

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 792

Introduced by Assembly Member Mullin
(Principal coauthor: Senator Hill)
(Coauthor: Assembly Member Alejo)

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 792, as amended, Mullin. ~~Local government: open meetings.~~
Utility user tax: exemption: distributed generation systems.

Existing law generally provides that the legislative body of any city and any charter city may make and enforce all ordinances and regulations with respect to municipal affairs, as provided, including, but not limited to, a utility user tax on the consumption of gas and electricity. Existing law provides that the board of supervisors of any county may levy a utility user tax on the consumption of, among other things, gas and electricity in the unincorporated area of the county.

This bill would exempt from any utility user tax imposed by a local jurisdiction, as defined, the consumption of electricity generated by a renewable distributed generation system that is installed for the exclusive use of a single customer.

~~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 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 7284.5 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 7284.5. (a) For the purposes of this section, “local
- 4 jurisdiction” means any city, county, city and county, including
- 5 any chartered city, county, or city and county, district, or public
- 6 or municipal corporation.

1 (b) *There is exempt from any utility user tax on the consumption*
2 *of electricity, imposed by any local jurisdiction, a customer's*
3 *consumption of electricity generated by a renewable distributed*
4 *generation system that is installed for the exclusive use of a single*
5 *customer.*

6 *SEC. 2. The Legislature finds and declares that exempting the*
7 *consumption of electricity generated by a renewable distributed*
8 *generation system that is installed for the exclusive use of a single*
9 *customer from local utility user taxes will ensure statewide*
10 *uniformity and fairness in the overall imposition of the utility user*
11 *tax. Therefore, exempting from utility user taxes the consumption*
12 *of electricity generated by a renewable distributed generation*
13 *system that is installed for the exclusive use of a single customer*
14 *is a matter of statewide concern, and not a municipal affair, as*
15 *that term is used in Section 5 of Article XI of the California*
16 *Constitution.*

17 ~~SECTION 1. Section 54954.2 of the Government Code is~~
18 ~~amended to read:~~

19 ~~54954.2. (a) (1) At least 72 hours before a regular meeting,~~
20 ~~the legislative body of the local agency, or its designee, shall post~~
21 ~~an agenda containing a brief general description of each item of~~
22 ~~business to be transacted or discussed at the meeting, including~~
23 ~~items to be discussed in closed session. A brief general description~~
24 ~~of an item generally need not exceed 20 words. The agenda shall~~
25 ~~specify the time and location of the regular meeting and shall be~~
26 ~~posted in a location that is freely accessible to members of the~~
27 ~~public and on the local agency's Internet Web site, if the local~~
28 ~~agency has one. If requested, the agenda shall be made available~~
29 ~~in appropriate alternative formats to persons with a disability, as~~
30 ~~required by Section 202 of the Americans with Disabilities Act of~~
31 ~~1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations~~
32 ~~adopted in implementation thereof. The agenda shall include~~
33 ~~information regarding how, to whom, and when a request for~~
34 ~~disability-related modification or accommodation, including~~
35 ~~auxiliary aids or services, may be made by a person with a~~
36 ~~disability who requires a modification or accommodation in order~~
37 ~~to participate in the public meeting.~~

38 ~~(2) No action or discussion shall be undertaken on any item not~~
39 ~~appearing on the posted agenda, except that members of a~~
40 ~~legislative body or its staff may briefly respond to statements made~~

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

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

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

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

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

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

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

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

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

6 ~~(e) (1) For purposes of the Internet posting requirements in~~
7 ~~subdivision (a), if the local agency is unable to post the agenda on~~
8 ~~the local agency's Internet Web site because of software or~~
9 ~~hardware impairment beyond the local agency's reasonable control,~~
10 ~~these circumstances shall not preclude the legislative body of the~~
11 ~~local agency from conducting the meeting or taking action on items~~
12 ~~of business, provided that the local agency has complied with all~~
13 ~~of the following requirements:~~

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

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

18 ~~(C) The legislative body posts the agenda 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 agenda 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 failure~~
26 ~~to post or the delay in posting the agenda on the local agency's~~
27 ~~Internet Web site, and the statement is posted on the local agency's~~
28 ~~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 agenda or agendas 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. 2. Section 54956 of the Government Code is amended~~
40 ~~to read:~~

1 ~~54956. (a) A special meeting may be called at any time by the~~
2 ~~presiding officer of the legislative body of a local agency, or by a~~
3 ~~majority of the members of the legislative body, by delivering~~
4 ~~written notice to each member of the legislative body and to each~~
5 ~~local newspaper of general circulation and radio or television~~
6 ~~station requesting notice in writing and posting a notice on the~~
7 ~~local agency's Internet Web site, if the local agency has one. The~~
8 ~~notice shall be delivered personally or by any other means and~~
9 ~~shall be received at least 24 hours before the time of the meeting~~
10 ~~as specified in the notice. The call and notice shall specify the time~~
11 ~~and place of the special meeting and the business to be transacted~~
12 ~~or discussed. No other business shall be considered at these~~
13 ~~meetings by the legislative body. The written notice may be~~
14 ~~dispensed with as to any member who at or prior to the time the~~
15 ~~meeting convenes files with the clerk or secretary of the legislative~~
16 ~~body a written waiver of notice. The waiver may be given by~~
17 ~~telegram. The written notice may also be dispensed with as to any~~
18 ~~member who is actually present at the meeting at the time it~~
19 ~~convenes.~~

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

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

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

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

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

1 ~~(d) (1) For purposes of the Internet posting requirements in~~
2 ~~subdivision (a), if the local agency is unable to post the notice on~~
3 ~~the local agency's Internet Web site because of software or~~
4 ~~hardware impairment beyond the local agency's reasonable control,~~
5 ~~these circumstances shall not preclude a legislative body of the~~
6 ~~local agency from conducting the meeting or taking action on items~~
7 ~~of business, provided that the local agency has complied with all~~
8 ~~of the following requirements:~~

9 ~~(A) The legislative body adheres to the requirements of~~
10 ~~subdivision (a).~~

11 ~~(B) The legislative body makes a reasonable effort to restore~~
12 ~~online posting capabilities.~~

13 ~~(C) The legislative body posts the notice on the Internet Web~~
14 ~~site immediately upon resolution of the technological problems.~~

15 ~~(D) The legislative body, or its designee, shall announce at the~~
16 ~~beginning of the meeting the reason for the failure to post, or the~~
17 ~~delay in posting, the notice on the local agency's Internet Web~~
18 ~~site.~~

19 ~~(E) The legislative body, or its designee, attests to a written~~
20 ~~statement from the local agency describing the reason for the failure~~
21 ~~to post or the delay in posting the notice on the local agency's~~
22 ~~Internet Web site, and the statement is posted on the local agency's~~
23 ~~Internet Web site without delay.~~

24 ~~(2) For purposes of this subdivision, "software or hardware~~
25 ~~impairment beyond the local agency's reasonable control" means~~
26 ~~that the local agency is unable to utilize the computer software,~~
27 ~~hardware, or network services to post the notice or notices to the~~
28 ~~local agency's Internet Web site due to inoperability of the~~
29 ~~software, hardware, or network services caused by a malicious~~
30 ~~act, introduction of a malicious program, including, but not limited~~
31 ~~to, a computer virus, an electrical outage affecting the local~~
32 ~~agency's computer network, or unanticipated system or equipment~~
33 ~~inoperability or failure.~~

34 ~~SEC. 3. The Legislature finds and declares that Sections 1 and~~
35 ~~2 of this act, which amend Sections 54954.2 and 54956 of the~~
36 ~~Government Code, impose a limitation on the public's right of~~
37 ~~access to the meetings of public bodies or the writings of public~~
38 ~~officials and agencies within the meaning of Section 3 of Article~~
39 ~~I of the California Constitution. Pursuant to that constitutional~~
40 ~~provision, the Legislature makes the following findings to~~

1 demonstrate the interest protected by this limitation and the need
2 for protecting that interest:
3 If unavoidable technical malfunctions or malicious acts prevent
4 local agencies from carrying out the people's business, efficient
5 governance is impeded. Therefore, the health and safety of the
6 people of California are enhanced by giving governing bodies the
7 authority to conduct meetings without complying with Internet
8 posting requirements when that compliance is unavoidable due to
9 circumstances beyond the local agency's control.

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