

RESOLUTION 02-12-2017 (REVISED)

DIGEST

Local Government: Prohibition on Acquisition of Federal Surplus Property

Amends Government Code section 54141 and adds sections 54145 and 54956.97 to prohibit a local agency from receiving federal surplus military equipment without an affirmative vote of the legislative body of the local agency.

RESOLUTIONS COMMITTEE ANALYSIS

History:

Similar to Resolution 07-07-2015, which was approved in principle.

Reasons:

This resolution amends Government Code section 54141 and adds sections 54145 and 54956.97 to prohibit a local agency from receiving surplus military equipment without an affirmative vote of the legislative body of the local agency. This resolution should be approved in principle because the local legislative body should have the right to exercise its voice in the repurposing of federal surplus property, particularly military property, in the furtherance of domestic services.

Current law allows certain surplus military and other federal property and equipment to be acquired by local agencies in California without any requirement that the local agency hold a public hearing or even a vote, or notify the public of the type of equipment or property sought to be acquired by the agency, thereby precluding a public discussion about the need and intended use for it. Requiring local municipal entities such as city councils, county boards of supervisors, school districts, and police departments to add the purchase of surplus military equipment to already public meeting agendas is a small burden on the entities. This resolution would allow the public and local governing body access to information, provides the public with an opportunity to ask relevant questions, and positions the local government entities to make thoughtful decisions. The public notice requirement will not compromise safety because of the provision allowing for the deliberations to take place in closed session if two thirds of the members of the legislative body vote in favor of the closed session.

This resolution is similar to AB 36 (Campos 2014) which Governor Brown vetoed. It is also similar to SB 242 (Monning) (Chapter 79, Statutes of 2015) which added section 38004.5 to the Education Code and was enacted into law effective January 1, 2016. Education Code section 39004.5 requires a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 54141 and to add sections 54145 and 54956.97 to read as follows:

1 § 54141

2 As used in this article:

3 (a) “Local agency” means county, city, whether general law or chartered, city and
4 county, town, school district, municipal corporation, or public district, political subdivision, or
5 any board, commission, or agency thereof, or other local public agency.

6 (b) “United States” includes any department, board, or agency thereof.

7 (c) “State” includes any department or agency thereof.

8 (d) “Legislative body” means a legislative body as defined in Section 54952.

9 (e) (1) “Surplus military equipment” means equipment made available to a local agency
10 pursuant to Section 2576a of Title 10 of the United States Code.

11 (2) “Tactical surplus military equipment” means surplus military equipment identified on
12 the list developed and maintained by the state coordinator pursuant to subdivision (e) of Section
13 54145.

14 (f) “State coordinator” means the state agency that has signed a current memorandum of
15 agreement with the federal Defense Logistics Agency for the purpose of administering a state
16 program for acquiring surplus military equipment.

17
18 § 54145

19 (a) A local agency shall not apply to receive tactical surplus military equipment unless
20 the legislative body of the local agency approves the acquisition of tactical surplus military
21 equipment by ordinance or resolution, pursuant to subdivision (b), at a regular meeting held
22 pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950)).

23 (b) The legislative body of a local agency may adopt an ordinance or resolution
24 authorizing the local law enforcement agency in that jurisdiction to apply for tactical surplus
25 military equipment. The ordinance or resolution shall comply with both of the following
26 requirements:

27 (1) The ordinance shall include a list of the types of tactical surplus military equipment
28 that the legislative body authorizes the local law enforcement agency to acquire, unless the
29 legislative body considers the ordinance or resolution at a closed session pursuant to Section
30 54956.97, in which case the ordinance or resolution shall instead state that the local law
31 enforcement agency is authorized to acquire tactical surplus military equipment.

32 (2) The legislative body shall review the ordinance or resolution at least annually.
33 During the review, the legislative body shall vote on whether to renew the ordinance or
34 resolution authorizing the acquisition of tactical surplus military equipment. If the legislative
35 body does not approve a renewal pursuant to this paragraph, the authorization shall expire.

36 (c) This section shall not be construed to require the legislative body of a local agency to
37 approve the acquisition of each individual item of tactical surplus military equipment, unless
38 specified by the ordinance or resolution adopted pursuant to subdivision (b).

39 (d) The Legislature finds and declares that this section constitutes a matter of statewide
40 concern, and shall apply to charter cities and charter counties. The provisions of this section shall

41 supersede any inconsistent provisions in the charter of any city, county, or city and county.

42 (e)(1) The state coordinator, by January 31, 2019, shall develop a list of tactical surplus
43 military equipment. The list shall identify surplus military equipment that warrants public input
44 pursuant to this article. The state coordinator shall post this list on its Internet Web site and
45 update it at least annually.

46 (2) In developing the list required by this subdivision, the state coordinator shall consider
47 the current list of controlled property designated by the federal Defense Logistics Agency, as
48 well as any other state or federal regulations or policies governing the use of surplus military
49 equipment.

50 (3) The list required by this subdivision shall include, at minimum, the following types
51 of equipment:

52 (A) Weapons.

53 (B) Armored vehicles.

54 (C) Watercraft.

55 (D) Aircraft.

56 (E) Other tactical equipment as determined by the state coordinator.

57 (f) Notwithstanding any other law, a local agency shall not apply to receive the following
58 types of surplus military equipment:

59 (1) Tracked armored vehicles.

60 (2) Weaponized vehicles.

61 (3) Firearms of .50 caliber or greater.

62 (4) Ammunition of .50 caliber or greater.

63 (5) Grenade launchers.

64 (6) Bayonets.

65 (7) Camouflage uniforms.

66

67 § 54956.97

68 (a) A legislative body of a local agency may hold a closed session for the purpose of
69 considering an ordinance or resolution authorizing the acquisition of tactical surplus military
70 equipment, as that term is defined in Section 54141, pursuant to Section 54145 if the following
71 conditions are met:

72 (1) The ordinance or resolution is listed on the agenda of a regular meeting pursuant to
73 Section 54954.2.

74 (2) A member of the legislative body, during an open session of the regular meeting,
75 makes a motion to consider the ordinance or resolution at a closed session.

76 (3) Two-thirds of the members of the legislative body concur in the motion.

77 (4) The closed session complies with the applicable requirements of this chapter.

78

79 Legislative Findings:

80 The Legislature finds and declares that Section 2 of this act, which adds Section 54145 to the
81 Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3
82 of Article I of the California Constitution, the purposes of that constitutional section as it relates
83 to the right of public access to the meetings of local public bodies or the writings of local public
84 officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I
85 of the California Constitution, the Legislature makes the following findings:

86 Requiring local agencies to hold public meetings prior to the acquisition of federal surplus

87 military equipment further exposes that activity to public scrutiny and enhances public access to
88 information concerning the conduct of the people’s business.

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

(Proposed new language underlined; language to be deleted stricken)

PROPONENTS: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Existing law allows local law enforcement agencies to obtain surplus military equipment from the federal government without obtaining the approval of the legislative body of the local agency. As noted by Assembly Member Campos: “Due to recent events of police brutality, distrust between law enforcement and many of our communities remains at an all-time high. Further exacerbating the issue is the recent militarization of law enforcement agencies and a movement away from community policing across the nation. . . . [I]n Ferguson, Missouri, the mine-resistant, ambush-protected troop transport, or Mine-Resistant Ambush Protected Vehicle (MRAP), became a focus for debate after this military surplus vehicle and other military equipment were used by local law enforcement to respond to civil unrest over the police killing of unarmed teenager Michael Brown.” This is just one example of “where the public felt threatened by military equipment in their communities. . . . [T]he communities involved did not have the opportunity to weigh in before the military equipment was acquired. These situations hurt our most underserved communities by exacerbating their relationship with the police and government. Unilateral decisions by law enforcement agencies to acquire military equipment provide little or no opportunity for community input.”

The Solution: This resolution addresses this problem by prohibiting a local agency from applying for "tactical" surplus military equipment unless the agency's legislative body adopts an ordinance or resolution that lists the types of equipment that the agency may acquire. This resolution further (1) Requires the ordinance or resolution to be adopted either: (a) At a regular public meeting subject to the Brown Act, or (b) At a closed session, if all of the following occur: (i) The ordinance or resolution is listed on the agenda of a regular meeting; (ii) A motion in a regular public meeting is approved by two-thirds of the members of the legislative body, to consider the ordinance or resolution at a closed session; (iii) The closed session complies with other requirements of the Brown Act. (2) Requires the ordinance or resolution to be reviewed annually. At that time, the legislative body must decide whether to renew the ordinance, or resolution. If it does not renew the resolution, the authorization to acquire tactical equipment expires. (3) Requires the state coordinator to develop a list of tactical surplus military equipment that includes: (a) Controlled equipment and (b) Consideration of the Defense Logistics Agency’s list of controlled property, or other state, or federal regulations, or policies governing the use of surplus military equipment. (4) Disallows all local agencies from acquiring prohibited equipment.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

This resolution is similar to the August 24, 2015 version of AB 36 introduced by Assembly Member Campos. Although a subsequently amended version of AB 36 was vetoed by Governor Brown, this resolution notably differs from the vetoed version. The CCBA passed Resolution 07-07-2015, which was based on the original version of AB 36.

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