

AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2801**

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**Introduced by Assembly Member Gallagher**

February 19, 2016

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An act to amend Section 869 of the Code of Civil Procedure, 53755 of the Government Code, relating to civil procedure, local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2801, as amended, Gallagher. Civil procedure: validation actions. Local government: fees and charges: written protest.

Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution.

Existing statutory law provides notice, protest, and hearing procedures for the levying of new or increased fees or charges by local government agencies pursuant to Article XIII D of the California Constitution. Under existing statutory law, one written protest per parcel, filed by an owner or tenant of the parcel, is counted in calculating a majority protest to a proposed new or increased fee or charge.

This bill would additionally require the local agency to keep the written protests securely stored and sealed until the public hearing. The bill would prohibit an agency from requiring a written protest to include any identification of the property other than the street address.

*unless the property does not have a street address and from requiring a written protest to be submitted on a form provided by the agency. The bill would require the agency to maintain the written protests for a minimum of 2 years and would provide that the written protests are a public record subject to inspection, as specified. By increasing the duties of local officials, this bill would impose a state-mandated local program.*

*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.*

*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.*

~~Existing law authorizes a public agency to bring an action in court to determine the validity of certain matters within 60 days of the existence of the matter, as specified. If the public agency does not bring this action, existing law authorizes any interested person to bring the same action in court to determine the validity within 60 days of the existence of the matter, as specified. Existing law prohibits a contest of any thing or matter under these provisions from being made other than within the specified time and manner, except by the public agency or its officer or agent.~~

~~This bill would delete the prohibition on a contest of any thing or matter under these provisions being made other than within the specified time and manner, except by the public agency or its officer or agent.~~

Vote: majority. Appropriation: no. Fiscal committee: no-yes.  
State-mandated local program: no-yes.

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

1     SECTION 1. Section 53755 of the Government Code is  
2 amended to read:

3       53755. (a) (1) The notice required by paragraph (1) of  
4 subdivision (a) of Section 6 of Article XIIIID of the California  
5 Constitution of a proposed increase of an existing fee or charge  
6 for a property-related service being provided to a parcel may be  
7 given by including it in the agency's regular billing statement for  
8 the fee or charge or by any other mailing by the agency to the  
9 address to which the agency customarily mails the billing statement  
10 for the fee or charge.

11     (2) The notice required by paragraph (1) of subdivision (a) of  
12 Section 6 of Article XIIIID of the California Constitution of a  
13 proposed new fee or charge may be given in the manner authorized  
14 for notice of an increase of a fee or charge if the agency is currently  
15 providing an existing property-related service to the address.

16     (3) If the agency desires to preserve any authority it may have  
17 to record or enforce a lien on the parcel to which service is  
18 provided, the agency shall also mail notice to the recordowner's  
19 address shown on the last equalized assessment roll if that address  
20 is different than the billing or service address.

21     (b) (1) One written protest per parcel, filed by an owner or  
22 tenant of the parcel, shall be counted in calculating a majority  
23 protest to a proposed new or increased fee or charge subject to the  
24 requirements of Section 6 of Article XIIIID of the California  
25 Constitution.

26     (2) *An agency shall not require a written protest to include any  
27 identification of the property other than the street address unless  
28 the property does not have a street address.*

29     (3) *An agency shall not require a written protest to be submitted  
30 on a form provided by the agency.*

31     (4) (A) *The agency shall keep any written protest it receives  
32 securely stored and sealed until the public hearing at which time  
33 it may be opened and counted pursuant to paragraph (1).*

34     (B) *The agency shall maintain all written protests for a minimum  
35 of two years.*

36     (C) (i) *A written protest is a public record within the meaning  
37 of subdivision (e) of Section 6252 and shall be subject to the*

1 provisions of the California Public Records Act (Chapter 3.5  
2 (commencing with Section 6250) of Division 7 of Title 1).

3 (ii) Notwithstanding subparagraph (i), written protests shall  
4 remain confidential and shall not be disclosed pursuant to any  
5 state law, including, but not limited to, the California Public  
6 Records Act (Chapter 3.5 (commencing with Section 6250) of  
7 Division 7 of Title 1) until they have been opened for counting at  
8 a public hearing.

9 (c) Any agency that bills, collects, and remits a fee or charge  
10 on behalf of another agency may provide the notice required by  
11 Section 6 of Article XIIIID of the California Constitution on behalf  
12 of the other agency.

13 SEC. 2. *The Legislature finds and declares that Section 1 of  
14 this act, which amends Section 53755 of the Government Code,  
15 imposes a limitation on the public's right of access to the meetings  
16 of public bodies or the writings of public officials and agencies  
17 within the meaning of Section 3 of Article I of the California  
18 Constitution. Pursuant to that constitutional provision, the  
19 Legislature makes the following findings to demonstrate the interest  
20 protected by this limitation and the need for protecting that  
21 interest:*

22 *In order to avoid undue influence in the decision on whether to  
23 protest a proposed levy of a new or increased fee or charge, and  
24 to ensure that written protests remain sealed from all parties,  
25 including the agency receiving the protest, until counted at a public  
26 hearing, a limitation on access by all parties to these written  
27 protests is required.*

28 SEC. 3. *The Legislature finds and declares that Section 1 of  
29 this act, which amends Section 53755 of the Government Code,  
30 furthers, within the meaning of paragraph (7) of subdivision (b)  
31 of Section 3 of Article I of the California Constitution, the purposes  
32 of that constitutional section as it relates to the right of public  
33 access to the meetings of local public bodies or the writings of  
34 local public officials and local agencies. Pursuant to paragraph  
35 (7) of subdivision (b) of Section 3 of Article I of the California  
36 Constitution, the Legislature makes the following findings:*

37 *To increase the transparency of the process for the levy of a new  
38 or increased fee or charge, the maintenance of, and access to, the  
39 records of written protests maintained by local agencies is within  
40 the public interest and therefore furthers the purpose of paragraph*

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

3 SEC. 4. 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 under this act would result from a legislative mandate that  
7 is within the scope of paragraph (7) of subdivision (b) of Section  
8 3 of Article I of the California Constitution.

9 SECTION 1. Section 869 of the Code of Civil Procedure is  
10 amended to read:

11 869. The availability to a public agency, including a local  
12 agency, or to its officers or agents, of the remedy provided by this  
13 chapter, shall not be construed to preclude the use by the public  
14 agency or its officers or agents, of mandamus or any other remedy  
15 to determine the validity of any thing or matter.