

**ASSEMBLY BILL**

**No. 194**

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**Introduced by Assembly Member Dymally**

January 27, 2005

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An act to amend Section 54960.1 of the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 194, as introduced, Dymally. Brown Act violations: remedy.

The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend. The act authorizes the district attorney or any interested person to commence an action for a judicial determination that an action of a legislative body of a local agency taken in violation of the act is null and void but requires that the body have an opportunity to cure or correct the alleged violation prior to commencement of the legal action. The act provides that an action of the body alleged to violate specified provisions of the act shall not be determined to be null and void if the action was taken in substantial compliance with those provisions and in other specified circumstances.

This bill would remove the requirement that the legislative body be allowed to cure or correct an alleged violation prior to commencement of a legal action and would remove provisions that preclude specified actions from being determined to be null and void.

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 54960.1 of the Government Code is  
2 amended to read:

3 54960.1. (a) The district attorney or any interested person  
4 may commence an action by mandamus or injunction for the  
5 purpose of obtaining a judicial determination that an action taken  
6 by a legislative body of a local agency in violation of Section  
7 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 ~~this~~  
8 ~~chapter~~ is null and void under this section. Nothing in this  
9 ~~chapter~~ shall be construed to prevent a legislative body from  
10 ~~curing or correcting an action challenged pursuant to this section.~~

11 (b) ~~Prior to any action being commenced pursuant to~~  
12 ~~subdivision (a), the district attorney or interested person shall~~  
13 ~~make a demand of the legislative body to cure or correct the~~  
14 ~~action alleged to have been taken in violation of Section 54953,~~  
15 ~~54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall~~  
16 ~~be in writing and clearly describe the challenged action of the~~  
17 ~~legislative body and nature of the alleged violation.~~

18 (c) (1) ~~The written demand shall be made within 90 days from~~  
19 ~~the date the action was taken unless the action was taken in an~~  
20 ~~open session but in violation of Section 54954.2, in which case~~  
21 ~~the written demand shall be made within 30 days from the date~~  
22 ~~the action was taken.~~

23 (2) ~~Within 30 days of receipt of the demand, the legislative~~  
24 ~~body shall cure or correct the challenged action and inform the~~  
25 ~~demanding party in writing of its actions to cure or correct or~~  
26 ~~inform the demanding party in writing of its decision not to cure~~  
27 ~~or correct the challenged action.~~

28 (3) ~~If the legislative body takes no action within the 30-day~~  
29 ~~period, the inaction shall be deemed a decision not to cure or~~  
30 ~~correct the challenged action, and the 15-day period to~~  
31 ~~commence the action described in subdivision (a) shall~~  
32 ~~commence to run the day after the 30-day period to cure or~~  
33 ~~correct expires.~~

34 (4) ~~Within 15 days of receipt of the written notice of the~~  
35 ~~legislative body's decision to cure or correct, or not to cure or~~  
36 ~~correct, or within 15 days of the expiration of the 30-day period~~  
37 ~~to cure or correct, whichever is earlier, the demanding party shall~~

1 ~~be required to commence the action pursuant to subdivision (a)~~  
2 ~~or thereafter be barred from commencing the action.~~

3 ~~(d) An action taken that is alleged to have been taken in~~  
4 ~~violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or~~  
5 ~~54956.5 shall not be determined to be null and void if any of the~~  
6 ~~following conditions exist:~~

7 ~~(1) The action taken was in substantial compliance with~~  
8 ~~Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.~~

9 ~~(2) The action taken was in connection with the sale or~~  
10 ~~issuance of notes, bonds, or other evidences of indebtedness or~~  
11 ~~any contract, instrument, or agreement thereto.~~

12 ~~(3) The action taken gave rise to a contractual obligation,~~  
13 ~~including a contract let by competitive bid other than~~  
14 ~~compensation for services in the form of salary or fees for~~  
15 ~~professional services, upon which a party has, in good faith and~~  
16 ~~without notice of a challenge to the validity of the action,~~  
17 ~~detrimentally relied.~~

18 ~~(4) The action taken was in connection with the collection of~~  
19 ~~any tax.~~

20 ~~(5) Any person, city, city and county, county, district, or any~~  
21 ~~agency or subdivision of the state alleging noncompliance with~~  
22 ~~subdivision (a) of Section 54954.2, Section 54956, or Section~~  
23 ~~54956.5, because of any defect, error, irregularity, or omission in~~  
24 ~~the notice given pursuant to those provisions, had actual notice of~~  
25 ~~the item of business at least 72 hours prior to the meeting at~~  
26 ~~which the action was taken, if the meeting was noticed pursuant~~  
27 ~~to Section 54954.2, or 24 hours prior to the meeting at which the~~  
28 ~~action was taken if the meeting was noticed pursuant to Section~~  
29 ~~54956, or prior to the meeting at which the action was taken if~~  
30 ~~the meeting is held pursuant to Section 54956.5.~~

31 ~~(e) During any action seeking a judicial determination~~  
32 ~~pursuant to subdivision (a) if the court determines, pursuant to a~~  
33 ~~showing by the legislative body that an action alleged to have~~  
34 ~~been taken in violation of Section 54953, 54954.2, 54954.5,~~  
35 ~~54954.6, 54956, or 54956.5 has been cured or corrected by a~~  
36 ~~subsequent action of the legislative body, the action filed~~  
37 ~~pursuant to subdivision (a) shall be dismissed with prejudice.~~

38 ~~(f)~~

39 ~~(b) The fact that a legislative body takes a subsequent action to~~  
40 ~~cure or correct an action taken pursuant to this section shall not~~

- 1 ~~be construed or admissible as evidence of~~*preclude a judicial*
- 2 *determination that a violation of this chapter has occurred.*