

Peralta G. C. § 54960.2

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57607]

( Title 5 added by Stats. 1949, Ch. 81. )

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821]

( Division 2 added by Stats. 1949, Ch. 81. )

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7]

( Part 1 added by Stats. 1949, Ch. 81. )

**CHAPTER 9. Meetings [54950 - 54963]**

( Chapter 9 added by Stats. 1953, Ch. 1588. )

**54960.2.**

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

- (1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.
- (2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To \_\_\_\_\_:

The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

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[Chairperson or acting chairperson of the legislative body]

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an

action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

*(Added by Stats. 2012, Ch. 732, Sec. 2. (SB 1003) Effective January 1, 2013.)*