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AGENDA REPORT

TO: Council President Pat Kernighan &
Members of the Rules Committee

FROM: Councilmember **Dan Kalb** &
President Pro Tempore
Rebecca Kaplan

SUBJECT: Item 8 for May 15, 2014 Agenda of
Rules Committee --
Support For Prop 42: Public Records &
Open Meetings Compliance

DATE: May 8, 2014

FULL TITLE

RESOLUTION IN SUPPORT OF CALIFORNIA PROPOSITION 42 –
CONSTITUTIONAL AMENDMENT TO PROTECT THE PUBLIC’S RIGHT TO
KNOW BY REQUIRING COMPLIANCE BY LOCAL AGENCIES WITH THE
PUBLIC RECORDS ACT AND THE BROWN ACT FOR OPEN MEETINGS

SUMMARY

State and local governments have been in disagreement regarding the amount of state financial support that is required to address the costs to local governments with complying with the California Public Records Act, which gives the public access to government records, and the Ralph M. Brown Act, which guarantees the public’s right to attend and participate in the legislative bodies of local agencies, including boards, commissions, and councils. At times, local agencies have used the failure of the state to reimburse their costs as an excuse for not complying with these transparency laws. California Proposition 42 on the June 2014 ballot would secure the California Public Records Act and the Ralph M. Brown Act in the State Constitution and relieve the State from paying for local governments’ costs of compliance with these fundamental government transparency laws.

BACKGROUND/LEGISLATIVE HISTORY

Proposition 42 was sponsored in the California Legislature by State Senator Mark Leno as Senate Constitutional Amendment 3 (SCA 3). SCA 3 was approved by the unanimous vote of the State Assembly and State Senate.

Item: 8
Rules Committee
May 15, 2014

ANALYSIS

Public transparency and freedom of information safeguards are of significant importance to and benefit for the citizens of Oakland and California and to the integrity of government. The California Public Records Act of 1968 and the Ralph M. Brown Act of 1953 are fundamental safeguards for ensuring the public's right to know and ability to participate in the activities of government. California Proposition 42 on the June 2014 ballot would secure these safeguards in the State Constitution and relieve the State from paying for local governments' costs of compliance with these open government laws. The State is already not required to reimburse for expenses relating to local implementation of the Brown Act, so the legal effect of the proposition with regard to Brown Act compliance costs is redundant and the fiscal impact of this proposition is only relevant with regard to the Public Records Act.

Relieving the State from paying for local governments' compliance costs with these laws is important because of disagreement regarding the amount of state financial support that is required. At times, some local agencies have used the failure of the state to reimburse their costs as an excuse for not complying with these transparency laws.

Requiring the state to reimburse local governments for compliance costs with these laws does not encourage local governments to take steps to reduce their compliance costs, such as through proactive transparency procedures. Therefore, transferring the responsibility for the costs to the local governments could foster increased transparency by both ending the "lack of cost reimbursement" exemption in compliance and incentivizing proactive transparency efforts.

Proposition 42 is endorsed by California Common Cause, the League of Women Voters of California, California Labor Federation, First Amendment Coalition, Californians Aware, California Professional Firefighters, California Teachers Association, California Nurses Association, California Forward Action Fund, California Federation of Teachers, California Democratic Party, California Newspaper Publishers Association, the California Clean Money Campaign, and other groups. Proposition 42 is opposed by the Rural County Representatives of California.

FISCAL IMPACT

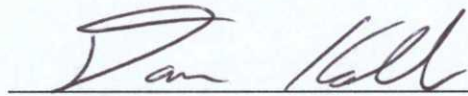
Per figures provided by the Controller's Office, the estimated annual reimbursement revenue that will be lost by the City as a result of passage of Proposition 42 is \$4,200.

ACTION REQUESTED OF THE CITY COUNCIL

Councilmembers Kalb and Kaplan recommend that the City Council approve the Resolution endorsing Proposition 42.

For questions regarding this report, please contact Oliver Luby at (510) 238-7013 or Ada Chan at (510) 238-7083.

Respectfully submitted,



Dan Kalb
Oakland City Councilmember, District 1



Rebecca Kaplan
President Pro Tem, Councilmember At-Large

Prepared by:
Oliver Luby, Policy Manager
Office of Councilmember Dan Kalb

Attachments

1. Official Title & Summary of Proposition 42, Prepared by the Attorney General of California
2. Arguments in Favor of and Against Proposition 42 with rebuttals, Voter Information Guide for the June 3, 2014 Election, California Secretary of State
3. "Prop. 42 – Vote for transparency in government," Editorial in *San Francisco Chronicle*, May 4, 2014

42

PUBLIC RECORDS. OPEN MEETINGS. STATE REIMBURSEMENT TO LOCAL AGENCIES. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Requires local government agencies, including cities, counties, and school districts, to comply with specified state laws providing for public access to meetings of local government bodies and records of government officials.
- Eliminates requirement that the State reimburse local government agencies for compliance with these specified laws.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Reduced state payments to local governments in the tens of millions of dollars annually.
- Potential increased local government costs of tens of millions of dollars annually from possible additional state requirements on local governments to make information available to the public.

FINAL VOTES CAST BY THE LEGISLATURE ON SCA 3 (PROPOSITION 42)
(Resolution Chapter 123, Statutes of 2013)

| | | |
|-----------|---------|--------|
| Senate: | Ayes 37 | Noes 0 |
| Assembly: | Ayes 78 | Noes 0 |

ANALYSIS BY THE LEGISLATIVE ANALYST**BACKGROUND**

California Has Thousands of Local Governments. Californians receive services from thousands of local governments—counties, cities, school and community college districts, and special districts (such as fire districts, flood control districts, and water districts). Each local government has a local governing body (such as a city council or county board of supervisors) that makes decisions about its programs, services, and operations.

Public Access to Local Government Information. The State Constitution requires that meetings of governing bodies and writings of public officials and agencies be open to public scrutiny. Two state laws establish rules local

governments must follow to provide public access to local government information and meetings.

- **California Public Records Act.** This law allows every person to inspect and obtain copies of state and local government documents. It requires state agencies and local governments to establish written guidelines for public access to documents and to post these guidelines at their offices.
- **Ralph M. Brown Act.** This law governs meetings of the governing bodies of local governments. It requires local governing bodies to provide public notice of agenda items and to hold meetings in an open forum.

State Payments for Public Records and Brown Act Costs. Over the years, the Legislature has modified the Public Records Act and Brown Act from time to time. Some of these changes have increased local government responsibilities and costs. The state generally must pay local governments for their costs when it increases their responsibilities—a requirement that state officials consider when reviewing proposals that increase local government costs. Under current law, the state must pay local governments for their costs to implement certain parts of the Public Records Act (such as the requirement to assist members of the public seeking records and to tell individuals seeking records whether the records can be provided). The amount of money the state owes local governments for their Public Records Act costs is not known yet, but is estimated to be in the tens of millions of dollars annually. In addition, the state previously has paid local governments for their costs resulting from certain parts of the Brown Act. However, California voters amended the State Constitution in 2012 to eliminate the state’s responsibility to pay local governments for these Brown Act costs.

PROPOSAL

This measure:

- Adds to the State Constitution the requirement that local governments follow the Public Records Act and the Brown Act.

- Eliminates the state’s responsibility to pay local governments for their costs related to these laws. (As noted above, state responsibility to pay for local Brown Act costs was eliminated in 2012.)

The measure applies to the current requirements of these laws, as well as any future changes to either law that are made to improve public access to government information or meetings.

FISCAL EFFECTS

Effect on State Costs and Local Revenues. By eliminating the state’s responsibility for paying local government costs to follow the Public Records Act, the measure would result in savings to the state and comparable revenue reductions to local governments. The impact is likely in the tens of millions of dollars a year.

Potential Effect on Local Costs. The measure could also change the future behavior of state officials. This is because under Proposition 42, the state could make changes to the Public Records Act and it would not have to pay local governments for their costs. Thus, state officials might make *more* changes to this law than they would have otherwise. In this case, local governments could incur **additional costs—potentially in the tens of millions of dollars annually in the future.**

Visit <http://cal-access.sos.ca.gov> for details about financial contributions for this proposition.

★ ARGUMENT IN FAVOR OF PROPOSITION 42 ★

42

Everyone has heard the old saw “you can’t fight city hall.” It turns out it is flatly untrue. Millions of Californians seek answers from public officials and bureaucrats in cities, counties, school districts, water agencies, and every type of government agency, using the information they gain to enter the political process and positively affect public policy.

Powerful tools like the California Public Records Act give citizens and businesses the ability to obtain the records they need to be effective advocates and protect the interests of the community. The Ralph M. Brown Open Meeting Law gives us the right to be in the room and heard as policy is developed during city council, board of supervisor, school board, and special district meetings.

In 2004, these laws giving Californians the right to access public records and attend meetings of local public bodies were made even more powerful when over 82 percent of the voters approved an amendment to the state constitution that says, in part: “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.”

In the past few years, though, key provisions of these great laws have been threatened when the state suffers fiscal crisis. In short, the state and local governments have been in long disagreement about the amount and level of state financial support for the local costs of complying with the public’s civil right of access to government. At times key provisions of these laws have become optional for local government agencies by virtue of tough decisions made in the state budget process. While most governments

continued to comply during these short periods of fiscal stress, the public’s fundamental rights should not depend on the good graces of local officials.

Proposition 42 will clarify that local government agencies and not the state are responsible for the costs associated with their compliance with our access laws. It will ensure access to public records and meetings that are essential to expose and fight public corruption, like that experienced by the citizens of the City of Bell when public officials engaged in criminal acts and sacked the city’s coffers.

Proposition 42 will cement in the Constitution the public’s civil right to know what the government is doing and how it is doing it. It will add independent force to the state’s laws that require local governments to comply with open meeting and public record laws and future changes to those laws made by the Legislature.

Proposition 42 will eliminate the possibility that local agencies can deny a request for public information or slam a meeting door shut based on cost. As Thomas Jefferson said, “Information is the currency of democracy.” Tell the bureaucrats that the people—not the government—ought to decide what we need to know. Vote yes on Proposition 42.

MARK LENO, Member
California State Senate

THOMAS W. NEWTON, Executive Director
California Newspaper Publishers Association

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 42 ★

The proponents are basically right that “*Proposition 42 will eliminate the possibility that local agencies can [lawfully] deny a request for public information or slam a meeting door based on [the] cost*” of complying with these state laws. It would do so by imposing the cost of complying upon local governments. An alternative would be to require that the state government pay.

Over many years, I have provided arguments against state and local ballot measures so that voters will receive more information about the measures before voting.

I have also used the California Public Records Act and open meeting laws to attempt to positively influence decision-making at the local level. When those laws are violated, a civil lawsuit may be filed, and the official misconduct involved may be reported to the civil grand jury in the county.

However, the ability of individuals to make a difference—even at the local level—has been undermined in

recent years by the influence of *big money* and by the empowerment of various *regional agencies* throughout California headed by board members *never elected* to those regional positions.

For example, in the San Francisco Bay Area, regional agencies just adopted plans that will cram millions of new residents from around the world into existing metropolitan transportation corridors. Bus-only lanes are being created. HOV (high occupancy vehicle) lanes are being converted into “Express Lanes” that also allow toll-payers.

All lanes on freeways may become *toll lanes* in the years ahead. It is happening across the country.

GARY WESLEY

★ ARGUMENT AGAINST PROPOSITION 42 ★

Local governments are run by employees and politicians who may or may NOT want to share information or receive public input before making decisions.

In 2004, California voters approved an initiative state constitutional amendment designed to halt the rolling back of state laws that *guaranteed* access to many public records and *mandated* that meetings of local government legislative bodies usually be held in public and that decisions of local legislative bodies could be made only after an opportunity for public input (*California Constitution, article I, section 3(b)*).

Some local governments responded by objecting that the new constitutional provision did not supersede another provision of the State Constitution (*article XIII B, section 6*) which requires that the State pay to local governments the cost of implementing any new State mandates.

Proposition 42 would amend the California Constitution to clarify that the State need not pay a local government for the cost of complying with the open meeting law applicable to local governments (the *Brown Act*—Government Code sections 54950–54963) or with the *Public Records Act* (Government Code sections 6250–6270) as written or later changed—as long as any change “contains findings demonstrating that the statutory enactment further the purposes of” the constitutional guarantee of public access and input.

The main issue presented by this proposition is whether voters believe that the cost of complying with these important state laws should be borne by local governments or by the state government.

GARY WESLEY

42

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 42 ★

Our democracy depends upon informed and active participation in government. Proposition 42 is a simple measure that protects the basic right to know how government conducts our business.

Mr. Wesley’s primary argument against Proposition 42 recites a lot of facts—most of which we agree with—but doesn’t make much of an argument about why local government agencies should look to the state to pay their costs associated with compliance with your freedom of information laws like the California Public Records Act and Ralph M. Brown Open Meeting Law.

Compliance with our state and local laws requiring open meetings and access to public records is a matter of constitutional principle.

The fact is every state agency pays its own costs of compliance with the public records act and the Bagley-Keene Act, which is similar to the Brown Act and requires state boards and commissions to meet in open and public sessions.

When agencies pay their own costs of compliance, there is a built-in incentive to innovate to keep those costs down, like streamlining record request processes and putting commonly requested records online for easy public access. If the state pays local agencies for the purely local obligation of complying with these fundamentally important laws, though, there is no incentive to improve.

It’s simple; the state pays its own costs and local agencies should pay theirs.

Protect your civil right to know and vote YES on Proposition 42.

JAMES W. EWERT, General Counsel
California Newspaper Publishers Association

DONNA FRYE, President
Californians Aware

JENNIFER A. WAGGONER, President
League of Women Voters of California



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Prop. 42 - vote for transparency in government

Published 5:37 pm, Sunday, May 4, 2014

Faith in our democracy rests on the public's right to know what our government is doing in our names and with our tax dollars. Prop. 42, on the June ballot, would amend the state Constitution to ensure that government remains committed to a culture of transparency, rather than being one, as the governor suggested, that is open only if someone else pays.

A raft of state laws (the Brown Act, the Open Meeting Act, the Sunshine Act) mandate that state and local government operate in public view. Thus the frequent and regular postings of agendas, minutes and budgets to communicate officials' decisions, meetings and expenses. But, under the principle of state law, the state is supposed to pay for what it requires.

The cynical commitment to transparency was exposed when, in a budget-cutting move, the governor declared the state would not pay for local government to communicate with its citizens and respond to public records requests. Even though the state was not reimbursing local government for such communications, he didn't want the state to accrue more debt.

The Legislative Analyst's Office figured costs going forward would exceed \$10 million a year. Such a figure, based on estimates (which vary wildly by jurisdiction) of staff time is hard to accept. Transparency should be a priority and not an optional or additional, use of government staffers' time.

Prop. 42 makes it clear that the state should not have to provide a financial incentive to local government to do what it should be doing.

The measure does not say how local government should communicate - it does not require a website or specify a digital format that would unduly burden tiny local agencies. Nor should it, as it would require a vote of the people to change such a requirement in a world where technology evolves by the minute.

Prop. 42 prioritizes transparency in the role of local government, and, in so doing, takes a step toward restoring confidence in our democratic system. Vote yes.

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Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER KALB & PRESIDENT PRO TEMPORE
KAPLAN

**RESOLUTION IN SUPPORT OF CALIFORNIA PROPOSITION 42 –
CONSTITUTIONAL AMENDMENT TO PROTECT THE PUBLIC’S RIGHT
TO KNOW BY REQUIRING COMPLIANCE BY LOCAL AGENCIES
WITH THE PUBLIC RECORDS ACT AND THE BROWN ACT FOR
OPEN MEETINGS**

WHEREAS, public transparency and freedom of information safeguards are of significant importance to and benefit for the citizens of Oakland and California and the integrity of government; and

WHEREAS, the California Public Records Act, passed in 1968, is a critical tool for the public and the press and facilitates obtaining government records, awareness of the activities of government, and effective advocacy in the interests of the community; and

WHEREAS, the Ralph M. Brown Act, passed in 1953, guarantees the public’s right to attend and participate in legislative bodies of local agencies, including boards, commissions, and councils; and

WHEREAS, state and local governments have been in disagreement regarding the amount of state financial support that is required address the costs to local governments with complying with these transparency laws and, at times, local agencies have used the failure of the state to reimburse their costs as an excuse for not complying with the transparency laws; and

WHEREAS, requiring the state to reimburse local governments for compliance costs with these laws does not encourage local governments to take steps to reduce their compliance costs, such as through proactive transparency procedures; and

WHEREAS, California Proposition 42 on the June 2014 ballot would secure the California Public Records Act and the Ralph M. Brown Act in the State Constitution and relieve the State from paying for local governments’ costs of compliance with these open government laws; now, therefore, be it

RESOLVED: That the Oakland City Council hereby endorses Proposition 42.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California