

AMENDED IN SENATE AUGUST 24, 2015

AMENDED IN SENATE JUNE 24, 2015

AMENDED IN ASSEMBLY APRIL 27, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 36**

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**Introduced by Assembly Member Campos**

December 1, 2014

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An act to amend Section 54141 of, and to add ~~Section~~ *Sections* 54145 and 54956.97 to, the Government Code, relating to local government.

### LEGISLATIVE COUNSEL'S DIGEST

AB 36, as amended, Campos. Local government: federal surplus property.

Existing law, the Federal Surplus Property Acquisition Law of 1945, authorizes a local agency, as defined, to acquire surplus federal property without regard to any law which requires posting of notices or advertising for bids, inviting or receiving bids, delivery of purchases before payment, or prevents the local agency from bidding on federal surplus property. Existing law, the Ralph M. Brown Act, requires that all meetings of a legislative body, as defined, of a local agency be open and public and all persons permitted to attend unless a closed session is authorized. Existing federal law authorizes the Department of Defense to transfer surplus personal property, including arms and ammunition, to federal or state agencies for use in law enforcement activities, subject to specified conditions, at no cost to the acquiring agency.

This bill would prohibit a local ~~agency~~ *agency, other than a local law enforcement agency that is directly under the control of an elected officer*, from applying to receive ~~high-visibility~~ *tactical* surplus military

equipment, as defined, pursuant to the above-described federal law unless the legislative body of the local agency approves the acquisition by ordinance or resolution at a regular public meeting. *The bill would authorize the legislative body to consider the ordinance or resolution during a closed session of a regular meeting upon determination of 2/3 of the members of the legislative body, as specified.* The bill would require the ordinance or resolution to include a list of the types of ~~high-visibility tactical surplus military equipment and the period of time for which the authorization is valid, not to exceed one year.~~ *equipment, or, if the legislative body considers the ordinance or resolution during a closed session, a statement that the local agency is authorized to acquire tactical surplus military equipment, and would require the legislative body to review the ordinance at least annually, as specified.* The bill would prohibit a local agency from applying to receive specified types of equipment. The bill would also declare that this is a matter of statewide concern.

The bill would also require the state agency that has signed a current memorandum of agreement with the Defense Logistics Agency for the purpose of administering a state program for acquiring surplus military equipment to develop a list of ~~high-visibility tactical~~ surplus military equipment by January 31, 2016, as specified, and post the list on its Internet Web site.

By adding to the duties of local government officials, this bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 54141 of the Government Code is amended to read:

54141. As used in this article:

(a) “Local agency” means county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(b) “United States” includes any department, board, or agency thereof.

(c) “State” includes any department or agency thereof.

(d) “Legislative body” means a legislative body as defined in Section 54952.

(e) (1) “Surplus military equipment” means equipment made available to a local agency pursuant to Section 2576a of Title 10 of the United States Code.

(2) ~~“High-visibility”~~ “Tactical surplus military equipment” means surplus military equipment identified on the list developed and maintained by the state coordinator pursuant to subdivision (e) of Section 54145.

(f) “State coordinator” means the state agency that has signed a current memorandum of agreement with the federal Defense Logistics Agency for the purpose of administering a state program for acquiring surplus military equipment.

SEC. 2. Section 54145 is added to the Government Code, to read:

54145. (a) A ~~local agency~~ agency, *other than a local law enforcement agency that is directly under the control of an elected officer*, shall not apply to receive ~~high-visibility tactical~~ surplus military equipment unless the legislative body of the local agency approves the acquisition of ~~high-visibility tactical~~ surplus military equipment by ordinance or resolution, pursuant to subdivision (b), at a regular meeting held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950)).

(b) The legislative body of a local agency may adopt an ordinance or resolution authorizing the local law enforcement agency in that jurisdiction to apply for ~~high-visibility tactical~~ surplus military equipment. The ordinance or resolution shall include ~~comply with both of the following:~~ *following requirements:*

1 (1) ~~A~~ *The ordinance shall include a list of the types of*  
2 ~~high-visibility tactical surplus military equipment that the~~  
3 *legislative body authorizes the local law enforcement agency to*  
4 ~~acquire. acquire, unless the legislative body considers the~~  
5 *ordinance or resolution at a closed session pursuant to Section*  
6 *54956.97, in which case the ordinance or resolution shall instead*  
7 *state that the local law enforcement agency is authorized to acquire*  
8 *tactical surplus military equipment.*

9 (2) ~~The period of time for which the authorization is valid, not~~  
10 ~~to exceed one year.~~

11 (2) *The legislative body shall review the ordinance or resolution*  
12 *at least annually. During the review, the legislative body shall vote*  
13 *on whether to renew the ordinance or resolution authorizing the*  
14 *acquisition of tactical surplus military equipment. If the legislative*  
15 *body does not approve a renewal pursuant to this paragraph, the*  
16 *authorization shall expire.*

17 (c) This section shall not be construed to require the legislative  
18 body of a local agency to approve the acquisition of each individual  
19 item of ~~high-visibility tactical surplus military equipment~~, unless  
20 specified by the ordinance or resolution adopted pursuant to  
21 subdivision (b).

22 (d) The Legislature finds and declares that this section  
23 constitutes a matter of statewide concern, and shall apply to charter  
24 cities and charter counties. The provisions of this section shall  
25 supersede any inconsistent provisions in the charter of any city,  
26 county, or city and county.

27 (e) (1) The state coordinator, by January 31, 2016, shall develop  
28 a list of ~~high-visibility tactical surplus military equipment~~. The  
29 list shall identify surplus military equipment that ~~poses a potential~~  
30 ~~negative impact on the community in which it is deployed.~~  
31 *warrants public input pursuant to this article.* The state coordinator  
32 shall post this list on its Internet Web site and update it at least  
33 annually.

34 (2) In developing the list required by this subdivision, the state  
35 coordinator shall consider the current list of controlled property  
36 designated by the federal Defense Logistics Agency, as well as  
37 any other state or federal regulations or policies governing the use  
38 of surplus military equipment.

39 (3) The list required by this subdivision shall include, at  
40 minimum, the following types of equipment:

1     (A) The following types of weapons:

2     (i) Firearms and ammunition of .50 caliber or greater.

3     (ii) Specialized firearms and ammunition of less than .50 caliber.

4     This subparagraph shall not apply to service-issued firearms and  
5     ammunition.

6     (iii) Explosives and pyrotechnics, including flash-bang grenades  
7     and grenade launchers.

8     (iv) Bayonets.

9     (B) The following types of vehicles:

10    (i) Armored vehicles, whether wheeled or utilizing a track  
11    system, including mine-resistant ambush protected vehicles and  
12    armored personnel carriers.

13    (ii) Tactical vehicles, including vehicles purpose-built to operate  
14    on and off road in support of military operations.

15    (iii) Command and control vehicles, including wheeled vehicles  
16    either purpose-built or modified to facilitate the operational control  
17    and direction of public safety units responding to an incident.

18    (iv) Manned fixed-wing or rotary-wing aircraft.

19    (v) Unmanned aerial vehicles.

20    (vi) Any weaponized vehicles, vessels, or aircraft.

21    (C) The following additional types of equipment:

22    (i) Camouflage uniforms.

23    (ii) Riot equipment, including batons, helmets, and shields. This  
24    subparagraph shall not apply to service-issued telescopic or  
25    fixed-length straight batons.

26    (iii) Breaching apparatus, including battering rams or similar  
27    entry devices.

28    (A) Weapons.

29    (B) Armored vehicles.

30    (C) Watercraft.

31    (D) Aircraft.

32    (E) Other tactical equipment as determined by the state  
33    coordinator.

34    (f) Notwithstanding any other law, a local agency shall not  
35    apply to receive the following types of surplus military equipment:

36    (1) Tracked armored vehicles.

37    (2) Weaponized vehicles.

38    (3) Firearms of .50 caliber or greater.

39    (4) Ammunition of .50 caliber or greater.

40    (5) Grenade launchers.

1     (6) *Bayonets.*

2     (7) *Camouflage uniforms.*

3     SEC. 3. *Section 54956.97 is added to the Government Code,*  
4 *to read:*

5     54956.97. (a) *A legislative body of a local agency may hold*  
6 *a closed session for the purpose of considering an ordinance or*  
7 *resolution authorizing the acquisition of tactical surplus military*  
8 *equipment, as that term is defined in Section 54141, pursuant to*  
9 *Section 54145 if the following conditions are met:*

10     (1) *The ordinance or resolution is listed on the agenda of a*  
11 *regular meeting pursuant to Section 54954.2.*

12     (2) *A member of the legislative body, during an open session*  
13 *of the regular meeting, makes a motion to consider the ordinance*  
14 *or resolution at a closed session.*

15     (3) *Two-thirds of the members of the legislative body concur in*  
16 *the motion.*

17     (4) *The closed session complies with the applicable requirements*  
18 *of this chapter.*

19     (b) *The types of tactical surplus military equipment that the*  
20 *legislative body authorizes at a closed session held pursuant to*  
21 *this section shall not be disclosed during an open session.*

22     ~~SEC. 3.~~

23     SEC. 4. The Legislature finds and declares that Section 2 of  
24 this act, which adds Section 54145 to the Government Code,  
25 furthers, within the meaning of paragraph (7) of subdivision (b)  
26 of Section 3 of Article I of the California Constitution, the purposes  
27 of that constitutional section as it relates to the right of public  
28 access to the meetings of local public bodies or the writings of  
29 local public officials and local agencies. Pursuant to paragraph (7)  
30 of subdivision (b) of Section 3 of Article I of the California  
31 Constitution, the Legislature makes the following findings:

32     Requiring local agencies to hold public meetings prior to the  
33 acquisition of federal surplus military equipment further exposes  
34 that activity to public scrutiny and enhances public access to  
35 information concerning the conduct of the people's business.

36     ~~SEC. 4.~~

37     SEC. 5. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district under this act would result from a legislative mandate that

1 is within the scope of paragraph (7) of subdivision (b) of Section  
2 3 of Article I of the California Constitution.

3 ~~SEC. 5. No reimbursement is required by this act pursuant to~~  
4 ~~Section 6 of Article XIII B of the California Constitution because~~  
5 ~~the only costs that may be incurred by a local agency or school~~  
6 ~~district will be incurred because this act creates a new crime or~~  
7 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
8 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
9 ~~the Government Code, or changes the definition of a crime within~~  
10 ~~the meaning of Section 6 of Article XIII B of the California~~  
11 ~~Constitution.~~