

AMENDED IN ASSEMBLY JUNE 19, 2012

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~~ *Sections 54960 and 54960.5* 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~~. *meetings: cease and desist letters.*

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 *a district attorney or* an interested person from filing an action for an alleged violation of the Brown Act, ~~or as specified~~ *for past actions of a legislative body*, unless certain conditions are met, including, but not limited to, a requirement that the *district attorney or* interested person submit a *cease and desist* letter to the legislative body being accused of the violation setting forth the alleged violation, *and the legislative body has failed to issue an unconditional*

*commitment to cease and desist from the alleged past action within 30 days of receiving the letter. 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 require the unconditional commitment to cease and desist from the alleged past action to meet certain requirements. The bill would require that an action filed to challenge an alleged violation of the Brown Act pursuant to these provisions be dismissed with prejudice if the legislative body enters into an unconditional commitment to cease and desist from the alleged past action. The bill would authorize the legislative body to enter into an unconditional commitment to cease and desist from the alleged action at any time, unless the plaintiff succeeds in a civil action against the legislative body and is awarded attorney's fees. The bill would provide that if an action filed to challenge an alleged violation of the Brown Act pursuant to these provisions is dismissed with prejudice because the legislative body has entered into an unconditional commitment to cease and desist from the alleged action after the 30-day period described above, and if the filing of that action caused the legislative body to enter into the unconditional commitment, then a court shall award costs and reasonable attorney's fees to the plaintiff. The bill would require a legislative body that wishes to rescind a commitment to do so by a majority vote of the membership of the legislative body.*

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 ongoing~~ actions or threatened future action of the legislative  
9 body, *or to determine the applicability of this chapter to past*  
10 *actions of the legislative body, subject to Section 54960.2, or to*

1 determine whether any rule or action by the legislative body to  
2 penalize or otherwise discourage the expression of one or more of  
3 its members is valid or invalid under the laws of this state or of  
4 the United States, or to compel the legislative body to audio record  
5 its closed sessions as hereinafter provided.

6 (b) The court in its discretion may, upon a judgment of a  
7 violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957,  
8 or 54957.6, order the legislative body to audio record its closed  
9 sessions and preserve the audio recordings for the period and under  
10 the terms of security and confidentiality the court deems  
11 appropriate.

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

15 (2) The audio recordings shall be subject to the following  
16 discovery procedures:

17 (A) In any case in which discovery or disclosure of the audio  
18 recording is sought by either the district attorney or the plaintiff  
19 in a civil action pursuant to Section 54959, 54960, or 54960.1  
20 alleging that a violation of this chapter has occurred in a closed  
21 session that has been recorded pursuant to this section, the party  
22 seeking discovery or disclosure shall file a written notice of motion  
23 with the appropriate court with notice to the governmental agency  
24 that has custody and control of the audio recording. The notice  
25 shall be given pursuant to subdivision (b) of Section 1005 of the  
26 Code of Civil Procedure.

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

30 (i) Identification of the proceeding in which discovery or  
31 disclosure is sought, the party seeking discovery or disclosure, the  
32 date and time of the meeting recorded, and the governmental  
33 agency that has custody and control of the recording.

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

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

1 (4) If, following the in camera review, the court concludes that  
 2 disclosure of a portion of the recording would be likely to  
 3 materially assist in the resolution of the litigation alleging violation  
 4 of this chapter, the court shall, in its discretion, make a certified  
 5 transcript of the portion of the recording a public exhibit in the  
 6 proceeding.

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

9 SEC. 2. Section 54960.2 is added to the Government Code, to  
 10 read:

11 ~~54960.2. (a) The district attorney or any interested person may~~  
 12 ~~file an action to determine the applicability of this chapter to past~~  
 13 ~~actions of a legislative body pursuant to subdivision (a) of Section~~  
 14 ~~54960 if all of the following conditions are met:~~

15 ~~(1) The district attorney or interested person alleging a violation~~  
 16 ~~of this chapter, first submits a letter to the legislative body being~~  
 17 ~~accused of the violation setting forth the alleged violation.~~

18 ~~(2) The letter required under paragraph (1) is submitted to the~~  
 19 ~~legislative body within one year of the alleged violation.~~

20 ~~(3) The time during which the legislative body may respond to~~  
 21 ~~the letter pursuant to subdivision (b) has expired.~~

22 ~~(4) The district attorney or interested person alleging the~~  
 23 ~~violation commences the action pursuant to subdivision (a) within~~  
 24 ~~30 days of receipt of the legislative body's response to the letter~~  
 25 ~~alleging a violation or within 30 days of the legislative body~~  
 26 ~~receiving the letter pursuant to subdivision (b), whichever is earlier.~~

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

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

31 *54960.2. (a) The district attorney or any interested person*  
 32 *may file an action to determine the applicability of this chapter to*  
 33 *past actions of the legislative body pursuant to subdivision (a) of*  
 34 *Section 54960 only if all of the following conditions are met:*

35 *(1) The district attorney or interested person alleging a violation*  
 36 *of this chapter first submits a cease and desist letter by postal mail*  
 37 *or facsimile transmission to the clerk or secretary of the legislative*  
 38 *body being accused of the violation, as designated in the statement*  
 39 *pertaining to that public agency on file pursuant to Section 53051,*  
 40 *or if the agency does not have a statement on file designating a*

1 clerk or a secretary, to the chief executive officer of that agency,  
2 clearly describing the past action of the legislative body and nature  
3 of the alleged violation.

4 (2) The cease and desist letter required under paragraph (1) is  
5 submitted to the legislative body within nine months of the alleged  
6 violation.

7 (3) The time during which the legislative body may respond to  
8 the cease and desist letter pursuant to subdivision (b) has expired  
9 and the legislative body has not provided an unconditional  
10 commitment pursuant to subdivision (c).

11 (4) Within 60 days of receipt of the legislative body’s response  
12 to the cease and desist letter, other than an unconditional  
13 commitment pursuant to subdivision (c), or within 60 days of the  
14 expiration of the time during which the legislative body may  
15 respond to the cease and desist letter pursuant to subdivision (b),  
16 whichever is earlier, the party submitting the cease and desist  
17 letter shall commence the action pursuant to subdivision (a) of  
18 Section 54960 or thereafter be barred from commencing the action.

19 (b) The legislative body may respond to a cease and desist letter  
20 submitted pursuant to subdivision (a) within 30 days of receiving  
21 the letter. This subdivision shall not be construed to prevent the  
22 legislative body from providing an unconditional commitment  
23 pursuant to subdivision (c) at any time after the 30-day period has  
24 expired, except that in that event the court shall award court costs  
25 and reasonable attorney’s fees to the plaintiff in an action brought  
26 pursuant to this section, in accordance with Section 54960.5.

27 (c) (1) If the legislative body elects to respond to the cease and  
28 desist letter with an unconditional commitment to cease, desist  
29 from, and not repeat the past action that is alleged to violate this  
30 chapter, that response shall be in substantially the following form:

31  
32 To \_\_\_\_\_:  
33

34 The [name of legislative body] has received your cease and  
35 desist letter dated [date] alleging that the following described past  
36 action of the legislative body violates the Ralph M. Brown Act:

37  
38 [Describe alleged past action, as set forth in the cease and desist  
39 letter submitted pursuant to subdivision (a)]  
40

1     *In order to avoid unnecessary litigation and without admitting*  
2     *any violation of the Ralph M. Brown Act, the [name of legislative*  
3     *body] hereby unconditionally commits that it will cease, desist*  
4     *from, and not repeat the challenged past action as described above.*

5  
6     *The [name of legislative body] may rescind this commitment*  
7     *only by a majority vote of its membership taken in open session at*  
8     *a regular meeting and noticed on its posted agenda as “Rescission*  
9     *of Brown Act Commitment.” You will be provided with written*  
10    *notice, sent by any means or media you provide in response to this*  
11    *message, to whatever address or addresses you specify, of any*  
12    *intention to consider rescinding this commitment at least 30 days*  
13    *before any such regular meeting. In the event that this commitment*  
14    *is rescinded, you will have the right to commence legal action*  
15    *pursuant to subdivision (a) of Section 54960 of the Government*  
16    *Code. That notice will be delivered to you by the same means as*  
17    *this commitment, or may be mailed to an address that you have*  
18    *designated in writing.*

19  
20    *Very truly yours,*

21  
22    \_\_\_\_\_  
23    *[Chairperson or acting chairperson of the legislative body]*

24    (2) *An unconditional commitment pursuant to this subdivision*  
25    *shall be approved by the legislative body in open session at a*  
26    *regular or special meeting as a separate item of business, and not*  
27    *on its consent agenda.*

28    (3) *An action shall not be commenced to determine the*  
29    *applicability of this chapter to any past action of the legislative*  
30    *body for which the legislative body has provided an unconditional*  
31    *commitment pursuant to this subdivision. During any action*  
32    *seeking a judicial determination regarding the applicability of this*  
33    *chapter to any past action of the legislative body pursuant to*  
34    *subdivision (a), if the court determines that the legislative body*  
35    *has provided an unconditional commitment pursuant to this*  
36    *subdivision, the action shall be dismissed with prejudice. Nothing*  
37    *in this subdivision shall be construed to modify or limit the existing*  
38    *ability of the district attorney or any interested person to commence*  
39    *an action to determine the applicability of this chapter to ongoing*  
40    *actions or threatened future actions of the legislative body.*

1 (4) Except as provided in subdivision (d), the fact that a  
2 legislative body provides an unconditional commitment shall not  
3 be construed or admissible as evidence of a violation of this  
4 chapter.

5 (d) If the legislative body provides an unconditional commitment  
6 as set forth in subdivision (c), the legislative body shall not  
7 thereafter take or engage in the challenged action described in  
8 the cease and desist letter, except as provided in subdivision (e).  
9 Violation of this subdivision shall constitute an independent  
10 violation of this chapter, without regard to whether the challenged  
11 action would otherwise violate this chapter. An action alleging  
12 past violation or threatened future violation of this subdivision  
13 may be brought pursuant to subdivision (a) of Section 54960,  
14 without regard to the procedural requirements of this section.

15 (e) The legislative body may resolve to rescind an unconditional  
16 commitment made pursuant to subdivision (c) by a majority vote  
17 of its membership taken in open session at a regular meeting as a  
18 separate item of business not on its consent agenda, and noticed  
19 on its posted agenda as “Rescission of Brown Act Commitment,”  
20 provided that not less than 30 days prior to such regular meeting,  
21 the legislative body provides written notice of its intent to consider  
22 the rescission to each person to whom the unconditional  
23 commitment was made, and to the district attorney. Upon  
24 rescission, the district attorney or any interested person may  
25 commence an action pursuant to subdivision (a) of Section 54960.  
26 An action under this subdivision may be brought pursuant to  
27 subdivision (a) of Section 54960, without regard to the procedural  
28 requirements of this section.

29 SEC. 3. Section 54960.5 of the Government Code is amended  
30 to read:

31 54960.5. A court may award court costs and reasonable attorney  
32 fees to the plaintiff in an action brought pursuant to Section 54960  
33 or, 54960.1, or 54960.2 where it is found that a legislative body  
34 of the local agency has violated this chapter. Additionally, when  
35 an action brought pursuant to Section 54960.2 is dismissed with  
36 prejudice because a legislative body has provided an unconditional  
37 commitment pursuant to paragraph (1) of subdivision (c) of that  
38 section at any time after the 30-day period for making such a  
39 commitment has expired, the court shall award court costs and  
40 reasonable attorney’s fees to the plaintiff if the filing of that action

1 *caused the legislative body to issue the unconditional commitment.*  
2 The costs and fees shall be paid by the local agency and shall not  
3 become a personal liability of any public officer or employee of  
4 the local agency.

5 A court may award court costs and reasonable attorney fees to  
6 a defendant in any action brought pursuant to Section 54960 or  
7 54960.1 where the defendant has prevailed in a final determination  
8 of such action and the court finds that the action was clearly  
9 frivolous and totally lacking in merit.

10 *SEC. 4. The provisions of this act shall not apply to past actions*  
11 *of a legislative body that occurred before January 1, 2013.*