

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 392

Introduced by Assembly Member Alejo

February 14, 2011

An act to amend Sections 54954.2 and 54957.5 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 392, as amended, Alejo. Ralph M. Brown Act: posting agendas.

(1) Existing law, the Ralph M. Brown Act, requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Existing law requires that the legislative body of a local agency post an agenda, as specified, at least 72 hours before a regular meeting of that body, and prohibits the legislative body from acting on or discussing any item not appearing on the agenda, except as provided.

Existing law requires that agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of the legislative body of a local agency in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act. Existing law establishes a procedure for the disclosure of any writings that are distributed less than 72 hours prior to the meeting.

~~This bill would additionally require the legislative body of the local agency, at least 72 hours before a regular meeting of that body, to post the writings that relate to an agenda item for the open session of that regular meeting. This bill would require the legislative body of a local agency to post the agenda and the writings specified staff generated~~

reports that relate to items on the agenda on its Internet Web site, if any, as specified. *The bill would require the legislative body of the local agency, if it does not have an Internet Web site, to disclose on the posted agenda a public location where the agency would make an applicable staff generated report available for copying and inspection by a member of the public for at least 72 hours prior to the meeting.* The bill would ~~repeal the procedure for the disclosure of any writings that are distributed less than 72 hours prior to the meeting and would instead~~ prohibit the legislative body from acting on or discussing an item on the agenda for which a related ~~writing~~ *staff generated report* was not properly disclosed at least 72 hours prior to the meeting, except as provided. By expanding the duties of local agencies, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54954.2 of the Government Code is
2 amended to read:
3 54954.2. (a) (1) (A) At least 72 hours before a regular
4 meeting, the legislative body of the local agency, or its designee,
5 shall post an agenda containing a brief general description of each
6 item of business to be transacted or discussed at the meeting,
7 including items to be discussed in closed session, ~~and shall post~~
8 ~~any writing, as described in subdivision (a) of Section 54957.5,~~
9 ~~that relates to an agenda item for the open session of that regular~~
10 ~~meeting of the legislative body of the local agency.~~ *session.* A
11 brief general description of an item generally need not exceed 20
12 words. The agenda shall specify the time and location of the regular
13 meeting and shall be posted, ~~along with the writings in a manner~~
14 ~~that makes it clear to which agenda items the writings relate, on~~
15 ~~the local agency's posted on the local agency's Internet Web site,~~

1 if any, and in a location that is freely accessible to members of the
2 public. Each local agency shall list the address of the publicly
3 accessible location on the agendas for all meetings of the legislative
4 body of that agency. If requested, the agenda or ~~writing~~ *an*
5 *applicable staff generated report described in subparagraph (B)*,
6 shall be made available in appropriate alternative formats to
7 persons with a disability, as required by Section 202 of the
8 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),
9 and the federal rules and regulations adopted in implementation
10 thereof. The agenda shall include information regarding how, to
11 whom, and when a request for disability related modification or
12 accommodation, including auxiliary aids or services may be made
13 by a person with a disability who requires a modification or
14 accommodation in order to participate in the public meeting.

15 *(B) In addition to the requirements of subparagraph (A), at least*
16 *72 hours before a regular meeting, the legislative body of the local*
17 *agency, or its designee, shall post on its Internet Web site, if any,*
18 *any staff generated report that is a writing, as described in*
19 *subdivision (a) of Section 54957.5, and that relates to an agenda*
20 *item for an open session of the regular meeting of a legislative*
21 *body of a local agency. The agency shall post the meeting agenda*
22 *and the applicable staff generated reports on the Internet Web*
23 *site, if any, in a manner that makes it clear to which agenda item*
24 *a staff generated report relates. If the local agency does not have*
25 *an Internet Web site, then the posted agenda shall disclose a public*
26 *location where the agency shall make any applicable staff*
27 *generated report available for copying and inspection by a member*
28 *of the public for at least 72 hours prior to the meeting.*

29 (2) No action or discussion shall be undertaken on any item not
30 appearing on the posted agenda or any item for which a related
31 ~~writing was not disclosed pursuant to subdivision (a) staff~~
32 *generated report was not disclosed in the manner described in this*
33 *subdivision, except that members of a legislative body or its staff*
34 *may briefly respond to statements made or questions posed by*
35 *persons exercising their public testimony rights under Section*
36 *54954.3. In addition, on their own initiative or in response to*
37 *questions posed by the public, a member of a legislative body or*
38 *its staff may ask a question for clarification, make a brief*
39 *announcement, or make a brief report on his or her own activities.*
40 Furthermore, a member of a legislative body, or the body itself,

1 subject to rules or procedures of the legislative body, may provide
2 a reference to staff or other resources for factual information,
3 request staff to report back to the body at a subsequent meeting
4 concerning any matter, or take action to direct staff to place a
5 matter of business on a future agenda.

6 (b) Notwithstanding subdivision (a), the legislative body may
7 take action on items of business not appearing on the posted agenda
8 or items for which a related writing was not disclosed pursuant to
9 *staff generated report was not disclosed in the manner described*
10 *in* subdivision (a), under any of the conditions stated below. Prior
11 to discussing any item pursuant to this subdivision, the legislative
12 body shall publicly identify the item.

13 (1) Upon a determination by a majority vote of the legislative
14 body that an emergency situation exists, as defined in Section
15 54956.5.

16 (2) Upon a determination by a two-thirds vote of the members
17 of the legislative body present at the meeting, or, if less than
18 two-thirds of the members are present, a unanimous vote of those
19 members present, that there is a need to take immediate action and
20 that the need for action came to the attention of the local agency
21 subsequent to the agenda being posted as specified in subdivision
22 (a).

23 (3) The item was posted pursuant to subdivision (a) for a prior
24 meeting of the legislative body occurring not more than five
25 calendar days prior to the date action is taken on the item, and at
26 the prior meeting the item was continued to the meeting at which
27 action is being taken.

28 (c) This section is necessary to implement and reasonably within
29 the scope of paragraph (1) of subdivision (b) of Section 3 of Article
30 I of the California Constitution.

31 SEC. 2. Section 54957.5 of the Government Code is amended
32 to read:

33 54957.5. (a) Notwithstanding Section 6255 or any other
34 provisions of law, agendas of public meetings and any other
35 writings, when distributed to all, or a majority of all, of the
36 members of a legislative body of a local agency in connection with
37 a matter subject to discussion or consideration at an open meeting
38 of the body, are disclosable public records under the California
39 Public Records Act (Chapter 3.5 (commencing with Section 6250)
40 of Division 7 of Title 1), and shall be made available upon request

1 without delay. However, this section shall not include any writing
2 exempt from public disclosure under Section 6253.5, 6254, 6254.3,
3 6254.7, 6254.15, 6254.16, or 6254.22.

4 *(b) (1) If a writing that is a public record under subdivision*
5 *(a), and that relates to an agenda item for an open session of a*
6 *regular meeting of the legislative body of a local agency, is*
7 *distributed less than 72 hours prior to that meeting, the writing*
8 *shall be made available for public inspection pursuant to*
9 *paragraph (2) at the time the writing is distributed to all, or a*
10 *majority of all, of the members of the body.*

11 *(2) A local agency shall make any writing described in*
12 *paragraph (1) available for public inspection at a public office or*
13 *location that the agency shall designate for this purpose. Each*
14 *local agency shall list the address of this office or location on the*
15 *agendas for all meetings of the legislative body of that agency.*
16 *The local agency also may post the writing on the local agency's*
17 *Internet Web site in a position and manner that makes it clear that*
18 *the writing relates to an agenda item for an upcoming meeting.*

19 *(c) Writings that are public records under subdivision (a) and*
20 *that are distributed during a public meeting shall be made*
21 *available for public inspection at the meeting if prepared by the*
22 *local agency or a member of its legislative body, or after the*
23 *meeting if prepared by some other person. These writings shall be*
24 *made available in appropriate alternative formats upon request*
25 *by a person with a disability, as required by Section 202 of the*
26 *Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),*
27 *and the federal rules and regulations adopted in implementation*
28 *thereof.*

29 *(d) Compliance with subdivision (b) or (c) shall not be construed*
30 *to modify or eliminate the requirement, pursuant to Section*
31 *54954.2, that no action or discussion be undertaken by the*
32 *legislative body of a local agency at a meeting on any item not*
33 *appearing on the posted agenda or for which a staff generated*
34 *report was not properly disclosed in the manner described in that*
35 *section.*

36 ~~(b)~~

37 *(e) Nothing in this chapter shall be construed to prevent the*
38 *legislative body of a local agency from charging a fee or deposit*
39 *for a copy of a public record pursuant to Section 6253, except that*
40 *no surcharge shall be imposed on persons with disabilities in*

1 violation of Section 202 of the Americans with Disabilities Act of
2 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
3 adopted in implementation thereof.

4 (e)

5 (f) This section shall not be construed to limit or delay the
6 public's right to inspect or obtain a copy of any record required to
7 be disclosed under the requirements of the California Public
8 Records Act (Chapter 3.5 (commencing with Section 6250) of
9 Division 7 of Title 1). Nothing in this chapter shall be construed
10 to require a legislative body of a local agency to place any paid
11 advertisement or any other paid notice in any publication.

12 SEC. 3. If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.

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