



March 19, 2002

Supervisors support free speech limits

By Woody Morgan
Staff Writer

The Lassen County Board of Supervisors unanimously approved a resolution, Tuesday, March 12, to support AB 1945, an act to amend closed session provisions of the Ralph M. Brown Act.

Supervisor Jim Chapman who has not attended a closed session meeting of the board of supervisor for the last year and a half, said his absence was prompted following statements by fellow supervisor Everd McCain's disclosure of information known only to the supervisors regarding the county administrative officer's position.

Chapman said he was "flabbergasted" when informed by County Counsel William Murano there were no penalties associated with disclosing information learned in a closed meeting.

"I think that is a major defect in the system," Chapman said. "It has nothing to do with the merits of what happened a year or two ago, but for the future."

Chapman said he would volunteer his testimony in

support of the bill as an individual to share his experience.

"I'd like to see this board," Chapman said, "be on record to be in support of this bill as a statement of faith the system works in this fashion."

"It is not designed to preclude anybody from being open and honest."

Before the supervisors approved the ordinance supporting the act, Murano suggested two changes that the bill's author may want to consider: instead of the bill reading "no person may publicly disclose confidential information" Murano suggested it read "no person may disclose to any unauthorized persons."

The second change requested in section 54963, subsection A where it reads, "to meet in a closed session," Murano suggested it read "or any information which is discussed in closed session."

Following a motion to approve the resolution but before the final vote, McCain said he was also in favor of the amendment.

"I think this is a very good bill," McCain said. "that we should support because confidential information should not be disclosed."

McCain maintains the information he disclosed about the county administrative officer's position was not confidential because more than one person had previously publicly disclosed it.

One opponent of AB 1945 is California Newspaper and Publishers Association General Counsel Jim Ewert, who calls the move an infringement on the U.S. Constitution's First Amendment.

In addition to violating the U.S. Constitution Ewert said, "it also violates the California Constitution which guarantees 'every citizen the ability to speak freely, write and publish, his or her sentiments on all subject. No law may abridge or restrain liberty of speech or press.'"

He said if anything, the state constitution gives more protection to free speech.

"Any thinking public official who looks at this should take great pause because today's

majority may be tomorrow's minority," Ewert said.

The bills author, Assembly member Joe Simitian of Palo Alto, defended his actions telling the Times he is "Absolutely committed to an open and public process."

But Simitian also said closed-session communications should be privileged.

"But once you go in that closed session," Simitian said, "information that is derived from that closed session, that affects the public interests, is by law supposed to be privileged."

Simitian pointed out that if information from a closed session is divulged and it is incorrect, another member of that closed session cannot comment on "because the conscientious, honest member has no ability to correct that because he or she can't talk about what goes on in the closed session."

In addition, Simitian said it's the public who actually loses when someone divulges information from a closed session.

"If you are engaged in a property transaction," Simitian

said, "where the local government is wither buying or selling property and knows what it is or isn't prepared to accept by way of a price, the public can lose millions of dollars."

The California League of Cities has not taken a position to support or endorse the amendment but that determination could be made at a March 22 meeting.

"We are going to have a big debate, a huge discussion," Amy Brown, CLC's Legislative Representative said. "Then our board's going to take action. However, I think we have mixed feelings on it."

California State Association of Counties legal representative Ruben Lopez said the amendment is still being discussed.

"We don't have a position on it yet," Lopez said. "At this stage we don't have a position."

Lopez said he expects a decision to be made to either reject or endorse the act very soon.

"Probably within the next 10 days to two weeks," Lopez said.

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NEWS

Simitian bill axes possibility for jail

BY MELANIE CARROLL
DAILY NEWS STAFF WRITER

Assemblyman Joe Simitian said yesterday he's removing the possibility of jail time from a bill he's authored to stop elected officials from revealing information discussed behind closed doors.

"The amendment was to give the public a better comfort level," Simitian, D-Palo Alto, told the Daily News. "The bill's gotten better ... I hope it's more broadly accepted."



SIMITIAN

Assembly Bill 1945 is intended to stop elected officials, such as city council members or county supervisors, from revealing what they were told during closed-door meetings. These closed meetings are called "executive sessions" in government parlance.

News organizations opposed the bill, claiming the threat of jail would cause local officials to say less about government matters.

The state open meetings law, the Brown Act, requires city councils, county supervisors, school boards and other panels of elected officials to meet in public except under certain circumstances. They are permitted to go into secret session to talk about some personnel items, real estate transactions and litigation.

Simitian told the Daily News that he changed the bill after discussions with the California Newspaper Publishers Association and its general counsel, Tom Newton.

"We had a good frank conversation," Newton said. "And we arrived at an agreement."

Simitian's original bill would have subjected elected officials to a misdemeanor charge, which carries the possibility of jail time, if they discussed executive session items in public.

But the criminal prosecution portion has been dropped in the bill's current incarnation. Now, one new solution is banning officials from future meetings,

should they leak the wrong information, Simitian said.

That means an elected board could obtain an injunction stopping a member with loose lips from attending future executive sessions. Other punitive measures in the bill include publicly disciplining a board member who discusses private items publicly. Another option is for a civil grand jury to bring an "accusation" against a board member, similar to the one brought against Mountain View City Council member Mario Ambra.

Ambra was convicted of misconduct in office and resigned yesterday — a day before a judge was scheduled to remove him from office.

An accusation doesn't carry the possibility of jail time, just the chance that the overly-talkative office holder would be removed from office.

Simitian is also adding to the bill a provision that would make it easier for public officials to bring complaints about open meetings law violations to prosecutors.

Currently, a public official is subject to a misdemeanor charge if they discuss non-executive session matters during an executive session. That's intended to stop, say, a city council from going behind closed doors to hammer out a zoning matter or a budget issue, which are things the law says a council must discuss in the open.

But council members take a risk if they report violations of the current law to the district attorney.

In the process of reporting violations, they must reveal closed-session items to the prosecutor. By revealing those closed-session items, they would be committing a crime.

Simitian's revised law would allow elected officials to report violations without risking jail time by discuss executive session matters with a prosecutor.

Simitian's revised bill is scheduled to be heard by the Assembly's Local Government Committee on Wednesday.

"It will be the first time in committee," the lawmaker said. "I don't have a sense" of what reaction the bill will receive.