

AMENDED IN SENATE JUNE 17, 2014

AMENDED IN ASSEMBLY JANUARY 27, 2014

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 194

Introduced by Assembly Member Campos

January 28, 2013

An act to amend Section ~~54960.1~~ 54954.3 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

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

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 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.~~ *specified, and authorizes the legislative body, to adopt reasonable regulations to ensure that the intent of this provision is carried out. Existing law forbids the legislative body from prohibiting public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.*

~~This bill would 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.~~
expand the above prohibition on the legislative body, to forbid the legislative body, and its presiding officer or staff, from prohibiting, limiting, or otherwise preventing public criticism, as described above, as well as certain other designated activities related to public comment.

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 54954.3 of the Government Code is
 2 amended to read:
 3 54954.3. (a) Every agenda for regular meetings shall provide
 4 an opportunity for members of the public to directly address the
 5 legislative body on any item of interest to the public, before or
 6 during the legislative body’s consideration of the item, that is
 7 within the subject matter jurisdiction of the legislative body,
 8 provided that no action shall be taken on any item not appearing
 9 on the agenda unless the action is otherwise authorized by
 10 subdivision (b) of Section 54954.2. However, the agenda need not
 11 provide an opportunity for members of the public to address the
 12 legislative body on any item that has already been considered by
 13 a committee, composed exclusively of members of the legislative
 14 body, at a public meeting wherein all interested members of the
 15 public were afforded the opportunity to address the committee on
 16 the item, before or during the committee’s consideration of the
 17 item, unless the item has been substantially changed since the
 18 committee heard the item, as determined by the legislative body.
 19 Every notice for a special meeting shall provide an opportunity
 20 for members of the public to directly address the legislative body
 21 concerning any item that has been described in the notice for the
 22 meeting before or during consideration of that item.
 23 (b) The legislative body of a local agency may adopt reasonable
 24 regulations to ensure that the intent of subdivision (a) is carried
 25 out, including, but not limited to, regulations limiting the total

1 amount of time allocated for public testimony on particular issues
2 and for each individual speaker.

3 (c) ~~The~~(1) *Subject to subdivision (b), the legislative body of a*
4 *local agency, or its presiding officer or staff, shall not prohibit*
5 *public prohibit, limit, or otherwise prevent any of the following:*

6 (A) *Public criticism of the policies, procedures, programs, or*
7 *services of the agency, or of the acts or omissions of the legislative*
8 *body. Nothing in this subdivision shall confer any privilege or*
9 *protection for expression beyond that otherwise provided by law.*

10 (B) *Comment by a member of the public on an item after the*
11 *introductory presentation has been made and before the body takes*
12 *action.*

13 (C) *Comment by a member of the public during presentation of*
14 *the item who has failed to provide notice of his or her desire to*
15 *comment at the beginning of the meeting.*

16 (D) *Comment by a member of the public based on his or her*
17 *viewpoint.*

18 (E) *A member of the public from using his or her allotted time*
19 *for comment by interrupting, questioning, or otherwise disrupting*
20 *the individual.*

21 (2) *This subdivision shall not be construed to confer any*
22 *privilege or protection for expression beyond that otherwise*
23 *provided by law.*

24 ~~SECTION 1. Section 54960.1 of the Government Code is~~
25 ~~amended to read:~~

26 ~~54960.1. (a) The district attorney or any interested person may~~
27 ~~commence an action by mandamus or injunction for the purpose~~
28 ~~of obtaining a judicial determination that an action taken by a~~
29 ~~legislative body of a local agency in violation of Section 54953,~~
30 ~~54954.2, 54954.3, 54954.5, 54954.6, 54956, or 54956.5 is null~~
31 ~~and void under this section. Nothing in this chapter shall be~~
32 ~~construed to prevent a legislative body from curing or correcting~~
33 ~~an action challenged pursuant to this section.~~

34 ~~(b) Prior to any action being commenced pursuant to subdivision~~
35 ~~(a), the district attorney or interested person shall make a demand~~
36 ~~of the legislative body to cure or correct the action alleged to have~~
37 ~~been taken in violation of Section 54953, 54954.2, 54954.3,~~
38 ~~54954.5, 54954.6, 54956, or 54956.5. The demand shall be in~~
39 ~~writing and clearly describe the challenged action of the legislative~~
40 ~~body and nature of the alleged violation.~~

1 ~~(e) (1) The written demand shall be made within 90 days from~~
2 ~~the date the action was taken unless the action was taken in an~~
3 ~~open session but in violation of Section 54954.2, in which case~~
4 ~~the written demand shall be made within 30 days from the date~~
5 ~~the action was taken.~~

6 ~~(2) Within 30 days of receipt of the demand, the legislative body~~
7 ~~shall cure or correct the challenged action and inform the~~
8 ~~demanding party in writing of its actions to cure or correct or~~
9 ~~inform the demanding party in writing of its decision not to cure~~
10 ~~or correct the challenged action.~~

11 ~~(3) If the legislative body takes no action within the 30-day~~
12 ~~period, the inaction shall be deemed a decision not to cure or~~
13 ~~correct the challenged action, and the 15-day period to commence~~
14 ~~the action described in subdivision (a) shall commence to run the~~
15 ~~day after the 30-day period to cure or correct expires.~~

16 ~~(4) Within 15 days of receipt of the written notice of the~~
17 ~~legislative body’s decision to cure or correct, or not to cure or~~
18 ~~correct, or within 15 days of the expiration of the 30-day period~~
19 ~~to cure or correct, whichever is earlier, the demanding party shall~~
20 ~~be required to commence the action pursuant to subdivision (a) or~~
21 ~~thereafter be barred from commencing the action.~~

22 ~~(d) (1) An action taken that is alleged to have been taken in~~
23 ~~violation of Section 54953, 54954.2, 54954.3, 54954.5, 54954.6,~~
24 ~~54956, or 54956.5 shall not be determined to be null and void if~~
25 ~~any of the following conditions exist:~~

26 ~~(A) The action taken was in substantial compliance with~~
27 ~~Sections 54953, 54954.2, 54954.3, 54954.5, 54954.6, 54956, and~~
28 ~~54956.5.~~

29 ~~(B) The action taken was in connection with the sale or issuance~~
30 ~~of notes, bonds, or other evidences of indebtedness or any contract,~~
31 ~~instrument, or agreement thereto.~~

32 ~~(C) The action taken gave rise to a contractual obligation,~~
33 ~~including a contract let by competitive bid other than compensation~~
34 ~~for services in the form of salary or fees for professional services,~~
35 ~~upon which a party has, in good faith and without notice of a~~
36 ~~challenge to the validity of the action, detrimentally relied.~~

37 ~~(D) The action taken was in connection with the collection of~~
38 ~~any tax.~~

39 ~~(E) Any person, city, city and county, county, district, or any~~
40 ~~agency or subdivision of the state alleging noncompliance with~~

1 ~~subdivision (a) of Section 54954.2, Section 54956, or Section~~
2 ~~54956.5, because of any defect, error, irregularity, or omission in~~
3 ~~the notice given pursuant to those provisions, had actual notice of~~
4 ~~the item of business at least 72 hours prior to the meeting at which~~
5 ~~the action was taken, if the meeting was noticed pursuant to Section~~
6 ~~54954.2, or 24 hours prior to the meeting at which the action was~~
7 ~~taken if the meeting was noticed pursuant to Section 54956, or~~
8 ~~prior to the meeting at which the action was taken if the meeting~~
9 ~~is held pursuant to Section 54956.5.~~

10 ~~(2) With regard to an action that is alleged to have been taken~~
11 ~~in violation of Section 54954.3, this section shall not apply to any~~
12 ~~agenda item except the agenda item or items acted upon in violation~~
13 ~~of that section.~~

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

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