

# CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

## BILL ANALYSIS

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**Assembly Bill 1209**                      **Assembly Member Nakano (As amended 4/21/03)**

**Position:**                                      **Support**

**Proponents:**                                **SCSA and Office of Homeland Security**

**Opponents:**                                 **None known**

### **SUMMARY**

Assembly Bill 1209, for purposes of security, ensures that security documents from state agencies receive the level of protection that local government documents are granted from public disclosure under the Public Records Act (PRA). Additionally, this bill authorizes a state body to hold closed sessions to consider matters posing a threat or potential threat of terrorist activity or other criminal acts against the general public and or private property, as specified, and repeals the January 1, 2006 sunset date in order to make the authorization permanent.

### **HISTORY**

Chapter 175, Statutes of 2002 (SB 1643—Johnson) exempts security-related documents in the possession of local governments from the PRA and allows local governments to hold closed sessions to discuss emergency situations including criminal or terrorists attacks.

Chapter 1113, Statutes of 2002 (AB 2072—Mountjoy) enables a state body subject to the Open Meeting Act to discuss security issues in closed session—specifically matters posing threat of criminal or terrorist activity against personnel, property, buildings, facilities or equipment, as specified.

Chapter 177, Statutes of 1989 (AB 1284—Quackenbush) authorizes the Teachers' Retirement Board (Board) and the California Public Employees' Retirement (CalPERS) Board of Administration to meet in closed session to consider matters pertaining to the recruitment or removal of the Chief Investment Officer of each System and adds authorization for the CalPERS Board of Administration to meet in closed session to consider personnel matters pertaining to the Chief Executive Officer.

Chapter 1320, Statutes of 1987 (SB 200—Roberti) provides, among other things, that a state body prior to holding a closed session to discuss litigation, must require its legal counsel to prepare and submit a memorandum stating the specific reasons and legal authority for closed session, as specified.

## **SUMMARY OF CHANGES**

The April 21, 2003 amendments:

- Extend to other criminal acts a current exemption from the PRA to disclose records that address mitigation of potential terrorist activity;
- Permit governmental bodies to meet in closed session to discuss issues relating to other criminal acts against the general public and or private property.

## **CURRENT PRACTICE**

The PRA (Government Code Section 6254) exempts from disclosure local government documents that assess vulnerability to terrorist and or criminal acts. Additionally, the Ralph Brown Act allows a local agency or legislative body to hold a closed session when considering issues related to the security of public facilities and services. Local legislative bodies may hold an emergency meeting in closed session with law enforcement officials, if agreed to by a two-thirds vote of members present at the emergency meeting or by unanimous vote if less than two-thirds of the members are present.

The California State Teachers' Retirement System (CalSTRS) as a qualifying "state body" under the Bagley-Keene Open Meeting Act (Government Code Section 11121) is authorized to conduct meetings that are open to the public. Until January 1, 2006, upon a two-thirds vote, a state body may hold a closed meeting to consider matters posing a threat or potential threat of criminal or terrorist activity directed at the state body or its facilities, including personnel, buildings, electronic equipment and electronic data. After meeting in closed session, the state body would reconvene in open session and report the general nature of the matters considered, whether action was taken in closed session, and to submit written notification of these matters to the Legislature.

Under current law, protection of security documents is not consistent between state and local government. Moreover, unless criminal or terrorist activity is directed at state property, state employees or state governmental bodies cannot discuss security issues in a closed session. To do so would violate open meeting laws, however, having an open session could disclose security preparations or potential targets to terrorists or criminals.

## **DISCUSSION**

AB 1209 provides a consistent level of protection for security-related documents between state and local government agencies, and would eliminate concerns of public disclosure of security issues that may compromise the health and safety of state employees, state property, the general public and or private property.

The author believes this proposal would initially reduce uncertainty concerning when a meeting can be closed so that critical information regarding vulnerability to attack or means to prevent and respond to these attacks can be debated. Additionally, AB 1209 provides state and local government agencies an equitable means for securing documents and for discussing issues of terrorism or other criminal acts.

This bill permits the Board and other state bodies to continue to conduct official meetings and commissions that are open to the public so that the public may remain informed. Additionally, this would permit CalSTRS to not disclose vulnerability documentation and assessments relating to potential terrorist targets, records depicting mitigation of public facilities or critical infrastructure with respect to potential terrorist acts, and information relative to facility security that could be used to aid a potential terrorist act.

### **FISCAL IMPACT**

Benefit Program Cost– None

Administrative Costs/Saving – Minor cost savings

### **RECOMMENDATION**

Support. This bill would ensure that security documentation and deliberations have the same protection at both the state and local level. This legislation is consistent with CalSTRS' goal to foster board culture and practices that promote efficient and effective governance.