutes/record of actions or other written document, the same format described in Section A above must be used to describe the vote.<sup>3</sup>

In an oral report of action taken or direction given in a closed session, the vote or abstention of every member present for the closed session must be reported. This applies even if the vote is unanimous.<sup>4</sup> For example, the chair or counsel may state:

“In closed session, the board voted unanimously to seek appellate review in the case of *Green v. Miller*.” or

“In closed session, the board voted 3-2, to seek appellate review in the case of *Green v. Miller*, with Smith, Jones, and Black voting aye, and White and Rose dissenting.” or

“In closed session, the board voted unanimously to seek appellate review in the case of *Green v. Miller*, with Black abstaining.

MAM/am

cc: Members, Board of Supervisors  
County Administrator  
Attn: Terry Speiker, Chief Assistant County Administrator  
Julie Enea, Senior Deputy County Administrator  
Department Heads  
Steven Moawad, Senior Deputy District Attorney

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<sup>3</sup> Gov. Code, §§ 54953, 54957.1.

<sup>4</sup> Gov. Code, § 54957.1.