

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 194**

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**Introduced by Assembly Member Campos**

January 28, 2013

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An act to amend Section 54960.1 of, and to add Section 54959.5, to, of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 194, as amended, Campos. Open meetings: ~~protections for public criticism: penalties~~ *actions* for violations.

~~(1) The~~

*The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act prohibits a legislative body of a local agency from preventing public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body, as specified: requires every agenda for a regular meeting or notice for a special meeting to provide an opportunity for members of the public to address the legislative body on items being considered by the legislative body, as specified. The act authorizes a district attorney or any interested party to seek a judicial determination that an action taken by a legislative body is null and void if the legislative body violated certain provisions of the act.*

~~This bill would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the act. This bill would authorize a district attorney or any interested person to commence~~

~~an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void, as specified. expand the authorization for a district attorney or interested party to seek a judicial determination that an action taken by a legislative body is null and void if the legislative body violated the requirement that every agenda for a regular meeting or notice for a special meeting provide an opportunity for members of the public to address the legislative body on items being considered, as specified.~~

~~Because this bill would establish a new misdemeanor crime, the 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 no reimbursement is required by this act for a specified reason:~~

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

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

1 ~~SECTION 1. Section 54959.5 is added to the Government~~  
2 ~~Code, to read:~~

3 ~~54959.5. A member of a legislative body who, while acting as~~  
4 ~~the chairperson of that legislative body, prohibits public criticism~~  
5 ~~of the policies, procedures, programs, or services of the agency,~~  
6 ~~or of the acts or omissions of the legislative body, as protected~~  
7 ~~under subdivision (c) of Section 54954.3, shall be guilty of a~~  
8 ~~misdemeanor.~~

9 ~~SEC. 2.~~

10 ~~SECTION 1. Section 54960.1 of the Government Code is~~  
11 ~~amended to read:~~

12 ~~54960.1. (a) The district attorney or any interested person may~~  
13 ~~commence an action by mandamus or injunction for the purpose~~  
14 ~~of obtaining a judicial determination that an action taken by a~~  
15 ~~legislative body of a local agency in violation of Section 54953,~~  
16 ~~54954.2, 54954.3, 54954.5, 54954.6, 54956, or 54956.5 is null~~  
17 ~~and void under this section. Nothing in this chapter shall be~~  
18 ~~construed to prevent a legislative body from curing or correcting~~  
19 ~~an action challenged pursuant to this section.~~

1 (b) Prior to any action being commenced pursuant to subdivision  
2 (a), the district attorney or interested person shall make a demand  
3 of the legislative body to cure or correct the action alleged to have  
4 been taken in violation of Section 54953, 54954.2, 54954.3,  
5 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in  
6 writing and clearly describe the challenged action of the legislative  
7 body and nature of the alleged violation.

8 (c) (1) The written demand shall be made within 90 days from  
9 the date the action was taken unless the action was taken in an  
10 open session but in violation of Section 54954.2, in which case  
11 the written demand shall be made within 30 days from the date  
12 the action was taken.

13 (2) Within 30 days of receipt of the demand, the legislative body  
14 shall cure or correct the challenged action and inform the  
15 demanding party in writing of its actions to cure or correct or  
16 inform the demanding party in writing of its decision not to cure  
17 or correct the challenged action.

18 (3) If the legislative body takes no action within the 30-day  
19 period, the inaction shall be deemed a decision not to cure or  
20 correct the challenged action, and the 15-day period to commence  
21 the action described in subdivision (a) shall commence to run the  
22 day after the 30-day period to cure or correct expires.

23 (4) Within 15 days of receipt of the written notice of the  
24 legislative body's decision to cure or correct, or not to cure or  
25 correct, or within 15 days of the expiration of the 30-day period  
26 to cure or correct, whichever is earlier, the demanding party shall  
27 be required to commence the action pursuant to subdivision (a) or  
28 thereafter be barred from commencing the action.

29 (d) An action taken that is alleged to have been taken in violation  
30 of Section 54953, 54954.2, 54954.3, 54954.5, 54954.6, 54956, or  
31 54956.5 shall not be determined to be null and void if any of the  
32 following conditions exist:

33 (1) The action taken was in substantial compliance with Sections  
34 54953, 54954.2, 54954.3, 54954.5, 54954.6, 54956, and 54956.5.

35 (2) The action taken was in connection with the sale or issuance  
36 of notes, bonds, or other evidences of indebtedness or any contract,  
37 instrument, or agreement thereto.

38 (3) The action taken gave rise to a contractual obligation,  
39 including a contract let by competitive bid other than compensation  
40 for services in the form of salary or fees for professional services,

1 upon which a party has, in good faith and without notice of a  
2 challenge to the validity of the action, detrimentally relied.

3 (4) The action taken was in connection with the collection of  
4 any tax.

5 (5) Any person, city, city and county, county, district, or any  
6 agency or subdivision of the state alleging noncompliance with  
7 subdivision (a) of Section 54954.2, Section 54956, or Section  
8 54956.5, because of any defect, error, irregularity, or omission in  
9 the notice given pursuant to those provisions, had actual notice of  
10 the item of business at least 72 hours prior to the meeting at which  
11 the action was taken, if the meeting was noticed pursuant to Section  
12 54954.2, or 24 hours prior to the meeting at which the action was  
13 taken if the meeting was noticed pursuant to Section 54956, or  
14 prior to the meeting at which the action was taken if the meeting  
15 is held pursuant to Section 54956.5.

16 (e) During any action seeking a judicial determination pursuant  
17 to subdivision (a) if the court determines, pursuant to a showing  
18 by the legislative body that an action alleged to have been taken  
19 in violation of Section 54953, 54954.2, 54954.3, 54954.5, 54954.6,  
20 54956, or 54956.5 has been cured or corrected by a subsequent  
21 action of the legislative body, the action filed pursuant to  
22 subdivision (a) shall be dismissed with prejudice.

23 (f) The fact that a legislative body takes a subsequent action to  
24 cure or correct an action taken pursuant to this section shall not  
25 be construed or admissible as evidence of a violation of this  
26 chapter.

27 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
28 ~~Section 6 of Article XIII B of the California Constitution because~~  
29 ~~the only costs that may be incurred by a local agency or school~~  
30 ~~district will be incurred because this act creates a new crime or~~  
31 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
32 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
33 ~~the Government Code, or changes the definition of a crime within~~  
34 ~~the meaning of Section 6 of Article XIII B of the California~~  
35 ~~Constitution.~~