

RESOLUTION 09-04-2006

DIGEST

Open Government: Felony Penalties for Brown Act Violations

Amends Government Code section 54959 to make a violation of the open government laws prosecutable as a felony.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 54959 to make a violation of the open government laws prosecutable as a felony. This resolution should be disapproved because violation of these laws does not rise to a level which would justify felony prosecution.

The purpose of the Brown Act is to ensure the public’s right to attend the meetings of public agencies. It requires such acts as the posting of an agenda before a regular meeting, and forbids action on any item not included in the agenda. It dictates that “[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency,” with certain enumerated exceptions. (Gov. Code, § 54953, subd. (a).)

The Brown Act covers a very broad range of activities. Although prosecution under this resolution would be discretionary, state prison time and disenfranchisement for unintentional and minor violations is excessive. Such sanctions should be reserved for truly serious misconduct.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code section 54959 to read as follows:

- 1 §54959.
- 2 Each member of a legislative body who attends a meeting of that legislative body where
- 3 action is taken in violation of any provision of this chapter, and where the member intends to
- 4 deprive the public of information to which the member knows or has reason to know the
- 5 public is entitled under this chapter, is guilty of a misdemeanor or felony.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

Existing law: Existing law provides for a misdemeanor charge on any violation of the Brown Act under California Government Code Section 54950 et. seq.

This Resolution: Provides for higher penalties upon conviction.

The Problem: There have been many issues with local legislatures regarding violations of the Brown Act. The Brown Act is the protection for the public to know and understand what is happening with our legislative bodies. Because the penalties are so light, the risk is low in violating the code sections and often the District Attorney will not pursue.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE:

COUNTERARGUMENTS

BAR ASSOCIATION OF SAN FRANCISCO

A violation of the open meeting requirements in the Brown Act, which are not always quite clear, does not rise to the level of a felony. The argument that a prosecutor will choose not to prosecute a clear violation, simply because it is a misdemeanor suggests that our prosecutors do not take their jobs seriously. A good prosecutor will prosecute a clear violation of the law regardless of whether it is a felony or a misdemeanor. A murky case does not suddenly become clear because it is declared to be a felony rather than a misdemeanor. We do not believe that an increased criminal sanction is an appropriate solution to every problem and it is certainly not appropriate here. The Bar Association of San Francisco urges disapproval of this resolution.

SAN DIEGO COUNTY BAR ASSOCIATION

Criminal punishment should be proportionate to the harm caused to society by the criminal offense and necessary to serve the ends of justice. While the San Diego County Bar Association recognizes that the Brown Act serves an important public interest, as currently drafted, the statute encompasses an extremely broad range of improper activities. Subjecting an individual to the possibility of a prison sentence based upon a broadly written, all encompassing statute, is excessive and unnecessary.