

## LEGISLATIVE TINKERING IMPACTS AGENDA LANGUAGE FOR LITIGATION ITEMS!

The Legislature recently renumbered certain provisions in the Brown Act relating to closed session discussions concerning litigation, which in turn impacts agenda descriptions.<sup>1</sup> The Act requires districts to agendize the specific provision authorizing a closed session relating to litigation (in other words, whether the closed session relates to (1) existing litigation to which the district is a party, (2) anticipated litigation, or discussion of whether a closed session to discuss anticipated litigation is authorized, or (3) anticipated litigation to be initiated by the district).

The following table uses the “canned” closed session agenda descriptions in the Brown Act to illustrate the prior language and the new language with updated Code references.

	OLD AGENDA DESCRIPTION	NEW AGENDA DESCRIPTION
Existing Litigation	<p><b>CONFERENCE WITH LEGAL COUNSEL– EXISTING LITIGATION</b>                      (Government Code § 54956.9, subd. (a))                      Name of case: <i>[Specify by reference to claimant's name, names of parties, case or claim numbers]</i> or                      Case name unspecified: <i>[Specify whether disclosure would jeopardize service of process or existing settlement negotiations]</i></p>	<p><b>CONFERENCE WITH LEGAL COUNSEL– EXISTING LITIGATION</b>                      (Government Code § 54956.9, subd.(d), par. (1))                      Name of case: <i>[Specify by reference to claimant's name, names of parties, case or claim numbers]</i> –OR–                      Case name unspecified: <i>[Specify whether disclosure would jeopardize service of process or existing settlement negotiations]</i></p>
Anticipated Litigation or Meeting to Consider Closed Session Authority to Discuss Anticipated Litigation	<p><b>CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION</b>                      Significant exposure to litigation pursuant to Government Code section 54956.9, subd. (b): <i>[Specify number of potential cases]</i>                      [NOTE: In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subdivisions (B) to (E), inclusive, of subdivision (b) of Section 54956.9]</p>	<p><b>CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION</b>                      Significant exposure to litigation pursuant to Government Code § 54956.9, subd.(d), par. (2) or (3): <i>[Specify number of potential cases]</i>                      [NOTE: In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to § 54956.9, subd.(e), par. (2) to (5), inclusive]</p>
Anticipated Litigation - District-Initiated	<p>Initiation of litigation pursuant to Government Code § 54956.9, subd. (c): <i>[Specify number of potential cases]</i></p>	<p>Initiation of litigation pursuant to Government Code § 54956.9, subd. (d), par. (4): <i>[Specify number of potential cases]</i></p>

Remember, when a Board adjourns into closed session for a litigation matter, it must also announce the specific legal authority (Government Code section) which authorizes the closed session. Should you have any questions or need further information, please contact Schools Legal Service.

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<sup>1</sup> In a sort of legislative Rubix Cube, the legislature directed that this provision (and not several other provisions included in three different bills) would become law only if Senate Bill 1395 was also enacted and effective by January 1, 2013, each bill amended section 54954.5; Assembly Bill 1736 was not enacted, and AB 2690 was enacted after SB 1395.