

AMENDED IN SENATE MAY 3, 2012
AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 1003

Introduced by Senator Yee

February 6, 2012

An act to amend Section 54960 of, and to add Section 54960.2 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1003, as amended, Yee. Local government: open meetings.

Existing law, the Ralph M. Brown Act (Brown Act), requires each legislative body of a local agency to provide the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public and all persons be permitted to attend unless a closed session is authorized. Existing law authorizes the district attorney or any interested person to file an action by mandamus, injunction, or declaratory relief to, among other things, determine the applicability of the act to actions or threatened future action of the legislative body.

This bill would prohibit an interested person from filing an action for an alleged violation of the Brown Act, or as specified, unless certain conditions are met, including, but not limited to, a requirement that the interested person submit a letter to the legislative body being accused of the violation setting forth the alleged violation. The bill would authorize the legislative body to respond to the letter within 30 days of receiving the letter. The bill would additionally authorize the district attorney or any interested person to file an action to determine the applicability of the act to past actions of the legislative body *that occur after January 1, 2013, as specified.*

~~This bill would state that the provisions related to past actions are intended to supersede the decision of the California Court of Appeal for the Fifth District in *McKee v. Tulare County Bd. of Sup'rs* (Nov. 2, 2011, F061146) in a nonpublished opinion.~~

~~This bill would state that the provisions related to past actions are declaratory of existing law.~~

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

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

1 SECTION 1. Section 54960 of the Government Code is
2 amended to read:

3 54960. (a) The district attorney or any interested person may
4 commence an action by mandamus, injunction, or declaratory relief
5 for the purpose of stopping or preventing violations or threatened
6 violations of this chapter by members of the legislative body of a
7 local agency or to determine the applicability of this chapter to
8 past actions or threatened future action of the legislative body, or
9 to determine whether any rule or action by the legislative body to
10 penalize or otherwise discourage the expression of one or more of
11 its members is valid or invalid under the laws of this state or of
12 the United States, or to compel the legislative body to audio record
13 its closed sessions as hereinafter provided.

14 (b) The court in its discretion may, upon a judgment of a
15 violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957,
16 or 54957.6, order the legislative body to audio record its closed
17 sessions and preserve the audio recordings for the period and under
18 the terms of security and confidentiality the court deems
19 appropriate.

20 (c) (1) Each recording so kept shall be immediately labeled
21 with the date of the closed session recorded and the title of the
22 clerk or other officer who shall be custodian of the recording.

23 (2) The audio recordings shall be subject to the following
24 discovery procedures:

25 (A) In any case in which discovery or disclosure of the audio
26 recording is sought by either the district attorney or the plaintiff
27 in a civil action pursuant to Section 54959, 54960, or 54960.1
28 alleging that a violation of this chapter has occurred in a closed
29 session that has been recorded pursuant to this section, the party

1 seeking discovery or disclosure shall file a written notice of motion
2 with the appropriate court with notice to the governmental agency
3 that has custody and control of the audio recording. The notice
4 shall be given pursuant to subdivision (b) of Section 1005 of the
5 Code of Civil Procedure.

6 (B) The notice shall include, in addition to the items required
7 by Section 1010 of the Code of Civil Procedure, all of the
8 following:

9 (i) Identification of the proceeding in which discovery or
10 disclosure is sought, the party seeking discovery or disclosure, the
11 date and time of the meeting recorded, and the governmental
12 agency that has custody and control of the recording.

13 (ii) An affidavit that contains specific facts indicating that a
14 violation of the act occurred in the closed session.

15 (3) If the court, following a review of the motion, finds that
16 there is good cause to believe that a violation has occurred, the
17 court may review, in camera, the recording of that portion of the
18 closed session alleged to have violated the act.

19 (4) If, following the in camera review, the court concludes that
20 disclosure of a portion of the recording would be likely to
21 materially assist in the resolution of the litigation alleging violation
22 of this chapter, the court shall, in its discretion, make a certified
23 transcript of the portion of the recording a public exhibit in the
24 proceeding.

25 (5) Nothing in this section shall permit discovery of
26 communications that are protected by the attorney-client privilege.

27 SEC. 2. Section 54960.2 is added to the Government Code, to
28 read:

29 54960.2. (a) ~~An~~ *The district attorney or any interested person*
30 ~~may not~~ *file an action to determine the applicability of this chapter*
31 *to past actions of a legislative body* pursuant to subdivision (a) of
32 Section 54960 ~~unless if~~ all of the following conditions are met:

33 (1) *The district attorney or interested person alleging a violation*
34 ~~of the this chapter, or as specified in subdivision (a) of Section~~
35 ~~54960,~~ *first submits a letter to the legislative body being accused*
36 *of the violation setting forth the alleged violation.*

37 (2) *The letter required under paragraph (1) is submitted to the*
38 *legislative body within one year of the alleged violation.*

39 (3) *The time during which the legislative body may respond to*
40 *the letter pursuant to subdivision (b) has expired.*

1 (4) *The district attorney or interested person alleging the*
2 *violation commences the action pursuant to subdivision (a) within*
3 *30 days of receipt of the legislative body’s response to the letter*
4 *alleging a violation or within 30 days of the legislative body*
5 *receiving the letter pursuant to subdivision (b), whichever is*
6 *earlier.*

7 (b) The legislative body may respond to a letter submitted
8 pursuant to subdivision (a) within 30 days of receiving the letter.

9 (c) *This section shall not apply to past actions of a legislative*
10 *body that have occurred before January 1, 2013.*

11 ~~SEC. 3. It is the intent of the Legislature, in amending Section~~
12 ~~54960 of the Government Code, to supersede the decision of the~~
13 ~~California Court of Appeal for the Fifth District in McKee v. Tulare~~
14 ~~County Bd. of Sup’rs (Nov. 2, 2011, F061146) in a nonpublished~~
15 ~~opinion, in which the court held that injunctive and declaratory~~
16 ~~relief were not available to determine the applicability of this~~
17 ~~chapter to a past action or practice of a legislative body of a local~~
18 ~~agency that the body, while resolving not to repeat it, nevertheless~~
19 ~~continued to maintain was lawful.~~

20 ~~The Legislature finds and declares that the amendments made~~
21 ~~to Section 54960 of the Government Code by this act are~~
22 ~~declaratory of existing law.~~