

AMENDED IN ASSEMBLY APRIL 26, 2016

AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2801

Introduced by Assembly Member Gallagher

February 19, 2016

An act to amend Section 53755 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2801, as amended, Gallagher. 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: *following the date of the hearing to consider the written protests.* 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.~~

~~*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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 XIII D 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 XIII D 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 XIII D 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)~~

35 (c) The agency shall maintain all written protests for a minimum
36 of two years: *years following the date of the hearing to consider*
37 *written protests.*

1 ~~(C) (i) A written protest is a public record within the meaning~~
2 ~~of subdivision (e) of Section 6252 and shall be subject to the~~
3 ~~provisions of the California Public Records Act (Chapter 3.5~~
4 ~~(commencing with Section 6250) of Division 7 of Title 1).~~

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

11 ~~(e) Any agency that bills, collects, and remits a fee or charge~~
12 ~~on behalf of another agency may provide the notice required by~~
13 ~~Section 6 of Article XIII D of the California Constitution on behalf~~
14 ~~of the other agency.~~

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

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

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

38 ~~To increase the transparency of the process for the levy of a new~~
39 ~~or increased fee or charge, the maintenance of, and access to, the~~
40 ~~records of written protests maintained by local agencies is within~~

1 the public interest and therefore furthers the purpose of paragraph
2 (7) of subdivision (b) of Section 3 of Article I of the California
3 Constitution.

4 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
5 ~~Section 6 of Article XIII B of the California Constitution because~~
6 ~~the only costs that may be incurred by a local agency or school~~
7 ~~district under this act would result from a legislative mandate that~~
8 ~~is within the scope of paragraph (7) of subdivision (b) of Section~~
9 ~~3 of Article I of the California Constitution.~~

10 *SEC. 2. If the Commission on State Mandates determines that*
11 *this act contains costs mandated by the state, reimbursement to*
12 *local agencies and school districts for those costs shall be made*
13 *pursuant to Part 7 (commencing with Section 17500) of Division*
14 *4 of Title 2 of the Government Code.*