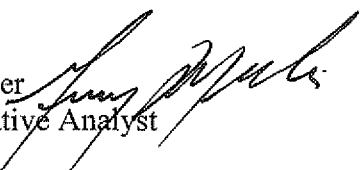


**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: April 25, 2013

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Gerry F. Miller  Chief Legislative Analyst Assignment No. 13-04-0253

SUBJECT: Resolution Opposing AB 185: Televising Open/Public Meetings and the Use of Cable Franchise Receipts

CLA RECOMMENDATION: ADOPT attached Resolution that would include in the City's 2013-14 State Legislative Program OPPOSITION to AB 185 (Hernandez), which would amend the Ralph M. Brown Act, in part, to require local entities that collect cable television franchise fees to televise open and public meetings of its legislative body and planning commission, and if financially feasible, to televise open and public meetings of its advisory committees. The bill would also duplicate existing statutory law authorizing the use of franchise fee revenues to televise these meetings on Public, Educational and Governmental (PEG) Access channels.

SUMMARY

AB 185 (Hernandez) would amend the Brown Act to require that a local entity that collects cable television franchise fees and airs PEG Access channels to televise open and public meetings of its legislative body and planning commissions; it would also require the local agency, if financially feasible, to televise its advisory committee meetings.

While the intent of the bill is to protect and preserve PEG Access channel operations in California and promote transparency in local government, AB 185 would potentially require local entities to expend the balance of their franchise fee revenues to televise, not only City Council meetings and Council Committee meetings, but all other legislative and advisory body meetings, including but not limited to all City commission meetings, board meetings, and neighborhood council meetings.

AB 185 further states that if monies are available in excess of the amount necessary to televise open and public meetings as required by the bill, the local agency may use those funds to provide live streaming of its open and public meetings on the Internet.

Currently, the City spends less than it receives in unrestricted 5 percent franchise fee revenue (approximately \$24 million annually) on Channel 35 LA CityView operations because of other critical local government services that require funding, such as police and fire. The language pertaining to a local agency's financial feasibility in AB 185 is not specific; it could require a local entity to spend the total of its franchise fee revenues. Based on this interpretation, the Information Technology Agency (ITA) estimates that it would have to supplement the Channel 35/LA CityView budget by an additional \$20 million to comply with AB 185 requirements.

## BACKGROUND

The City collects two revenue streams from its cable/video television operators permitted under federal (United States Code Service, Title 47, Section 542) and state law (Digital Infrastructure Video Competition Act). The first revenue stream consists of 5 percent gross revenue receipts (5 percent franchise fee revenues). These payments currently total approximately \$24 million per year. The 5 percent franchise fee revenues are received by ITA and placed into the Telecommunications Development Account (TDA). Pursuant to Section 5.97 of the Los Angeles Administrative Code, 40 percent of the 5 percent franchise fee revenues must be deposited into the "Telecommunications Fund, Liquidated Damages and Lost Franchise Fees" for telecommunications related expenses; the remaining 60 percent is deposited into the City's General Fund. Historically, the City did not budget the full 40 percent portion of the 5 percent franchise fee revenues for telecommunications expenses, and the remaining balance was transferred to the General Fund. However, in the FY 2012-13 Budget, the 3-1-1 Call Center was deemed a telecommunications expense, as was a portion of the City's phone bills paid by ITA, which enabled the City to budget the entire 40 percent share of the TDA revenue for telecommunications expenses.

The second revenue stream consists of federal and state 1 percent gross revenue receipts (1 percent PEG Access fees). The 1 percent PEG Access fees total approximately \$5 million per year. These fees have restrictions and may only be used for capital costs. On an annual basis, the City receives approximately \$24 million in 5 percent franchise fees and \$5 million in restricted 1 percent PEG Access fees. The City currently allocates approximately \$4 million for Channel 35 operations from the 5 percent franchise fees and the 1 percent PEG Access fees.

Currently, the City controls/operates two Government Access channels: LA CityView 35 and a billboard channel that streams notifications of City government events and services. LA CityView 35 provides live and repeat coverage of City Council meetings, and produces/televises original programming related to City departments, events, and services. LA CityView 35 also streams all live City Council meetings and maintains an on-demand library of programming on its website (<http://www.lacityview.org/>).

The City has two other PEG Access channels, which are operated under a City-authorized grant. LA36 is a mixed-use Public and Educational Access channel operated by Los Angeles Cable Television Access Corporation (LACTAC), a non-profit entity. The other City-authorized PEG Access channel is an Educational Access channel operated by UCTV-UCLA. Both LACTAC and UCTV-UCLA maintain websites with on-demand libraries containing previously televised programming.

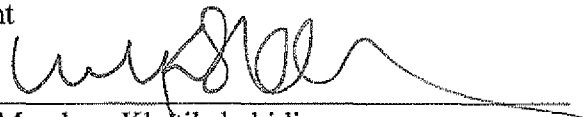
## BILL STATUS

### AB 185

1/8/13 Introduced

4/2/13 Last Amended

4/3/13 Re-referred to Com. on Local Government



Mandana Khatibshahidi

Analyst

### Attachments:

(1) Resolution

(2) AB 185

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, currently pending before the legislature is AB 185 (Hernandez), which would amend the Ralph M. Brown Act and provide that an audio or video recording of an open and public meeting made at the direction of a local agency may be erased or destroyed two years after the recording; and

WHEREAS, AB 185 would also require a local agency that collects cable television franchise fees to televise open and public meetings of its legislative body and planning commission; and

WHEREAS, AB 185 further requires that if it is “financially feasible” to do so, a local agency shall also televise open and public meetings of its advisory committees; and

WHEREAS, the bill duplicates existing statutory law to “authorize” the use of franchise fees to cover the costs of televising open/public meetings; and

WHEREAS, Section 1 of the bill suggests that many local governments are not utilizing General Fund monies or franchise fees to support public access television; and

WHEREAS, AB 185 states that if there are monies available in excess of the amount necessary to televise open and public meetings as required by the bill, the local agency may use those funds to provide live streaming of its open and public meetings on the Internet; and

WHEREAS, AB 185 declares that the provisions contained within the bill are not reimbursable by the State; and

WHEREAS, if this bill passes in its current form, it would require the City of Los Angeles to expend General Fund monies to televise not only City Council meetings and Council Committee meetings, but all other City legislative and advisory body meetings, including but not limited to all City commission meetings, board meetings, and neighborhood council meetings; and

WHEREAS, AB 185 is overly broad and restrictive, and would place a financial and operational burden on the City.

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes its 2013-14 State Legislative Program OPPOSITION to AB 185 (Hernandez), which would require a local agency that collects cable television franchise fees to televise open and public meetings of its legislative body and planning commission, and if it is financially feasible to do so, televise open and public meetings of its advisory committees, as recommended by the Los Angeles Information Technology Agency (ITA).

AMENDED IN ASSEMBLY APRIL 2, 2013

AMENDED IN ASSEMBLY MARCH 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL****No. 185****Introduced by Assembly Member Roger Hernández**

January 28, 2013

An act to amend Section 54953.5 of the Government Code, relating to local government.

## LEGISLATIVE COUNSEL'S DIGEST

AB 185, as amended, Roger Hernández. Open and public meetings: televised meetings.

(1) The Ralph M. Brown Act requires that an audio or video recording of an open and public meeting made at the direction of a local agency is subject to inspection pursuant to the California Public Records Act and may be erased or destroyed 30 days after the recording. Existing law requires that any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

The Digital Infrastructure and Video Competition Act of 2006 provides that cities, counties, cities and counties, or joint powers authorities receive state franchise fees in exchange for the use of public rights-of-way for the delivery of cable and video services provided within their jurisdictions, based on gross revenues, pursuant to a specified formula, from state franchise holders that provide public, educational, and governmental access (PEG) channels.

The bill would provide that an audio or video recording of an open and public meeting made at the direction of a local agency may be erased or destroyed 2 years after the recording.

The bill would require a local agency that collects a franchise fee from the holder of a state franchise that provides PEG channels to televise the open and public meetings of its legislative body and *planning commission, and, if it is financially feasible, to televise the open and public meetings of any of its advisory committees, if financially feasible, and would. The bill would also authorize the use of the franchise fees for that purpose. The bill would additionally authorize the use of franchise fees to televise the open and public meetings of the local agency and to cover the necessary expenses, as defined, for implementing the televising of the local agency's open and public meetings. The bill would authorize, if franchise fee moneys in excess of that necessary to televise these meetings are available, the use of such fees to provide live streaming of these meetings on the Internet.*

By imposing new duties on local public officials to televise open and public meetings, the bill would impose a state-mandated local program.

~~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 with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~(2) 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.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~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.~~

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

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

P3 1 SECTION 1.

The Legislature finds and declares all of the following:

(a) There have been over 50 public access channel closures in California municipalities. Seven of those municipalities are found within the boundaries of the 48th Assembly District.

(b) Unfortunately, many local governments are not utilizing General Fund moneys or franchise fees for support, in addition to public, educational, and governmental access (PEG) channel funds, for the operation of public access television. Not televising open meetings or providing public access television is a threat to accessing public information in a readily available medium.

(c) PEG channels permit schools, governments, individuals, and groups to provide and receive information about local events, emergencies, and issues. PEG channels encourage the creation of local programming not only by local municipalities but by civic groups and nonprofits to promote localism and civic engagement.

17 SEC. 2.

Section 54953.5 of the Government Code is amended to read:

19 54953.5.

(a) A person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) An audio or video recording of an open and public meeting made at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed two years after the recording. An inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

P4 1 (c) (1) A local agency that collects a franchise fee adopted

2 pursuant to paragraph (1) of subdivision (q) of Section 5840 of  
 3 the Public Utilities Code from the holder of a state franchise that  
 4 provides public, educational, and governmental access (PEG)  
 5 channels shall televise the open and public meetings of its  
 6 legislative body and *planning commission*. *If it is financially*  
 7 *feasible to do so, it shall also televise the open and public meetings*  
 8 *of its advisory committees that are governed by this chapter, if it*  
 9 *is financially feasible.*

10 (2) A local agency may utilize any portion of franchise fees  
 11 collected from the holder of a state franchise pursuant to  
 12 subdivision (q) of Section 5840 of the Public Utilities Code to  
 13 televise the open and public meetings of the local agency,  
 14 including, but not limited to, any necessary expenses for  
 15 implementing the televising of the local agency's open and public  
 16 meetings.

17 (3) If there are franchise fee moneys available in excess of the  
 18 amount necessary to televise open and public meetings as required  
 19 under paragraph (1), the local agency may use that money to fund  
 20 live streaming of its open and public meetings on the Internet.

21 (4) As used in this subdivision, "necessary expenses" includes,  
 22 but is not limited to, the hiring of personnel, the purchase and  
 23 maintenance of equipment, or the rental or leasing of production  
 24 facilities.

25 ~~SEC. 3.~~

26 ~~No reimbursement is required by this act pursuant to~~  
 27 ~~Section 6 of Article XIII B of the California Constitution because~~  
 28 ~~a local agency or school district has the authority to levy service~~  
 29 ~~charges, fees, or assessments to pay for the program or level of~~  
 30 ~~service mandated by this act, within the meaning of Section 17556~~  
 31 ~~of the Government Code.~~

32 ~~However, if the Commission on State Mandates determines that~~  
 33 ~~this act contains other costs mandated by the state for which the~~  
 34 ~~authority to levy service charges, fees, or assessments is insufficient~~  
 35 ~~to pay for the program or level of service mandated by this act,~~  
 36 ~~reimbursement to local agencies and school districts for those costs~~  
 37 ~~shall be made pursuant to Part 7 (commencing with Section 17500)~~  
 38 ~~of Division 4 of Title 2 of the Government Code.~~

38 SEC. 3.

39 *No reimbursement is required by this act under Section*  
 40 *6 of Article XIII B of the California Constitution because the only*  
 P5 1 *costs that may be incurred by a local agency or school district*  
 2 *under this act are the costs of complying with Chapter 9*  
 3 *(commencing with Section 54950) of Part 1 of Division 3 of Title*  
 4 *5 of the Government Code and subdivision (c) of Section 36 of*  
 5 *Article XIII of the California Constitution provides that costs of*  
 this type are not reimbursable.

## COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 185  
AUTHOR : Roger Hernández  
TOPIC : Open and public meetings: televised meetings.

## TYPE OF BILL :

Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
State-Mandated Local Program  
Fiscal  
Non-Tax Levy

## BILL HISTORY

2013

Apr. 3 Re-referred to Com. on L. GOV.  
Apr. 2 From committee chair, with author's amendments: Amend, and re-refer to Com. on L. GOV. Read second time and amended.  
Mar. 12 Re-referred to Com. on L. GOV.  
Mar. 11 From committee chair, with author's amendments: Amend, and re-refer to Com. on L. GOV. Read second time and amended.  
Feb. 7 Referred to Com. on L. GOV.  
Jan. 29 From printer. May be heard in committee February 28.  
Jan. 28 Read first time. To print.