

## ITEM 6

### **PROPOSED ORDER TO SET ASIDE STATEMENTS OF DECISION DIRECTED BY STATUTES 2005, CHAPTER 72, SECTION 17 (Assem. Bill No. 138 (“AB 138”))**

***Open Meetings Act (CSM 4257)***  
Government Code Sections 54954.2, 54954.3  
Statutes 1986, Chapter 641

***Brown Act Reform (CSM 4469)***  
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7  
Statutes 1993, Chapters 1136, 1137, and 1138; Statutes 1994, Chapter 32

### **PROPOSED ORDER TO DISMISS PENDING RECONSIDERATION DIRECTED BY STATUTES 2005, CHAPTER 72, SECTION 17 (AB 138)**

***Brown Act Reform (04-RL-4469-08)***  
Directed by Statutes 2004, Chapter 316, Section 3, Subdivision (c) (Assem. Bill No. 2851)

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## **Executive Summary**

This item relates to two prior test claim decisions addressing the Brown Act; *Open Meetings Act* (CSM 4257) and *Brown Act Reform* (CSM 4469). The Brown Act was initially enacted in 1953 and governs the open meetings conducted by local legislative bodies. Recent urgency legislation (Stats. 2005, ch. 72, § 17 (AB 138)) requires the Commission on State Mandates (Commission) to set aside these test claim decisions. Staff further finds that AB 138 requires the Commission to dismiss the pending reconsideration directed by the Legislature in 2004 of the *Brown Act Reform* decision (04-RL-4469-08). This item proposes to set these decisions aside and to dismiss the pending reconsideration in accordance with AB 138.

AB 138 also requires the Commission to amend the parameters and guidelines to be consistent with its provisions. Item 9 addresses the parameters and guidelines.

## **Background**

In 1988, the Commission adopted a Statement of Decision in the *Open Meetings Act* test claim (CSM 4257). The Commission’s parameters and guidelines for the *Open Meetings Act* program authorized reimbursement for the increased costs to prepare and post a notice and an agenda containing a brief general description of each item of business to be transacted or discussed at least 72 hours before the meeting of the local legislative body. For purposes of seeking reimbursement for the *Open Meetings Act* program, “legislative body” was defined in former Government Code sections 54952 and 54952.2 to include the governing body of a local agency,

permanent decision-making committees or boards created by formal action of the governing body, and temporary decision-making committees or boards created by formal action of the governing body.<sup>1</sup>

In 2001, the Commission adopted a Statement of Decision in the *Brown Act Reform* test claim (CSM 4469). The *Brown Act Reform* test claim addressed the 1993 and 1994 amendments to the Brown Act. The Commission found that the test claim legislation constituted a reimbursable state-mandated program by:

- Adding two new “legislative bodies” required to comply with the provisions of the Brown Act;
- Requiring certain advisory bodies to comply with the full notice and agenda requirements of the Brown Act by preparing and posting, at least 72 hours before the meeting, a notice and agenda that contained a brief general description, generally not to exceed 20 words, of each item of business to be transacted or discussed at the meeting of the advisory body; and
- Requiring all legislative bodies defined in the Brown Act to comply with public disclosure and reporting requirements for closed session meetings.<sup>2</sup>

In 2002, the Commission adopted the parameters and guidelines for *Brown Act Reform*, with a reimbursement period beginning January 1, 1994. The parameters and guidelines were consolidated with the parameters and guidelines for the *Open Meetings Act* program (CSM 4257) for annual reimbursement claims filed for the 2001-2002 fiscal year and thereafter.

In 2004, legislation was enacted requiring the Commission to reconsider its 2001 decision in *Brown Act Reform*. (Stats. 2004, ch. 316, § 3 (AB 2851).) Section 3 of this bill states in relevant part the following:

Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(c) Brown Act Reforms [sic] (CSM 4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

The reconsideration was designated *Brown Act Reform* (04-RL-4469-08). In May 2005, a draft staff analysis was issued on the reconsideration and the matter was originally scheduled for hearing in July 2005. Before the July hearing, however, Statutes 2005, chapter 72 (AB 138) was enacted and became effective as urgency legislation on July 19, 2005.

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<sup>1</sup> The Statement of Decision for *Open Meetings Act* is attached to the proposed order in Exhibit A.

<sup>2</sup> The Statement of Decision for *Brown Act Reform* is attached to the proposed order in Exhibit B.

## **Assembly Bill 138 (Exhibit D)**

AB 138 does three things that are relevant to these test claims. First, AB 138 amended Government Code section 17556, subdivision (f), to read as follows:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

... (f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters....

Second, AB 138 repealed and replaced two statutes within the Brown Act, Government Code sections 54954.2 and 54957.1, and added legislative intent language that the statutes are necessary to implement and are reasonably within the scope of Proposition 59. As more fully described in Item 9, Proposition 59 was enacted by the voters in the November 2004 election to amend the Constitution to require that meetings of public bodies be open to the public. Section 16 of AB 138 states the following:

The Legislature finds and declares that Sections 54954.2 and 54957.1 of the Government Code are necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

Finally, AB 138 requires the Commission to set aside the Statements of Decision in the *Open Meetings Act* (CSM 4257) and *Brown Act Reform* (CSM 4469) test claims, and to “set aside” the “reconsiderations” on these programs. AB 138 then requires the Commission to amend the appropriate parameters and guidelines to be consistent with this bill. Section 17 of AB 138 states the following:

Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM 4257) and Brown Act Reform (CSM 4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

## **Position of the Parties**

On July 22, 2005, a notice was issued to interested parties, affected state agencies, and interested persons inviting additional comments on the impact of AB 138 on the pending reconsideration of *Brown Act Reform* (04-RL-4469-08). Comments were received from the Department of Finance. (Exhibit E.) No other comments were received.

The Department of Finance contends that reimbursement is no longer required for the *Open Meetings Act* and *Brown Act Reform* test claims and that AB 138 “eliminates all grounds for

mandated cost claims to be submitted by, or on behalf of, the legislative bodies of local governments and K-14 school districts.”

### **Proposed Orders (Exhibits A, B, and C)**

Staff finds that the plain language of AB 138 requires the Commission to set aside the *Open Meetings Act* (CSM 4257) and *Brown Act Reform* (CSM 4469) decisions. The operative date of the orders to set aside these decisions is July 19, 2005. Exhibits A and B are the proposed orders to set aside these decisions.

The plain language of AB 138 also directs the Commission to “set-aside all ... reconsiderations.” The only reconsideration pending with the Commission is the reconsideration of *Brown Act Reform* (04-RL-4469-08) directed by Statutes 2004, chapter 316 (AB 2851). Although AB 138 does not expressly repeal the statutes enacted by AB 2851, staff finds, for the reasons below, that the requirement in AB 138 to set aside the reconsideration controls and requires the Commission to dismiss the pending reconsideration action.

Under the rules of statutory construction, it is presumed that the Legislature is aware of the laws in effect at the time it enacts new laws, and has enacted the new law in light of the existing laws.<sup>3</sup> Thus, when the Legislature enacted AB 138, it must be presumed the Legislature was aware of the existing statute enacted by AB 2851 requiring the Commission to reconsider *Brown Act Reform*. The plain language of the statute supports this presumption since the Legislature expressly used the word “reconsiderations” in the statute.

Although AB 2851 still exists, the subsequent statute enacted by AB 138 states “*notwithstanding any other provision of law*, the Commission on State Mandates shall set aside all ... reconsiderations.” (Emphasis added.) The phrase “notwithstanding any other provision of law” has expressly been interpreted by the courts as “an express legislative intent to have the specific statute control despite the existence of other law which might otherwise govern.”<sup>4</sup> Therefore, despite the existence of the statute enacted by AB 2851 directing the Commission to reconsider *Brown Act Reform*, the statute enacted by AB 138 controls and directs the Commission to set aside that reconsideration. Since the Commission has not taken any action with respect to the reconsideration, the appropriate method of setting the action aside is to dismiss the action and close the file.

Exhibit C is the proposed order to dismiss the reconsideration of *Brown Act Reform* (04-RL-4469-08).

### **Staff Recommendation**

Staff recommends that the Commission adopt the orders to set aside the Statements of Decision in *Open Meetings Act* (CSM 4257) and *Brown Act Reform* (CSM 4469). Staff further recommends that the Commission adopt the order dismissing the reconsideration of *Brown Act Reform* (04-RL-4469-08) and direct staff to close the reconsideration file.

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<sup>3</sup> *McLaughlin v. State Board of Education* (1999) 75 Cal.App.4th 196, 212. (Exhibit F.)

<sup>4</sup> *People v. Tillman* (1999) 73 Cal.App.4th 771, 784-785. (Exhibit F.)

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code sections 54954.2 and  
54954.3; Statutes 1986, Chapters 641

Filed on April 1, 1987

By the County of Los Angeles, Claimant.

No. CSM 4257

*Open Meetings Act*

**PROPOSED ORDER TO SET ASIDE  
STATEMENT OF DECISION**

(Statutes 2005, Chapter 72, Section 17  
(Assem. Bill No. 138))

*Proposed for Adoption on September 27, 2005*

**ORDER TO SET ASIDE STATEMENT OF DECISION**

On July 19, 2005, Statutes 2005, chapter 72 (Assem. Bill No. 138 (“AB 138”)) became effective and directed the Commission to set aside its decision in the *Open Meetings Act* (CSM 4257) test claim. Section 17 of this bill states the following:

Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the *Open Meetings Act* (CSM 4257) and *Brown Act Reform* (CSM 4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

In accordance with AB 138, the Commission hereby sets aside its Statement of Decision, adopted on October 22, 1987, in the *Open Meetings Act* (CSM 4257) test claim. This order to set aside the Statement of Decision shall be operative on July 19, 2005.

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PAULA HIGASHI, Executive Director

Attachment: Statement of Decision

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Date

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes 1993, Chapters 1136, 1137, 1138 and Statutes 1994, Chapter 32;

Filed on December 29, 1994 and amended on August 7, 2000;

By the City of Newport Beach, Claimant.

No. CSM 4469

*Brown Act Reform*

**PROPOSED ORDER TO SET ASIDE  
STATEMENT OF DECISION**

(Statutes 2005, Chapter 72, Section 17  
(Assem. Bill No. 138))

*Proposed for Adoption on September 27, 2005*

**ORDER TO SET ASIDE STATEMENT OF DECISION**

On July 19, 2005, Statutes 2005, chapter 72 (Assem. Bill No. 138 (“AB 138”)) became effective and directed the Commission to set aside its decision in the *Brown Act Reform* (CSM 4469) test claim. Section 17 of this bill states the following:

Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM 4257) and Brown Act Reform (CSM 4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

In accordance with AB 138, the Commission hereby sets aside its Statement of Decision, adopted on June 28, 2001, in the *Brown Act Reform* (CSM 4469) test claim. This order to set aside the Statement of Decision shall be operative on July 19, 2005.

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PAULA HIGASHI, Executive Director

Attachment: Statement of Decision

\_\_\_\_\_  
Date

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE RECONSIDERATION OF TEST  
CLAIM ON:

Government Code sections 54952, 54954.2,  
54957.1, and 54957.7 as amended by Statutes  
1993, Chapters 1136, 1137, 1138 and Statutes  
1994, Chapter 32;

Directed by Statutes 2004, Chapter 316,  
Section 3, Subdivision (c) (Assem. Bill  
No. 2851)

No. CSM 04-RL-4469-08

*Brown Act Reform*

PROPOSED ORDER TO DISMISS  
PENDING RECONSIDERATION  
(Statutes 2005, Chapter 72, Section 17  
(Assem. Bill No. 138))

*Proposed for Adoption on September 27, 2005*

**ORDER TO DISMISS PENDING RECONSIDERATION**

On July 19, 2005, Statutes 2005, chapter 72 (Assem. Bill No. 138 (“AB 138”)) became effective and directed the Commission to set aside the reconsideration of the *Brown Act Reform* test claim (04-RL-4469-08). Section 17 of this bill states the following:

Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM 4257) and Brown Act Reform (CSM 4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

In accordance with AB 138, the Commission hereby dismisses the reconsideration of *Brown Act Reform* (04-RL-4469-08).

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PAULA HIGASHI, Executive Director

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Date