

**Introduced by Senator Yee**

February 6, 2012

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An act to amend Section 54960 of the Government Code, relating to local government.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1003, as introduced, Yee. Local government: open meetings.

Existing law, the Ralph M. Brown Act, requires each legislative body of a local agency to provide the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public and all persons be permitted to attend unless a closed session is authorized. Existing law authorizes the district attorney or any interested person to file an action by mandamus, injunction, or declaratory relief to, among other things, determine the applicability of the act to actions or threatened future action of the legislative body.

This bill would additionally authorize the district attorney or any interested person to file an action to determine the applicability of the act to past actions of the legislative body.

This bill would state that it is intended to supersede the decision of the California Court of Appeal for the Fifth District in *McKee v Tulare County Bd. of Sup'rs* (Nov. 2, 2011, F061146) in a nonpublished opinion.

This bill would state that its provisions are declaratory of existing law.

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

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

SECTION 1. Section 54960 of the Government Code is amended to read:

54960. (a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to *past* actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

1 (i) Identification of the proceeding in which discovery or  
2 disclosure is sought, the party seeking discovery or disclosure, the  
3 date and time of the meeting recorded, and the governmental  
4 agency that has custody and control of the recording.

5 (ii) An affidavit that contains specific facts indicating that a  
6 violation of the act occurred in the closed session.

7 (3) If the court, following a review of the motion, finds that  
8 there is good cause to believe that a violation has occurred, the  
9 court may review, in camera, the recording of that portion of the  
10 closed session alleged to have violated the act.

11 (4) If, following the in camera review, the court concludes that  
12 disclosure of a portion of the recording would be likely to  
13 materially assist in the resolution of the litigation alleging violation  
14 of this chapter, the court shall, in its discretion, make a certified  
15 transcript of the portion of the recording a public exhibit in the  
16 proceeding.

17 (5) Nothing in this section shall permit discovery of  
18 communications that are protected by the attorney-client privilege.

19 SEC. 2. It is the intent of the Legislature, in amending Section  
20 54960 of the Government Code, to supersede the decision of the  
21 California Court of Appeal for the Fifth District in *McKee v. Tulare*  
22 *County Bd. of Sup'rs* (Nov. 2, 2011, F061146) in a nonpublished  
23 opinion, in which the Court held that injunctive and declaratory  
24 relief were not available to determine the applicability of this  
25 chapter to a past action or practice of a legislative body of a local  
26 agency that the body, while resolving not to repeat it, nevertheless  
27 continued to maintain was lawful.

28 The Legislature finds and declares that the amendments made  
29 to Section 54960 of the Government Code by this act are  
30 declaratory of existing law.