

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 792

Introduced by Assembly Member Mullin

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 792, as amended, 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~~ *software, hardware, or network services* 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

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

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

14 (1) Upon a determination by a majority vote of the legislative
15 body that an emergency situation exists, as defined in Section
16 54956.5.

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

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

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

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

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

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

1 members of the legislative body are also members of a legislative
2 body as that term is defined by subdivision (a) of Section 54952.

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

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

26 SEC. 2. Section 54956 of the Government Code is amended
27 to read:

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

1 dispensed with as to any member who at or prior to the time the
2 meeting convenes files with the clerk or secretary of the legislative
3 body a written waiver of notice. The waiver may be given by
4 telegram. The written notice may also be dispensed with as to any
5 member who is actually present at the meeting at the time it
6 convenes.

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

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

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

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

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

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

1 (2) For purposes of this subdivision, “software or hardware
2 impairment beyond the local agency’s reasonable control” means
3 that the local agency is unable to utilize the computer software,
4 hardware, or network services to post the notice or notices to the
5 local agency’s Internet Web site due to inoperability of the ~~software~~
6 ~~or hardware~~ *software, hardware, or network services* caused by a
7 malicious act, introduction of a malicious program, including, but
8 not limited to, a computer virus, an electrical outage affecting the
9 local agency’s computer network, or unanticipated system or
10 equipment inoperability or failure.

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

20 If unavoidable technical malfunctions or malicious acts prevent
21 local agencies from carrying out the people’s business, efficient
22 governance is impeded. Therefore, the health and safety of the
23 people of California are enhanced by giving governing bodies the
24 authority to conduct meetings without complying with Internet
25 posting requirements when that compliance is unavoidable due to
26 circumstances beyond the local agency’s control.