

POLICY NO. F-01

DISCUSSION OF JPA CLOSED SESSION AGENDA WITH MEMBER BOARDS

Effective October 11, 2005

The following guideline of Risk Management Practices has been developed and adopted by the Board of Directors of the Fresno County Self-Insurance Group ("FCSIG") and is effective as of the date indicated above pursuant to Article VIII of the Bylaws of FCSIG. Each Member District has agreed to the implementation of all guidelines of Risk Management Practices developed by the Board of Directors. The following policy shall be referred to for all purposes as Policy No. F-01.

1. Assembly Bill 2782 (Chapter 784, Stats. Of 2004) adds Government Code section 54956.96 and modifies section 54954.5 to clarify the circumstances under which joint powers authority ("JPA") closed session discussions may be shared with a member local agency. AB 2782 became effective January 1, 2005.

2. **AGREEMENT REQUIREMENTS**

In order to clarify when JPA closed session discussions may be shared with a member local agency, all Member Districts in FCSIG shall be required to comply with this Policy No. F-01, which is set forth herein to contain and limit liability exposure to the SIR pool of FCSIG, and to provide its members with guidance in the issue of discussing JPA closed session agenda within its own local agency.

3. **DISCUSSION**

Existing law permits local agencies to form a JPA and requires that JPA board meetings comply with the Brown Act, including its closed session provisions. However, it does not address the circumstances under which information discussed in a JPA board meeting closed session may be shared with member agencies. The Attorney General previously opined that a JPA board member may not discuss JPA closed session items with his or her member agency board. (86 Att.Gen.Ops. 210 (2003).)

4. **EXAMPLE**

The practical impact of Government Code §54956.6 is best illustrated by example: John Smith is a member of a Board of "School District." School District is a member of "JPA". Mr. Smith is the School District representative on the JPA Board.

During a recent meeting, the JPA Board discussed a threat of litigation against the JPA in closed session. Mr. Smith wants to relate the substance of the discussion to the School District board at the next School District board meeting. May Mr. Smith do so?

The first question is whether the JPA agreement, or a JPA policy or bylaw permits the sharing of confidential closed session information. If it does not, Mr. Smith may not disclose closed session information to his member agency board. If he does, Mr. Smith

must decide whether the information has direct financial or liability implications for School District. If he decides yes, he may relate the information to the School District board or its legal counsel. If he decides no, he may not relate the information to either the School District board or legal counsel. If he is not sure, the statute permits him to relate the information to School District's legal counsel to obtain advice on the matter.

5. **POLICY**

Under Government Code §54956.96, a JPA may, by policy, bylaw, or by including a provision in the JPA agreement, make all information discussed in a JPA board meeting closed session confidential but authorize a JPA board member, who is also on the board of a member agency, to discuss the information with his or her member agency if it "has direct financial or liability implications" for the member agency. If there are such implications, the board member may discuss the information with: (1) the member agency's legal counsel to "obtain advice on whether the matter has direct financial or liability implications" or (2) the member agency board during a closed session.

Section 54954.5 now includes the following new closed session safe harbor language for the member agency board to use when discussing JPA information, which should appear on future member board meeting agendas where applicable:

"CONFERENCE INVOLVING A JOINT POWERS AGENCY.
(Fresno County Self-Insurance Group)

Discussion will concern: (Specify closed session description used by FCSIG.) Name of local agency representative on joint powers agency board: (Specify name). (Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)"

6. **DEFINITIONS**

- 5.1 For purposes of this Policy, a "Member District" means any school district which has become a member of FCSIG pursuant to the provisions of the FCSIG Agreement and Bylaws.
- 5.2 For purposes of this Policy, a "Third Party" means any person or entity other than the Member District providing or allowing the use of its facility.