

**ASSEMBLY BILL**

**No. 792**

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**Introduced by Assembly Member Mullin**

February 21, 2013

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An act to amend Sections 54954.2 and 54956 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 792, as introduced, Mullin. Local government: open meetings.

The Ralph M. Brown Act enables the legislative body of a local agency to call both regular and special meetings. The act requires the legislative body of a local agency to post, at least 72 hours before the meeting, an agenda containing a brief general description of each item of business to be transacted or discussed at a regular meeting, in a location that is freely accessible to members of the public, and to provide a notice containing similar information with respect to a special meeting at least 24 hours prior to the special meeting. The act requires that the agenda or notice be freely accessible to members of the public, and be posted on the local agency's Internet Web site, if the local agency has one.

This bill, if the local agency is unable to post the agenda or notice on its Internet Web site because of software or hardware impairment beyond the local agency's reasonable control, would require the local agency to post the agenda or notice immediately upon resolution of the technological problems. The bill would provide that the delay in posting, or the failure to post, the agenda or notice would not preclude a local agency from conducting the meeting or taking action on items of business, provided that the agency has complied with all other relevant requirements.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 54954.2 of the Government Code is  
2 amended to read:  
3 54954.2. (a) (1) At least 72 hours before a regular meeting,  
4 the legislative body of the local agency, or its designee, shall post  
5 an agenda containing a brief general description of each item of  
6 business to be transacted or discussed at the meeting, including  
7 items to be discussed in closed session. A brief general description  
8 of an item generally need not exceed 20 words. The agenda shall  
9 specify the time and location of the regular meeting and shall be  
10 posted in a location that is freely accessible to members of the  
11 public and on the local agency’s Internet Web site, if the local  
12 agency has one. If requested, the agenda shall be made available  
13 in appropriate alternative formats to persons with a disability, as  
14 required by Section 202 of the Americans with Disabilities Act of  
15 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations  
16 adopted in implementation thereof. The agenda shall include  
17 information regarding how, to whom, and when a request for  
18 disability-related modification or accommodation, including  
19 auxiliary aids or services, may be made by a person with a  
20 disability who requires a modification or accommodation in order  
21 to participate in the public meeting.  
22 (2) No action or discussion shall be undertaken on any item not  
23 appearing on the posted agenda, except that members of a  
24 legislative body or its staff may briefly respond to statements made  
25 or questions posed by persons exercising their public testimony  
26 rights under Section 54954.3. In addition, on their own initiative  
27 or in response to questions posed by the public, a member of a  
28 legislative body or its staff may ask a question for clarification,  
29 make a brief announcement, or make a brief report on his or her

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

7 (b) Notwithstanding subdivision (a), the legislative body may  
8 take action on items of business not appearing on the posted agenda  
9 under any of the conditions stated below. Prior to discussing any  
10 item pursuant to this subdivision, the legislative body shall publicly  
11 identify the item.

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

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

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

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

30 (d) For purposes of subdivision (a), the requirement that the  
31 agenda be posted on the local agency's Internet Web site, if the  
32 local agency has one, shall only apply to a legislative body that  
33 meets either of the following standards:

34 (1) A legislative body as that term is defined by subdivision (a)  
35 of Section 54952.

36 (2) A legislative body as that term is defined by subdivision (b)  
37 of Section 54952, if the members of the legislative body are  
38 compensated for their appearance, and if one or more of the  
39 members of the legislative body are also members of a legislative  
40 body as that term is defined by subdivision (a) of Section 54952.

1     (e) (1) *For purposes of the Internet posting requirements in*  
2 *subdivision (a), if the local agency is unable to post the agenda*  
3 *on the local agency’s Internet Web site because of software or*  
4 *hardware impairment beyond the local agency’s reasonable*  
5 *control, the local agency shall post the agenda immediately upon*  
6 *resolution of the technological problems. These circumstances*  
7 *shall not preclude the legislative body of the local agency from*  
8 *conducting the meeting or taking action on items of business,*  
9 *provided that the local agency has complied with all other*  
10 *requirements of subdivision (a). The legislative body, or its*  
11 *designee, shall announce at the beginning of the meeting the reason*  
12 *for the failure to post, or the delay in posting, the agenda.*

13     (2) *For purposes of this subdivision, “software or hardware*  
14 *impairment beyond the local agency’s reasonable control” means*  
15 *that the local agency is unable to utilize the computer software,*  
16 *hardware, or network services to post the agenda or agendas to*  
17 *the local agency’s Internet Web site due to inoperability of the*  
18 *software or hardware caused by a malicious act, introduction of*  
19 *a malicious program, including, but not limited to, a computer*  
20 *virus, an electrical outage affecting the local agency’s computer*  
21 *network, or unanticipated system or equipment inoperability or*  
22 *failure.*

23     SEC. 2. Section 54956 of the Government Code is amended  
24 to read:

25     54956. (a) A special meeting may be called at any time by the  
26 presiding officer of the legislative body of a local agency, or by a  
27 majority of the members of the legislative body, by delivering  
28 written notice to each member of the legislative body and to each  
29 local newspaper of general circulation and radio or television  
30 station requesting notice in writing and posting a notice on the  
31 local agency’s Internet Web site, if the local agency has one. The  
32 notice shall be delivered personally or by any other means and  
33 shall be received at least 24 hours before the time of the meeting  
34 as specified in the notice. The call and notice shall specify the time  
35 and place of the special meeting and the business to be transacted  
36 or discussed. No other business shall be considered at these  
37 meetings by the legislative body. The written notice may be  
38 dispensed with as to any member who at or prior to the time the  
39 meeting convenes files with the clerk or secretary of the legislative  
40 body a written waiver of notice. The waiver may be given by

1 telegram. The written notice may also be dispensed with as to any  
2 member who is actually present at the meeting at the time it  
3 convenes.

4 The call and notice shall be posted at least 24 hours prior to the  
5 special meeting in a location that is freely accessible to members  
6 of the public.

7 (b) Notwithstanding any other law, a legislative body shall not  
8 call a special meeting regarding the salaries, salary schedules, or  
9 compensation paid in the form of fringe benefits, of a local agency  
10 executive, as defined in subdivision (d) of Section 3511.1.  
11 However, this subdivision does not apply to a local agency calling  
12 a special meeting to discuss the local agency's budget.

13 (c) For purposes of subdivision (a), the requirement that the  
14 agenda notice be posted on the local agency's Internet Web site,  
15 if the local agency has one, shall only apply to a legislative body  
16 that meets either of the following standards:

17 (1) A legislative body as that term is defined by subdivision (a)  
18 of Section 54952.

19 (2) A legislative body as that term is defined by subdivision (b)  
20 of Section 54952, if the members of the legislative body are  
21 compensated for their appearance, and if one or more of the  
22 members of the legislative body are also members of a legislative  
23 body as that term is defined by subdivision (a) of Section 54952.

24 (d) (1) *For purposes of the Internet posting requirements in*  
25 *subdivision (a), if the local agency is unable to post the notice on*  
26 *the local agency's Internet Web site because of software or*  
27 *hardware impairment beyond the local agency's reasonable*  
28 *control, the local agency shall post the notice immediately upon*  
29 *resolution of the technological problems. These circumstances*  
30 *shall not preclude a legislative body of the local agency from*  
31 *conducting the meeting or taking action on items of business,*  
32 *provided that the local agency has complied with all other*  
33 *requirements of subdivision (a). The legislative body, or its*  
34 *designee, shall announce at the beginning of the meeting the reason*  
35 *for the failure to post, or the delay in posting, the notice.*

36 (2) *For purposes of this subdivision, "software or hardware*  
37 *impairment beyond the local agency's reasonable control" means*  
38 *that the local agency is unable to utilize the computer software,*  
39 *hardware, or network services to post the notice or notices to the*  
40 *local agency's Internet Web site due to inoperability of the software*

1 *or hardware caused by a malicious act, introduction of a malicious*  
2 *program, including, but not limited to, a computer virus, an*  
3 *electrical outage affecting the local agency's computer network,*  
4 *or unanticipated system or equipment inoperability or failure.*

5 SEC. 3. The Legislature finds and declares that Sections 1 and  
6 2 of this act, which amend Sections 54954.2 and 54956 of the  
7 Government Code, impose a limitation on the public's right of  
8 access to the meetings of public bodies or the writings of public  
9 officials and agencies within the meaning of Section 3 of Article  
10 I of the California Constitution. Pursuant to that constitutional  
11 provision, the Legislature makes the following findings to  
12 demonstrate the interest protected by this limitation and the need  
13 for protecting that interest:

14 If unavoidable technical malfunctions or malicious acts prevent  
15 local agencies from carrying out the people's business, efficient  
16 governance is impeded. Therefore, the health and safety of the  
17 people of California are enhanced by giving governing bodies the  
18 authority to conduct meetings without complying with Internet  
19 posting requirements when that compliance is unavoidable due to  
20 circumstances beyond the local agency's control.