

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 792**

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**Introduced by Assembly Member Mullin**  
*(Coauthor: Assembly Member Alejo)*

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 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, hardware, or network services impairment beyond the local agency's reasonable control, would ~~require the local agency to post~~ *specify that the local agency may conduct the meeting as long as the legislative body meets specified requirements,*

*including, among other things, posting the agenda or notice immediately upon resolution of the technological problems, as specified.* 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

1 legislative body or its staff may briefly respond to statements made  
2 or questions posed by persons exercising their public testimony  
3 rights under Section 54954.3. In addition, on their own initiative  
4 or in response to questions posed by the public, a member of a  
5 legislative body or its staff may ask a question for clarification,  
6 make a brief announcement, or make a brief report on his or her  
7 own activities. Furthermore, a member of a legislative body, or  
8 the body itself, subject to rules or procedures of the legislative  
9 body, may provide a reference to staff or other resources for factual  
10 information, request staff to report back to the body at a subsequent  
11 meeting concerning any matter, or take action to direct staff to  
12 place a matter of business on a future agenda.

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

18 (1) Upon a determination by a majority vote of the legislative  
19 body that an emergency situation exists, as defined in Section  
20 54956.5.

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

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

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

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

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

3 (2) A legislative body as that term is defined by subdivision (b)  
 4 of Section 54952, if the members of the legislative body are  
 5 compensated for their appearance, and if one or more of the  
 6 members of the legislative body are also members of a legislative  
 7 body as that term is defined by subdivision (a) of Section 54952.

8 (e) (1) For purposes of the Internet posting requirements in  
 9 subdivision (a), if the local agency is unable to post the agenda on  
 10 the local agency’s Internet Web site because of software or  
 11 hardware impairment beyond the local agency’s reasonable control,  
 12 ~~the local agency shall post the agenda immediately upon resolution~~  
 13 ~~of the technological problems. These~~ *these* circumstances shall  
 14 not preclude the legislative body of the local agency from  
 15 conducting the meeting or taking action on items of business,  
 16 provided that the local agency has complied with all ~~other~~  
 17 ~~requirements~~ *of the following requirements:*

18 (A) *The legislative body adheres to the requirements of*  
 19 *subdivision (a).* ~~The~~

20 (B) *The legislative body makes a reasonable effort to restore*  
 21 *online posting capabilities.*

22 (C) *The legislative body posts the agenda on the Internet Web*  
 23 *site immediately upon resolution of the technological problems.*

24 (D) *The legislative body, or its designee, shall announce at the*  
 25 *beginning of the meeting the reason for the failure to post, or the*  
 26 *delay in posting, the agenda on the local agency’s Internet Web*  
 27 *site.*

28 (E) *The legislative body, or its designee, attests to a written*  
 29 *statement from the local agency describing the reason for the*  
 30 *failure to post or the delay in posting the agenda on the local*  
 31 *agency’s Internet Web site, and the statement is posted on the local*  
 32 *agency’s Internet Web site without delay.*

33 (2) For purposes of this subdivision, “software or hardware  
 34 impairment beyond the local agency’s reasonable control” means  
 35 that the local agency is unable to utilize the computer software,  
 36 hardware, or network services to post the agenda or agendas to the  
 37 local agency’s Internet Web site due to inoperability of the  
 38 software, hardware, or network services caused by a malicious  
 39 act, introduction of a malicious program, including, but not limited  
 40 to, a computer virus, an electrical outage affecting the local

1 agency's computer network, or unanticipated system or equipment  
2 inoperability or failure.

3 SEC. 2. Section 54956 of the Government Code is amended  
4 to read:

5 54956. (a) A special meeting may be called at any time by the  
6 presiding officer of the legislative body of a local agency, or by a  
7 majority of the members of the legislative body, by delivering  
8 written notice to each member of the legislative body and to each  
9 local newspaper of general circulation and radio or television  
10 station requesting notice in writing and posting a notice on the  
11 local agency's Internet Web site, if the local agency has one. The  
12 notice shall be delivered personally or by any other means and  
13 shall be received at least 24 hours before the time of the meeting  
14 as specified in the notice. The call and notice shall specify the time  
15 and place of the special meeting and the business to be transacted  
16 or discussed. No other business shall be considered at these  
17 meetings by the legislative body. The written notice may be  
18 dispensed with as to any member who at or prior to the time the  
19 meeting convenes files with the clerk or secretary of the legislative  
20 body a written waiver of notice. The waiver may be given by  
21 telegram. The written notice may also be dispensed with as to any  
22 member who is actually present at the meeting at the time it  
23 convenes.

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

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

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

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

39 (2) A legislative body as that term is defined by subdivision (b)  
40 of Section 54952, if the members of the legislative body are

1 compensated for their appearance, and if one or more of the  
 2 members of the legislative body are also members of a legislative  
 3 body as that term is defined by subdivision (a) of Section 54952.

4 (d) (1) For purposes of the Internet posting requirements in  
 5 subdivision (a), if the local agency is unable to post the notice on  
 6 the local agency’s Internet Web site because of software or  
 7 hardware impairment beyond the local agency’s reasonable control,  
 8 ~~the local agency shall post the notice immediately upon resolution~~  
 9 ~~of the technological problems. These~~ *these* circumstances shall  
 10 not preclude a legislative body of the local agency from conducting  
 11 the meeting or taking action on items of business, provided that  
 12 the local agency has complied with all ~~other requirements~~ of the  
 13 *following requirements:*

14 (A) *The legislative body adheres to the requirements of*  
 15 *subdivision (a).* ~~The~~

16 (B) *The legislative body makes a reasonable effort to restore*  
 17 *online posting capabilities.*

18 (C) *The legislative body posts the notice on the Internet Web*  
 19 *site immediately upon resolution of the technological problems.*

20 (D) *The legislative body, or its designee, shall announce at the*  
 21 *beginning of the meeting the reason for the failure to post, or the*  
 22 *delay in posting, the notice on the local agency’s Internet Web*  
 23 *site.*

24 (E) *The legislative body, or its designee, attests to a written*  
 25 *statement from the local agency describing the reason for the*  
 26 *failure to post or the delay in posting the notice on the local*  
 27 *agency’s Internet Web site, and the statement is posted on the local*  
 28 *agency’s Internet Web site without delay.*

29 (2) For purposes of this subdivision, “software or hardware  
 30 impairment beyond the local agency’s reasonable control” means  
 31 that the local agency is unable to utilize the computer software,  
 32 hardware, or network services to post the notice or notices to the  
 33 local agency’s Internet Web site due to inoperability of the  
 34 software, hardware, or network services caused by a malicious  
 35 act, introduction of a malicious program, including, but not limited  
 36 to, a computer virus, an electrical outage affecting the local  
 37 agency’s computer network, or unanticipated system or equipment  
 38 inoperability or failure.

39 SEC. 3. The Legislature finds and declares that Sections 1 and  
 40 2 of this act, which amend Sections 54954.2 and 54956 of the

1 Government Code, impose a limitation on the public's right of  
2 access to the meetings of public bodies or the writings of public  
3 officials and agencies within the meaning of Section 3 of Article  
4 I of the California Constitution. Pursuant to that constitutional  
5 provision, the Legislature makes the following findings to  
6 demonstrate the interest protected by this limitation and the need  
7 for protecting that interest:

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

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