

- **Board of Directors**
Communications and Legislation Committee

March 8, 2005 Board Meeting

8-6

Subject

Adopt positions on legislation pertaining to special district and local government reform: (1) SB 393 (Ortiz); (2) AB 1234 (Salinas); and (3) SB 274 (Romero)

Description

Three local government reform bills that would significantly impact Metropolitan and its member agencies have been introduced in the Legislature. First, SB 393 ([Attachment 2](#)) is a special district “reform” measure that would create new auditing, ethics and whistle-blower protection requirements for special districts. The bill would also establish limitations on board compensation and expense reimbursement while banning specified benefits to Board members.

A related measure, AB 1234 ([Attachment 3](#)) would affect all local government entities – including special districts, cities, counties and school districts. Rather than imposing restrictive compensation and reimbursement limits on local governing boards, this measure generally requires that local governments publicly adopt policies regarding board compensation and expense reimbursement. The bill would also require ethics training for local agency officials and designated employees.

The third measure – SB 274 ([Attachment 4](#)) pertains to “incompatible offices” held by local elected or appointed officials. Specifically, the measure prohibits an individual to hold office in one local body that has oversight over another local body, as defined.

SB 393 (Ortiz) and AB 1234 (Salinas)

As noted above, both of these measures include provisions that would affect special districts’ board compensation and expense reimbursement practices and would require ethics training. [Attachment 1](#) details the provisions in each bill as compared to current Metropolitan requirements and practices. The following information is intended to provide background and context pertaining to the bills and the recommended staff positions.

Recommendation: SB 393 (Ortiz) – “Oppose Unless Amended”: Last year, Senator Deborah Ortiz (D-Sacramento) introduced SB 1272 regarding special district reform. Last year’s bill defined “special district” in a manner that did not apply to Metropolitan, although it would have directly impacted Metropolitan member agencies.

The senator’s interest in special district reform was initially triggered by the improper and – in some cases – illegal actions taken by a Sacramento-area water district. The district activities were covered in a series of high-profile reports in the Sacramento Bee and also spurred additional, ongoing legislative and media interest in the operations of special districts overall.

SB 1272 became a highly controversial measure that drew opposition from a wide range of special district associations and individual districts – including the Association of California Water Agencies and several of Metropolitan’s member agencies. Ultimately, the measure failed passage in the Senate Appropriations Committee.

The provisions of this year’s bill, SB 393 (Ortiz), are generally identical to SB 1272 from last year. However, the definition of “special district” within SB 393 is written in a manner that now applies to Metropolitan. Other significant differences between the Ortiz measure of last year and this year’s SB 393 include:

- The compensation limit for each “day of service” has been increased from \$100 to \$150.
- The measure now allows for an annual cost-of-living increase in compensation if the governing board, through a referendable ordinance, enacts the increase.

As noted in the summary of SB 393 [Attachment 1](#), given existing requirements in the Metropolitan Water District Act pertaining to the Office of Ethics and rules regarding internal disclosure, lobbying, conflicts of interest, contracts and campaign contributions, it should be noted that SB 393’s ethics requirements would have relatively minimal impact on Metropolitan. The primary change in Metropolitan’s practices would be the addition of a requirement that board members receive ethics training once every two years.

With respect to SB 393, it is expected that key special district associations – including the Association of California Water Agencies and the California Special Districts Association – will be maintaining the “oppose unless amended” position initially taken with last year’s SB 1272.

It is recommended that Metropolitan join these associations in this position. In particular, ACWA’s desired amendments are expected to include:

- Removal of the new “whistleblower” provisions, as the provisions are unnecessary and duplicative of existing law.
- Revision of reimbursement provisions to reasonably allow for necessary travel.
- Removal of the prohibition on health, life insurance and retirement benefits for board members.
- Elimination of provisions related to compensation limits.

Recommendation: AB 1234 (Salinas) – “Support and Amend.” AB 1234 – authored by Assembly Local Government Chair Simon Salinas (D-Salinas) – is intended as a local government “sunshine” measure that would apply equally to cities, counties, special districts and school districts. From the perspective of special districts, it may be viewed as a fairer, less restrictive and non-punitive alternative to Senator Ortiz’ SB 393.

Rather than limit local governments’ compensation and reimbursement rates and practices, this measure would require that each local government establish publicly adopted policies. The measure would also require ethics training for members of local governments’ governing bodies and designated employees every two years and would require the Attorney General and the Fair Political Practices Commission to develop ethics curriculum. See [Attachment 1](#).

Of particular note is the fact that the travel reimbursement provisions in AB 1234 would require local agencies to publicly adopt reimbursement policies, including maximum rates, for costs incurred for travel, meals and lodging. If no policy is adopted, the local agency must use the Internal Revenue Service rates for reimbursement of meals, lodging and travel.

Given the approach taken in AB 1234, it is expected that key associations – including ACWA and CSDA – will move to support AB 1234. It is recommended that Metropolitan join in the effort to win passage of this measure.

However, it is also recommended that an amendment be sought to address problems associated with the bill’s requirement that if lodging is “in connection with a conference, lodging costs shall not exceed the group rate published by the conference sponsor.” Such language could be problematic if the group rate is unavailable for all conference participants.

SB 274 (Romero)

Recommendation: SB 274 (Romero) – “Oppose Unless Amended.” SB 274 by Senator Gloria Romero (D-Los Angeles) provides that service on a local appointed or elected governmental board, commission, committee, or other body shall be deemed inconsistent, incompatible, in conflict with, or inimical to the duties on another elected or appointed local governmental body if either of the bodies may “audit, overrule, remove members of, dismiss employees of, or exercise supervisory power over the other in any circumstance.” In case of

an incompatibility, the person must not seek appointment or election to the second body prior to resigning from the first. This provision would not apply to a governmental body that has only advisory powers.

Although SB 274's provisions on incompatible offices are basically consistent with existing law, it fails to include a recognized exception for special statute – such as the Metropolitan Water District Act, Section 56 – which permits the holding of dual offices that otherwise could be considered incompatible under specified circumstances. The California courts have expressly accepted such special provisions.

It is recommended that the Board oppose SB 274 unless it is amended to continue to allow for the holding of dual offices as expressly authorized by Section 56 of the Metropolitan Water District Act.

Policy

Metropolitan Water District Act Section 56; appointment of members of governing bodies of member public agencies

Metropolitan Water District Administrative Code Section 2541 (a); proposals concerning state legislation that may affect Metropolitan

Metropolitan Water District Administrative Code Section 2461 (g); legislation dealing with public agencies

Metropolitan Water District Administrative Code Sections 6320-6332; expense account regulations

Metropolitan Water District Administrative Code Section 7100 et seq.; ethics requirements

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and oppose SB 393 unless amended; support and amend AB 1234; and oppose SB 274 unless amended.

Fiscal Impact: Unknown

Option #2

Adopt the CEQA determination and support SB 393 if amended; support and amend AB 1234; and support SB 274 if amended.

Fiscal Impact: Unknown

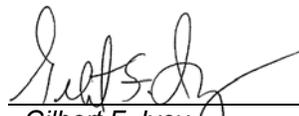
Option #3

Take no position on SB 393, AB 1234 or SB 274.

Fiscal Impact: No specific financial impact based on taking the recommended actions

Staff Recommendation

Option #1



Gilbert F. Ivey
Interim Chief Executive Officer

3/2/2005
Date

Attachment 1 – Comparison of SB 393, AB 1234 and Current MWD Provisions

Attachment 2 – Text of SB 393 as of February 17, 2005

Attachment 3 – Text of AB 1234 as of February 22, 2005

Attachment 4 – Text of SB 274 as of February 16, 2005

BLA #3579

Comparison of SB 393, AB 1234 and Current MWD Provisions

SB 393 (Ortiz)	AB 1234 (Salinas)	MWD Provisions
<p>Ethics Training:</p> <ul style="list-style-type: none"> • Ethics training for board members at least once every 2 years as of 1/1/07 (after training during the first year bill goes into effect); • Special districts must offer training at least once annually, but training could be accomplished by several authorized options; • Persons on more than one board would only have to comply once with these requirements; and • Special district would maintain records of compliance. 	<p>Ethics Training:</p> <ul style="list-style-type: none"> • Ethics training for board members and designated employees at least once every 2 years as of 1/1/07 (after training during the first year bill goes into effect); and • Governing body to designate employees required to comply with training requirement. 	<p>Ethics Training:</p> <ul style="list-style-type: none"> • MWD Act § 126.7 directs Ethics Office to educate Board, staff, contractors and subcontractors on ethical rules; and • No specific ethics education schedule or plan established.
<p>Investigation and Punishment for Improper Government Activities:</p> <ul style="list-style-type: none"> • County auditor in which special district is located or has its primary office administers program; • Employees or applicants for employment who file written complaints with own district can also file copy of complaint with county auditor within 12 months of most recent complaint; • If improper activities are uncovered, auditor can report to Chief Administrative Officer of district, to district attorney or county counsel if actions may involve a crime; and 	<p>Investigation and Punishment for Improper Government Activities:</p> <p>None</p>	<p>Investigation and Punishment for Improper Government Activities</p> <ul style="list-style-type: none"> • Detailed procedures for reporting and handling complaints established (Admin. Code §§ 7140, 7141); • Violations by employees enforced through existing disciplinary procedures; • Violations by directors referred to Executive Committee for appropriate action which can include letter of reprimand, letter of reprimand with copy to appointing agency and request for member agency to replace board member; and

<ul style="list-style-type: none"> Provides protection for alleged harassment of whistle-blowers. Intentional violation would be subject to criminal punishment of fine up to \$10,000 and imprisonment in county jail for up to a year. Civil suits could be brought and punitive damages and recovery of attorneys fee would be available. Once party demonstrates, by preponderance of evidence, that whistle-blowing activity was contributing factor to the alleged retaliation, burden of proof is on agency to establish by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons. 		<ul style="list-style-type: none"> Possible violations of state law referred to appropriate party, e.g. FPPC, state Attorney General or District Attorney.
<p>Reimbursement of Expenses and Benefits:</p> <ul style="list-style-type: none"> Reimbursement of reasonable expenses, including in-state travel, cannot exceed the amounts permitted for state employees; Reimbursement for out-of-state travel or international travel to be based on state guidelines, with approval of reimbursement rates adopted at a noticed public meeting; Establishes that compensation for a meeting cannot exceed \$150 per meeting and limits number of meetings allowed based on nature 	<p>Reimbursement of Expenses and Benefits:</p> <ul style="list-style-type: none"> Requires local agency to adopt written policy during public meeting to establish types of occurrences for which member of its legislative body can receive reimbursement of expenses for travel, meals and lodging; Governing body may also adopt travel reimbursement policy outlining procedures and reimbursement rates for meals, lodging and travel. If agency does not adopt a travel reimbursement policy, it must use the Internal Revenue Service (IRS) rates for reimbursement of these expenses; If lodging is in connection 	<p>Reimbursement of Expenses and Benefits</p> <ul style="list-style-type: none"> Reimbursed for reasonable expenses for meals, lodging, travel and incidentals incurred on authorized Metropolitan business; Level of expenditures is that to provide reasonable comfort and convenience, bearing in mind that public funds are being used; Type of transportation used to be selected on basis of lowest overall cost to Metropolitan, after all costs are considered, with detailed rules for making determination;

<p>of district and defines types of meetings and activities for which compensation can be given. If lesser amount is called for in district's act, that lesser amount prevails;</p> <ul style="list-style-type: none"> • Agency could not provide members first appointed or first elected to board on or after 1/1/06 with group life insurance or health and welfare benefits unless person participates on self-pay basis; and • Agency could not provide retirement benefits to any board member first appointed or first elected on or after 1/1/06. 	<p>with conference, lodging costs cannot exceed group rate published by the conference sponsor;</p> <ul style="list-style-type: none"> • Any expenses not covered by adopted travel reimbursement policy or IRS reimbursement rates must be approved by governing body during public meeting before expense is incurred; • Penalties for misuse of public resources or falsifying expense reports could include loss of reimbursement privileges, restitution to the local agency, and prosecution for misuse of public resources; and • No restrictions on benefits. 	<ul style="list-style-type: none"> • Detailed expense claim procedures outlined in MWD Administrative Code; and • Directors have Workers' Compensation coverage for injuries sustained in carrying out their Metropolitan duties. Metropolitan also provides directors with accidental death benefit of \$250,000 for accidental death or dismemberment occurring while a director is on Metropolitan business. There are no retirement or health benefits or group life benefits.
<p>Audits:</p> <ul style="list-style-type: none"> • Would establish new program for State Controller review and report on financial and compliance audits of special districts. Audits must comply with government auditing standards for financial and compliance audits and various other requirements. Unprofessional conduct could result in various penalties for accountants; • Special districts would pay for cost of requiring additional audits because of poor performance; and • Would appropriate \$600,000 for expenses to implement program, including hiring of additional staff. 	<p>Audits:</p> <p>None</p>	<p>Audits:</p> <ul style="list-style-type: none"> • Internal and external audits provided for in MWD Admin. Code; and • Audits supervised by General Auditor and the Audit Committee.

Introduced by Senator Ortiz

February 17, 2005

An act to amend Section 26909 of, to add Section 26909.5 to, and to add Chapter 7.5 (commencing with Section 60210) to Division 1 of Title 6 of, the Government Code, and to repeal Sections 20201 and 20202 of the Water Code, relating to special districts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 393, as introduced, Ortiz. Special districts.

(1) Existing law requires the county auditor to either make or contract for an annual audit of the accounts and records of every special purpose district within the county for which an audit is not otherwise provided.

This bill would require these audits to be performed in accordance with government auditing standards for financial and compliance audits and would impose various other requirements on these audits, thus imposing a state-mandated local program. The bill would require the Controller to review the audits under specified procedures and would make an annual appropriation to the Controller from the General Fund of up to \$600,000 for that purpose.

(2) Existing law provides for the establishment and operation of various special districts, the composition of their governing boards, and the payment to governing board members for attending meetings and performing other duties.

This bill would require the governing boards of special districts to conduct legal and ethics orientation sessions that governing board members would be required to attend, if they choose to receive compensation for their activities.

This bill would also establish whistle-blower protections for members or employees who make protected disclosures of improper governmental activities, as specified.

This bill would define the meetings for which compensation may be paid to members of governing boards of special districts and would limit travel expenses, as specified.

This bill would require that for members who first take office on or after January 1, 2006, participation in group life insurance and health and welfare benefits shall be on a self-pay basis and provide that those members may not receive retirement benefits from the district.

(3) Existing law provides that compensation of members of the governing board of any water district may not exceed \$100 per day for attendance at meetings subject to a 5% annual adjustment.

This bill would repeal those provisions.

(4) 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.

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.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 26909 of the Government Code is
 2 amended to read:
 3 26909. (a) The county auditor shall either make or contract
 4 with a certified public accountant or public accountant to make
 5 an annual audit of the accounts and records of every special
 6 purpose district within the county for which an audit by a
 7 certified public accountant or public accountant is not otherwise
 8 provided. In each case, the minimum requirements of the audit
 9 shall be prescribed by the Controller and shall conform to
 10 government auditing standards.

1 (b) Where an audit of a district's accounts and records is made
2 by a certified public accountant or public accountant, the
3 minimum requirements of the audit shall be prescribed by the
4 Controller and shall conform to government auditing standards,
5 and a report ~~thereof~~ *on the audit* shall be filed with the Controller
6 and with the county auditor of the county in which the district is
7 located. The report shall be filed within 12 months of the end of
8 the fiscal year or years under examination.

9 (c) Any costs incurred by the county auditor, including
10 contracts with, or employment of, certified public accountants or
11 public accountants, in making an audit of every special purpose
12 district pursuant to this section shall be borne by the district and
13 shall be a charge against any unencumbered funds of the district
14 available for the purpose.

15 (d) For joint districts lying within two or more counties, the
16 above provisions shall apply to the auditor of the county in which
17 the treasury is located.

18 (e) The county controller, or ex officio county controller, shall
19 ~~effect~~ *implement* this section in those counties having a county
20 controller, or ex officio county controller.

21 (f) A special district may, by unanimous request of the
22 governing board of the special district, with unanimous approval
23 of the board of supervisors, replace the annual audit with a
24 biennial audit covering a two-year period or, if the district's
25 annual budget does not exceed an amount specified by the board
26 of supervisors, an audit covering a five-year period.

27 Notwithstanding the foregoing provisions of this section to the
28 contrary, districts shall be exempt from the requirement of an
29 annual audit if the financial statements are audited by the
30 Controller to satisfy federal audit requirements.

31 (g) A board of supervisors may substitute a financial review in
32 accordance with definitions promulgated by the United States
33 General Accounting Office for the audit of a special district as
34 required by this section, provided that all of the following
35 conditions are met:

36 (1) The board of supervisors is the governing board of the
37 district.

38 (2) The special ~~districts~~ *district's* revenues and expenditures
39 are transacted through the county's financial systems.

1 (3) The special district's annual revenues do not exceed one
2 hundred thousand dollars (\$100,000).

3 SEC. 2. Section 26909.5 is added to the Government Code, to
4 read:

5 26909.5. (a) It is the intent of the Legislature in enacting this
6 section to promote accountability over public revenues by
7 establishing a new program to review and report on financial and
8 compliance audits of special districts. It is further the intent of
9 the Legislature that the Controller shall have the primary
10 responsibility for implementing and overseeing this program
11 through the special oversight program.

12 (b) Financial and compliance audits shall be performed in
13 accordance with government auditing standards for financial and
14 compliance audits. The audit guide prepared by the Controller
15 shall be used in the performance of these audits. The Controller
16 shall also require that special district auditors conduct testing of
17 transactions considered high risk for abuse. The additional testing
18 shall occur during each district's audit cycle's regular financial
19 statement audit or as a separate audit within that cycle. Special
20 districts shall provide funding for all costs associated with
21 conducting the audit of high-risk transactions. Every audit report
22 shall specifically and separately address each of the compliance
23 requirements included in the audit guide stating whether or not
24 the district is in compliance with those requirements. For each
25 compliance requirement included in the audit guide, every audit
26 report shall further state that the suggested audit procedures
27 included in the audit guide for that requirement were followed in
28 the making of the audit, if that is the case, or, if not, what other
29 procedures were followed. If a special district is not in
30 compliance, the audit report shall state all instances of
31 noncompliance. An auditor shall not engage in financial or
32 compliance audits unless, within three years of commencing the
33 first of the audits, and every successive three years thereafter, the
34 auditor completes a quality control review in accordance with
35 government auditing standards. This review shall be conducted
36 by the Controller. The time period between commencement of
37 the first audit, or completion of a quality control review and
38 completion of a subsequent quality control review, shall be
39 calculated from the first day of the month following
40 commencement of the audit or completion of the quality control

1 review. To determine the practicability and effectiveness of the
2 audits and audit guide, the Controller shall determine whether
3 audit reports are in conformance with reporting provisions of
4 government auditing standards and shall notify each special
5 district and the auditor regarding each determination. The special
6 district contracting for the financial and compliance audit shall
7 include a statement that provides the Controller access to audit
8 working papers.

9 (c) (1) The Controller may perform quality control reviews of
10 audit working papers to determine whether audits are performed
11 in conformity with subdivision (b). The Controller shall
12 communicate the results of his or her reviews to the auditor, and
13 the special district for which the review was performed, and shall
14 review his or her findings with the auditor.

15 (2) Prior to the performance of any quality control reviews, the
16 Controller shall develop and publish guidelines and standards for
17 those reviews. Pursuant to the development of those guidelines
18 and standards, the Controller shall provide opportunity for public
19 comment.

20 (3) (A) Notwithstanding any other provision of this code, the
21 Controller shall conduct a quality control review of the audit
22 working papers of the auditor who performed the audits for a
23 special district if either of the following applies.

24 (i) The Controller has reason to believe that public revenues
25 were not appropriately utilized.

26 (ii) There is reason to believe that a special district report is
27 false, incomplete, or incorrect.

28 (B) If the quality control review of the Controller indicates
29 that the audit was conducted in a manner that may constitute
30 unprofessional conduct as defined pursuant to Section 5100 of
31 the Business and Professions Code, including, but not limited to,
32 gross negligence resulting in a material misstatement in the audit,
33 the Controller shall refer the case to the California Board of
34 Accountancy. If the California Board of Accountancy finds that
35 the auditor conducted an audit in an unprofessional manner, the
36 auditor is prohibited from performing any audit of a special
37 district for a period of three years, in addition to any other
38 penalties that the California Board of Accountancy may impose.

39 (4) In any matter that is referred to the California Board of
40 Accountancy under subparagraph (B), the Controller may

1 suspend the auditor from performing any special district audits
2 pending final disposition of the matter by the California Board of
3 Accountancy if the Controller gives the auditor notice and an
4 opportunity to respond to that suspension. The auditor shall be
5 given credit for any period of suspension if the California Board
6 of Accountancy prohibits the auditor from performing audits of
7 the special district under subparagraph (B). In no event may the
8 Controller suspend an auditor under this subdivision for a period
9 of longer than three years.

10 (5) The legislative body of a special district may refer an
11 auditor of a special district to the California Board of
12 Accountancy for action pursuant to paragraph (3) if an audit of a
13 special district was conducted in a manner that may constitute
14 unprofessional conduct as defined by Section 5100 of the
15 Business and Professions Code, including, but not limited to,
16 gross negligence resulting in a material misstatement in the audit.

17 (d) The Controller shall conduct any additional audits that are
18 necessary to carry out any of his or her statutory duties and
19 responsibilities. Nothing in this section shall be construed to
20 authorize any special district, or any subcontractor or
21 subrecipient, to constrain, in any manner, the Controller from
22 carrying out any additional audits. However, to the extent that the
23 required financial and compliance audits do not provide the
24 Controller with the information necessary to carry out his or her
25 responsibilities, the Controller shall plan additional audits as
26 appropriate to avoid any unnecessary duplication of audit efforts.
27 In performing these additional audits, the Controller shall, to the
28 extent deemed appropriate under the circumstances, build upon
29 the work performed during the required financial and compliance
30 audit. The Controller shall receive reimbursement from the
31 special districts for the costs of these additional audits. The
32 special district may recover the costs for the audit performed by
33 the Controller's office from the private auditing firm that
34 conducted the audit if the auditing firm is found by the California
35 Board of Accountancy to have failed to conduct a thorough and
36 complete audit.

37 (e) The sum of up to six hundred thousand dollars (\$600,000)
38 is hereby appropriated annually from the General Fund to the
39 Controller as necessary to provide sufficient funding for one

1 audit manager, four audit specialists, and other expenses to
2 implement and operate the special district oversight program.

3 SEC. 3. Chapter 7.5 (commencing with Section 60210) is
4 added to Division 1 of Title 6 of the Government Code, to read:

5

6 CHAPTER 7.5. SPECIAL DISTRICT GOVERNING BOARDS

7

8 Article 1. General Provisions

9

10 60210. (a) “Member” as used in this chapter, means a
11 member of the governing board of a special district.

12 (b) “Special district,” as used in this chapter, means an agency
13 of the state that is formed pursuant to a general or special act for
14 the local performance of governmental or proprietary functions
15 within limited boundaries and that has a governing board, all of
16 whose members are elected by registered voters or landowners
17 within the special district or whose members are appointed.
18 “Special district” excludes any special district having a
19 governing board consisting, in whole or part, of ex officio
20 members who are officers of a county, city, or another special
21 district. Special district also excludes any special district whose
22 members are appointees of those officers, other than those who
23 are appointed to serve for fixed terms. “Special district” excludes
24 the state, a county, a city, a school district, a community facilities
25 district, an air quality district or other regulatory district having
26 responsibilities related to the protection of public health. “Special
27 district” also excludes a joint powers authority consisting solely
28 of cities, counties, or one or more cities and one or more
29 counties.

30 60211. Notwithstanding any other provision of law, the
31 governing board of every special district shall comply with the
32 requirements of this chapter.

33

34 Article 2. Ethics

35

36 60215. (a) Each member of a governing board of a special
37 district, except a member whose term of office ends before
38 January 1, 2007, serving on January 1, 2006, shall receive
39 training in ethical standards of conduct before January 1, 2007 if

1 the board members choose to receive compensation for their
2 activities as board members.

3 (b) Each member of a governing board who commences
4 serving a special district on or after January 1, 2006, shall receive
5 training in ethical standards of conduct no later than one year
6 from the first day of service to the special district. Thereafter,
7 members of governing boards shall receive training in ethical
8 standards of conduct at least once every two years if the board
9 members choose to receive compensation for their activities as
10 board members.

11 60216. (a) A special district, at least once annually, shall
12 offer to the members of its governing board training in ethical
13 standards of conduct. A special district may identify conferences,
14 seminars, online or videotaped training as currently available
15 through the Attorney General's office for statewide officers, or
16 other courses that meet the requirements of this section.

17 (b) A special district shall consult with the Fair Political
18 Practices Commission and the Attorney General to determine the
19 appropriate content for the training in ethical standards of
20 conduct.

21 (c) The requirements of this article shall be met by training in
22 ethical standards of conduct and shall include information
23 regarding potential ethical abuses relating to, but not limited to,
24 all of the following matters:

25 (1) The direct and indirect business relationships among
26 members of governing boards, contractors, and vendors, and
27 between members of governing boards and officers and
28 employees of other public agencies.

29 (2) The solicitation of campaign contributions by members of
30 governing boards, officers, or employees, and the receipt of
31 contributions from bidders, contractors, or subcontractors.

32 (3) The use of special district funds for personal expenses.

33 60217. Notwithstanding Section 60215, a member of a
34 governing board who serves more than one special district shall
35 only be required to meet the requirements of this section once
36 every two years without regard to the number of special districts
37 with which he or she is affiliated. A member of a governing
38 board who meets the requirements of Section 60215 for one
39 special district shall not be required by another special district

1 with which he or she is affiliated to receive additional training in
2 ethical standards of conduct.

3 60218. A special district shall maintain records indicating the
4 dates that the members of its governing board received training
5 in ethical standards of conduct, and the agency or entity that
6 conducted the training. Notwithstanding any other provision of
7 law, a special district shall maintain these records for at least five
8 years after the members and executive officers receive the
9 training. A special district shall make these records available to
10 the public for inspection and copying.

11
12 Article 2.5. Improper Governmental Activity

13
14 60221. For the purposes of this article:

15 (a) “Employee” means any individual who is a member of the
16 governing board of a special district or employed by a special
17 district.

18 (b) “Improper governmental activity” means any activity by a
19 special district or by an employee that is undertaken in the
20 performance of the employee’s official duties, whether or not
21 that action is within the scope of his or her employment, and that
22 (1) is in violation of any state or federal law or regulation,
23 including, but not limited to, corruption, malfeasance, bribery,
24 theft of government property, fraudulent claims, fraud, coercion,
25 conversion, malicious prosecution, misuse of government
26 property, or willful omission to perform duty, or (2) involves
27 gross misconduct or gross negligence.

28 (c) “Person” means any individual, corporation, trust,
29 association, any state or local government, or any agency or
30 instrumentality of any of the foregoing.

31 (d) “Protected disclosure” means any good faith
32 communication that discloses or demonstrates an intention to
33 disclose information that may evidence either of the following:

34 (1) An improper governmental activity.

35 (2) Any condition that may significantly threaten the health or
36 safety of employees or the public if the disclosure or intention to
37 disclose was made for the purpose of remedying that condition.

38 (e) “Illegal order” means any directive to violate or assist in
39 violating a federal, state, or local law, rule, or regulation or any
40 order to work or cause others to work in conditions outside of

1 their line of duty that would unreasonably threaten the health or
2 safety of employees or the public.

3 (f) “Chief administrative officer” means the person employed
4 by a special district, whether directly or by contract, who has
5 primary responsibility for the special district’s administration.
6 The title of the chief administrative officer may include, but is
7 not limited to, general manager, district manager, district
8 administrator, or executive officer.

9 60221.5. (a) An employee may not directly or indirectly use
10 or attempt to use the official authority or influence of the
11 employee for the purpose of intimidating, threatening, coercing,
12 commanding, or attempting to intimidate, threaten, coerce, or
13 command any person for the purpose of interfering with the
14 rights conferred pursuant to this article.

15 (b) For the purpose of subdivision (a), “use of official
16 authority or influence” includes promising to confer, or
17 conferring, any benefit; effecting, or threatening to effect, any
18 reprisal; or taking, or directing others to take, or recommending,
19 processing, or approving, any personnel action, including, but not
20 limited to, appointment, promotion, transfer, assignment,
21 performance evaluation, suspension, or other disciplinary action.

22 (c) Any employee who violates subdivision (a) may be liable
23 in an action for civil damages brought against the employee by
24 the offended party.

25 (d) Nothing in this section shall be construed to authorize an
26 individual to disclose information otherwise prohibited by or
27 under law.

28 60222. The county auditor of the county in which the special
29 district is located, or has its primary office, shall administer the
30 provisions of this article and shall investigate and report on
31 improper governmental activities. If, after investigating, the
32 county auditor finds that an employee may have engaged or
33 participated in improper governmental activities, the county
34 auditor shall send a copy of the investigative report to the
35 employee’s appointing power. Within 30 days after receiving a
36 copy of the county auditor’s investigative report, the chief
37 administrative officer shall either serve a notice of adverse action
38 upon the employee who is the subject of the investigative report
39 or set forth in writing its reasons for not taking adverse action.

1 60222.5. Upon receiving specific information that any
2 employee or special district has engaged in an improper
3 governmental activity, the county auditor may conduct an
4 investigative audit of the matter. The identity of the person
5 providing the information that initiated the investigative audit
6 shall not be disclosed without the written permission of the
7 person providing the information unless the disclosure is to a law
8 enforcement agency that is conducting a criminal investigation.

9 60223. (a) If the county auditor determines that there is
10 reasonable cause to believe that an employee or special district
11 has engaged in any improper governmental activity, he or she
12 shall report the nature and details of the activity to the chief
13 administrative officer, or if the county auditor has reason to
14 conclude that the activity may involve a violation of criminal
15 law, to the district attorney or county council, as the case may be.

16 (b) In any case in which the county auditor submits a report of
17 alleged improper activity to the chief administrative officer, that
18 individual shall report to the county auditor with respect to any
19 action taken by the individual regarding the activity, the first
20 report being transmitted no later than 30 days after the date of the
21 county auditor's report and monthly thereafter until final action
22 has been taken.

23 (c) Every investigative audit shall be kept confidential, except
24 that the county auditor may issue any report of an investigation
25 that has been substantiated, keeping confidential the identity of
26 the individual or individuals involved, or release any findings
27 resulting from an investigation conducted pursuant to this article
28 that is deemed necessary to serve the interests of the public.

29 (d) This section shall not limit any authority conferred upon
30 the Attorney General or any other department or agency of
31 government to investigate any matter.

32 60223.5. (a) An employee or applicant for employment with
33 a special district who files a written complaint with his or her
34 supervisor, manager, or the chief administrative officer alleging
35 actual or attempted acts of reprisal, retaliation, threats, coercion,
36 or similar improper acts prohibited by Section 60221.5, may also
37 file a copy of the written complaint with the chief administrative
38 officer of the special district, together with a sworn statement that
39 the contents of the written complaint are true, or are believed by
40 the affiant to be true, under penalty of perjury. The complaint

1 filed with the chief administrative officer shall be filed within 12
2 months of the most recent act of reprisal complained about.

3 (b) Any person who intentionally engages in acts of reprisal,
4 retaliation, threats, coercion, or similar acts against an employee
5 or applicant for employment for having made a protected
6 disclosure, is subject to a fine not to exceed ten thousand dollars
7 (\$10,000) and imprisonment in the county jail for a period not to
8 exceed one year.

9 (c) In addition to all other penalties provided by law, any
10 person who intentionally engages in acts of reprisal, retaliation,
11 threats, coercion, or similar acts against an employee or applicant
12 for employment for having made a protected disclosure shall be
13 liable in an action for damages brought against him or her by the
14 injured party. Punitive damages may be awarded by the court
15 where the acts of the offending party are proven to be malicious.
16 Where liability has been established, the injured party shall also
17 be entitled to reasonable attorney's fees as provided by law.
18 However, any action for damages shall not be available to the
19 injured party unless the injured party has first filed a complaint
20 with the chief administrative officer pursuant to subdivision (a),
21 and the department has failed to issue findings.

22 (d) This section is not intended to prevent the chief
23 administrative officer, a manager, or supervisor from taking,
24 directing others to take, recommending, or approving any
25 personnel action or from taking or failing to take a personnel
26 action with respect to any employee or applicant for employment
27 if the chief administrative officer, manager, or supervisor
28 reasonably believes any action or inaction is justified on the basis
29 of evidence separate and apart from the fact that the person has
30 made a protected disclosure as defined in subdivision (b) of
31 Section 60221.

32 (e) In any civil action or administrative proceeding, once it has
33 been demonstrated by a preponderance of evidence that an
34 activity protected by this article was a contributing factor in the
35 alleged retaliation against a former, current, or prospective
36 employee, the burden of proof shall be on the supervisor,
37 manager, or the chief administrative officer to demonstrate by
38 clear and convincing evidence that the alleged action would have
39 occurred for legitimate, independent reasons even if the
40 employee had not engaged in protected disclosures or refused an

1 illegal order. If the supervisor, manager, or the chief
2 administrative officer fails to meet this burden of proof in an
3 adverse action against the employee in any administrative
4 review, challenge, or adjudication in which retaliation has been
5 demonstrated to be a contributing factor, the employee shall have
6 a complete affirmative defense in the adverse action.

7 (f) Nothing in this article shall be deemed to diminish the
8 rights, privileges, or remedies of any employee under any other
9 federal or state law or under any employment contract or
10 collective bargaining agreement.

11 60224. If the chief administrative officer determines that there
12 is a reasonable basis for an alleged violation or finds an actual
13 violation of Section 60221.5, it shall transmit a copy of the
14 investigative report to the county auditor. All working papers
15 pertaining to the investigative report shall be made available
16 under subpoena in a civil action.

17
18 Article 3. Compensation and Benefits
19

20 60225. (a) Notwithstanding any other provision of law, the
21 governing board of a special district may adopt an ordinance that
22 provides compensation to the members of that governing board,
23 if that ordinance complies with this section.

24 (b) The ordinance may provide for an amount of compensation
25 that shall not exceed one hundred fifty dollars (\$150) for each
26 day of service, not to exceed six days a month.

27 (c) Notwithstanding subdivision (b), the ordinance may
28 provide for an amount of compensation that shall not exceed one
29 hundred fifty dollars (\$150) for each day of service, not to
30 exceed 10 days a month if the special district's population is
31 greater than two million persons or if the special district's annual
32 total expenditures for general purpose transactions is greater than
33 one hundred million dollars (\$100,000,000), as shown in the
34 most recent edition of the Special Districts Annual Report
35 published by the Controller.

36 (d) Notwithstanding subdivision (b) or (c), where the principal
37 act of the special district authorizes a maximum amount of
38 compensation that is less than one hundred fifty dollars (\$150)
39 for each day of service, that lesser amount shall prevail. The
40 compensation for governing board members may be increased

1 annually with a majority vote of the board by enacting a
2 referendable ordinance. The board shall vote in public session at
3 a meeting that complies with the Ralph M. Brown Act (Chapter 9
4 (commencing with Section 54950) of Part 1 of Division 2 of Title
5 5) notice requirements, and the vote shall be taken each time
6 compensation is increased. The increase shall be tied to the
7 California Consumer Price Index, as determined by the Division
8 of Labor Statistics and Research of the Department of Industrial
9 Relations, not to exceed 5 percent per year.

10 (e) Notwithstanding any other provision of this section, a
11 special district may provide monthly salaries to the members of
12 its governing board if those monthly salaries are authorized in the
13 special district's principal act and the salary was in effect on
14 January 1, 2006.

15 (f) As used in this section, "day of service" means:

16 (1) Attendance at a meeting of that special district that is
17 conducted pursuant to the Ralph M. Brown Act (Chapter 9
18 (commencing with Section 54950) of Division 2 of Title 5).

19 (2) Representation of that special district at a public event,
20 provided that the board of directors has previously approved the
21 member's representation at a board meeting and that the member
22 delivers a written report to the governing board regarding the
23 member's representation at the next board meeting following the
24 public event.

25 (3) Representation of that special district at a public meeting
26 or a public hearing conducted by another public agency,
27 including, but not limited to, a city, county, special district,
28 school district, community redevelopment agency, joint powers
29 agency, a regional agency, board, or commission, a state agency,
30 board, or commission, the Legislature, or the Congress, provided
31 that the board of directors has previously approved the member's
32 representation at a board meeting and that the member delivers a
33 written report to the governing board regarding the member's
34 representation at the next board meeting following the public
35 meeting or public hearing.

36 (4) Participation in a program, conference, workshop, meeting
37 with district staff or seminar on a topic that is directly related to
38 the special district, including, but not limited to, training in
39 ethical standards of conduct pursuant to Article 2 (commencing
40 with Section 60215), provided that the board of directors has

1 previously approved the member's participation at a board
2 meeting and that the member delivers a written report to the
3 governing board regarding the member's participation at the next
4 board meeting following the program.

5 60225.5. (a) If the principal act of a special district authorizes
6 a special district to reimburse the expenses of its governing board
7 members or employees, subject to collective bargaining
8 agreements, the special district shall follow the Internal Revenue
9 Service's accountable plan guidelines. However, the amount of
10 reimbursement may not exceed the amounts permitted for state
11 employees pursuant to Sections 599.615 to 599.638.1, inclusive,
12 of Title 2 of the California Code of Regulations for in-state
13 travel. For out-of-state or international travel, the reimbursement
14 shall be based on reasonable costs using state government rates
15 as a guideline for determining a reasonable amount of
16 reimbursement. Approval of the reimbursement rate shall occur
17 during a noticed, public meeting.

18 (b) Any reconciliation of advance payments for expenses and
19 any reimbursement for expenses paid to a special district's
20 governing board members or employees shall be supported by
21 receipts and shall be approved by the board of directors in a
22 noticed, public meeting.

23 60226. (a) Notwithstanding Article 1 (commencing with
24 Section 53200) of Chapter 2 of Part 1 of Division 2, or any other
25 provision of law, the governing board of a special district by
26 itself, or as a party to a joint exercise of powers agreement, may
27 not provide group life insurance or health and welfare benefits, as
28 those terms are defined in Section 53200 to any person first
29 appointed to an appointment or first elected to a term of office
30 that begins on or after January 1, 2006, unless the person
31 participates on a self-pay basis.

32 (b) Notwithstanding any other provision of law, the governing
33 board of a special district may not provide retirement benefits to
34 any member first appointed or first elected to a term of office that
35 begins on or after January 1, 2006.

36 60227. Any savings created by Sections 60225 and 60226
37 through decreased compensation to board members and
38 decreased cost to the district for providing health, welfare, and
39 pension benefits to board members shall be used by the district to
40 offset costs created by this chapter.

Article 4. Audits

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60230. (a) Special districts shall cause audits to be performed in compliance with Section 26909.

(b) In addition to the requirements of Section 26909, the governing board of a special district shall do all of the following:

(1) Require the auditor to meet directly with the governing board in an open session with the opportunity for public discussion of the auditor's findings consistent with the requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(2) Prohibit a public accounting firm from providing audit services to a special district if the lead audit partner, or coordinating audit partner, having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that special district for more than the six previous fiscal years, before the fiscal year being audited. If the auditor-controller is performing these audits rather than a public accounting firm, then the lead auditor or coordinating principals performing the audit within the auditor-controller's office shall also comply with these requirements. The Controller may waive this requirement if he or she finds no otherwise eligible auditor is available at a reasonable cost to perform the audit. The 2006 calendar year is the base year for determining whether a rotation shall be implemented.

(3) Revoke the authority of auditors or accountants to conduct audits of the special district for three years when an independent audit finds that the auditors or accountants failed to conduct a thorough and complete audit.

(c) The auditor or accountant shall promptly notify the Controller of any compliance violations.

(d) The Controller may audit any special district that is not in compliance with the prescribed standards at the expense of the special district.

(e) The special district may recover the costs for the audit performed by the Controller's office as referenced in subdivision (d) from the private auditing firm that conducted the original audit if the auditing firm is found by the California Board of

1 Accountancy to have failed to conduct a thorough and complete
2 audit.

3 SEC. 4. Section 20201 of the Water Code is repealed.

4 ~~20201. Notwithstanding any other provision of law, the~~
5 ~~governing board of any water district may, by ordinance adopted~~
6 ~~pursuant to this chapter, provide compensation to members of the~~
7 ~~governing board, unless any compensation is prohibited by its~~
8 ~~principal act, in an amount not to exceed one hundred dollars~~
9 ~~(\$100) per day for each day's attendance at meetings of the~~
10 ~~board, or for each day's service rendered as a member of the~~
11 ~~board by request of the board, and may, by ordinance adopted~~
12 ~~pursuant to this chapter, in accordance with Section 20202,~~
13 ~~increase the compensation received by members of the governing~~
14 ~~board above the amount of one hundred dollars (\$100) per day.~~

15 ~~It is the intent of the Legislature that any future increase in~~
16 ~~compensation received by members of the governing board of a~~
17 ~~water district be authorized by an ordinance adopted pursuant to~~
18 ~~this chapter and not by an act of the Legislature.~~

19 SEC. 5. Section 20202 of the Water Code is repealed.

20 ~~20202. In any ordinance adopted pursuant to this chapter to~~
21 ~~increase the amount of compensation which may be received by~~
22 ~~members of the governing board of a water district above the~~
23 ~~amount of one hundred dollars (\$100) per day, the increase may~~
24 ~~not exceed an amount equal to 5 percent, for each calendar year~~
25 ~~following the operative date of the last adjustment, of the~~
26 ~~compensation which is received when the ordinance is adopted.~~

27 ~~No ordinance adopted pursuant to this chapter shall authorize~~
28 ~~compensation for more than a total of 10 days in any calendar~~
29 ~~month.~~

30 SEC. 6. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution for
32 certain costs that may be incurred by a local agency or school
33 district because, in that regard, this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the
35 penalty for a crime or infraction, within the meaning of Section
36 17556 of the Government Code, or changes the definition of a
37 crime within the meaning of Section 6 of Article XIII B of the
38 California Constitution.

39 However, if the Commission on State Mandates determines
40 that this act contains other costs mandated by the state,

- 1 reimbursement to local agencies and school districts for those
- 2 costs shall be made pursuant to Part 7 (commencing with Section
- 3 17500) of Division 4 of Title 2 of the Government Code.

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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL**No. 1234**

Introduced by Assembly Member SalinasFebruary 22, 2005

An act to add Article 2.3 (commencing with Section 53232) and Article 2.4 (commencing with Section 53234) to Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1234, as introduced, Salinas. Local agencies: compensation and ethics.

(1) Existing law provides for the establishment and operations of cities, counties, cities and counties, districts, and other local government agencies, the composition of their governing bodies, and the payment of governing body members for attending meetings and performing other duties, and prescribes conflicts of interest.

This bill would require a local agency to adopt a written policy on the duties for which legislative body members may receive compensation, other than meetings of the legislative body or an advisory body or attendance at a conference. The bill would require the governing body to adopt a written policy concerning what occurrences qualify a member to receive reimbursement of expenses for travel, meals, and lodging and would impose related requirements, including the filing of expense reports, which would be public records.

This bill would also require that each member of a legislative body of a local agency, except a member whose term of office ends before January 1, 2007, and each designated employee of a local agency employed as of January 1, 2006, receive training in ethical standards of conduct before January 1, 2007, as specified. By imposing these

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requirements on local agencies, this bill would impose a state-mandated local program.

(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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Article 2.3 (commencing with Section 53232) is
2 added to Chapter 2 of Part 1 of Division 2 of Title 5 of the
3 Government Code, to read:

4

5

Article 2.3. Compensation

6

7 53232. For the purposes of this article, the following terms
8 have the following meanings:

9 (a) "Conference" has the same meaning as described in
10 paragraph (2) of subdivision (c) of Section 54952.2.

11 (b) "Governing body" means the board of supervisors in the
12 case of a county or a city and county, the city council or board of
13 trustees in the case of a city, and the board of directors or other
14 governing body in the case of a district or other public agency.

15 (c) "Legislative body" has the same meaning as specified in
16 Section 54952.

17 (d) "Local agency" means a city, county, city and county,
18 charter city, or special district.

19 (e) "Meeting" has the same meaning as specified in
20 subdivision (a) of Section 54952.2.

21 53232.1. (a) A local agency may pay compensation to
22 members of a legislative body for attendance at the following
23 occurrences:

24 (1) A meeting of the legislative body.

25 (2) A meeting of an advisory body.

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1 (3) A conference.

2 (b) A local agency may pay compensation for attendance at
3 occurrences not specified in subdivision (a) only if the governing
4 body has adopted, in a public meeting, a written policy on the
5 other specific types of occasions that constitute the performance
6 of official duties for which a member of the legislative body may
7 receive payment.

8 (c) Subdivisions (a) and (b) apply to any local agency that is
9 otherwise authorized, by law, to pay compensation to members
10 of a legislative body on the basis of a fixed daily amount for
11 attendance at meetings or performance of official duties on
12 behalf of the agency. If a local agency is otherwise authorized, in
13 statute, or has enacted an ordinance to provide that a member of
14 the legislative body shall receive a salary, then subdivisions (a)
15 and (b) do not apply to that member.

16 (d) The provisions of this section are additional to any other
17 laws authorizing payment of compensation to members of
18 legislative bodies of local agencies.

19 53232.2. (a) A local agency may reimburse members of a
20 legislative body for actual and necessary expenses incurred in the
21 performance of official duties.

22 (b) The governing body shall adopt a written policy, in a
23 public meeting, specifying the types of occurrences that qualify a
24 member of the legislative body to receive reimbursement of
25 expenses relating to travel, meals, and lodging.

26 (c) The members of the governing body may adopt a travel
27 reimbursement policy, in a public meeting, that outlines
28 procedures and reimbursement rates for meals, lodging, and
29 travel. If the governing body of a local agency does not adopt a
30 travel reimbursement policy, the local agency shall use the
31 Internal Revenue Service rates for reimbursement of meals,
32 lodging, and travel, as established in Publication 463, or any
33 successor publication.

34 (d) If the lodging is in connection with a conference, lodging
35 costs shall not exceed the group rate published by the conference
36 sponsor.

37 (e) Members of the legislative body shall use the most
38 economical mode and class of transportation and lodging
39 available that is consistent with scheduling needs and cargo

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1 requirements. Members shall use government and group rates for
2 travel and lodging when available.

3 (f) All expenses that do not fall within the adopted travel
4 reimbursement policy or the IRS reimbursable rates as provided
5 in subdivision (a), shall be approved by the governing body, in a
6 public meeting before the expense is incurred, except as provided
7 in subdivision (d).

8 53232.3. (a) A local agency shall provide expense report
9 forms to be filed by the members of the legislative body for
10 reimbursement for actual and necessary expenses incurred on
11 behalf of the local agency in the performance of official duties.
12 Reimbursable expenses shall include, but not be limited to,
13 meals, lodging, and travel.

14 (b) Expense reports shall document that expenses meet the
15 existing policy for expenditure of public resources.

16 (c) Members shall submit expense reports within a reasonable
17 time after incurring the expense, as determined by the legislative
18 body, and the reports shall be accompanied by the receipts
19 documenting each expense.

20 (d) Members shall provide brief reports on meetings attended
21 at the expense of the local agency at the next regular meeting of
22 the legislative body.

23 (e) All documents related to reimbursable agency expenditures
24 are public records subject to disclosure under the California
25 Public Records Act (Chapter 3.5 (commencing with Section
26 6250) of Division 7 of Title 1).

27 53232.4. Penalties for misuse of public resources or falsifying
28 expense reports in violation of expense reporting polices may
29 include, but are not limited to, the following:

30 (a) The loss of reimbursement privileges.

31 (b) Responsibility for restitution to the local agency.

32 (c) Prosecution for misuse of public resources, pursuant to
33 Section 8314 of this code or Section 424 of the Penal Code.

34 SEC. 2. Article 2.4 (commencing with Section 53234) is
35 added to Chapter 2 of Part 1 of Division 2 of Title 5 of the
36 Government Code, to read:

— 5 —

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1 Article 2.4. Ethics Training

2

3 53234. For the purposes of this article, the following terms
4 have the following meanings:5 (a) "Legislative body" has the same meaning as specified in
6 Section 54952.7 (b) "Local agency" means a city, county, city and county,
8 charter city, or special district.9 53235. (a) Each member of a legislative body of a local
10 agency, except a member whose term of office ends before
11 January 1, 2007, and each designated employee of a local agency
12 employed with the agency as of January 1, 2006, shall receive
13 training in ethical standards of conduct before January 1, 2007.14 (b) Each member of a legislative body and each designated
15 employee who commences employment with a local agency on
16 or after January 1, 2006, shall receive training in ethical
17 standards of conduct no later than one year from the first day of
18 employment with the local agency. Thereafter, members of a
19 legislative body and designated employees shall receive training
20 in ethical standards of conduct at least once every two years.21 (c) The legislative body of a local agency shall designate the
22 employees who shall receive training in ethical standards of
23 conduct for the purposes of this section.24 53235.1. (a) A local agency shall provide information on
25 training available in ethical standards of conduct, that meets the
26 requirements of this section, to members of its legislative body
27 and designated employees at least once annually.28 (b) A local agency may offer a training course in ethical
29 standards of conduct that meets the requirements of this section.30 (c) A local agency may identify online courses, conferences,
31 seminars, or other courses that meet the requirements of this
32 section.33 (d) The Fair Political Practices Commission and the Attorney
34 General shall jointly develop curriculum appropriate for the
35 training in ethical standards of conduct for members of the
36 legislative body of a local agency and designated employees.37 (e) The curriculum for training in ethical standards of conduct
38 shall include information regarding potential ethical abuses
39 relating to, but not limited to, all of the following:

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1 (1) The direct and indirect business relationships among
2 members of the legislative body of a local agency, contractors,
3 and vendors, and between members of the legislative body of a
4 local agency and officers and employees of other public
5 agencies.

6 (2) The solicitation of campaign contributions by members of
7 a legislative body, officers, or employees of a local agency, and
8 the receipt of contributions from bidders, contractors, and
9 subcontractors.

10 (3) The use of public resources for a campaign activity, or
11 personal or other purposes that are not authorized by law.

12 (f) In order to satisfy the requirements of Section 53235,
13 members of a legislative body and designated employees of a
14 local agency shall complete training in ethical standards of
15 conduct that meets the requirements of this section.

16 53235.2. Notwithstanding Section 53235, a member of a
17 legislative body or a designated employee who serves more than
18 one local agency shall satisfy the requirements of this article
19 once every two years without regard to the number of local
20 agencies with which he or she is affiliated.

21 53235.3. (a) A local agency shall maintain records indicating
22 both of the following:

23 (1) The dates that members of the legislative body and
24 designated employees satisfied the requirements of this article.

25 (2) The agency or entity that conducted the training.

26 (b) Notwithstanding any other provision of law, a local agency
27 shall maintain these records for at least five years after the
28 members of the legislative body and designated employees
29 receive the training. A local agency shall make these records
30 available to the public for inspection.

31 SEC. 3. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.

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SENATE BILL**No. 274****Introduced by Senator Romero**

February 16, 2005

An act to add Section 1129.5 to the Government Code, relating to public service.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as introduced, Romero. Incompatible offices: elected and appointed positions.

Existing statutory law forbids a local agency officer or employee to engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed, except as specified. The common law forbids the simultaneous holding of 2 offices that exercise sovereign power that are incompatible, as when one office is superior to and exercises some supervisory power over the other, or has the power to remove the incumbent of the other or to audit the accounts of the other.

This bill would, except as specified, provide that service on a local appointed or elected governmental board, commission, committee, or other body shall be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of service on another local elected or appointed governmental board, commission, committee, or other body, if either of the bodies may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other in any circumstance. It would require an elected or appointed member of one of 2 local governmental bodies in the above-described relation to resign prior to seeking election or appointment, or prior to accepting election or appointment, to the 2nd,

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and would forbid the exercise of any of the powers of the first after acceding to the 2nd.

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 1129.5 is added to the Government
2 Code, to read:

3 1129.5. (a) Except as provided in Section 1129, service on an
4 local appointed or elected governmental board, commission,
5 committee, or other body shall be deemed to be inconsistent,
6 incompatible, in conflict with, or inimical to the duties of service
7 on another elected or appointed local governmental board,
8 commission, committee, or other body, if either of the bodies
9 may audit, overrule, remove members of, dismiss employees of,
10 or exercise supervisory powers over the other in any
11 circumstance.

12 (b) An elected or appointed member of one of two local
13 governmental bodies described in subdivision (a) shall not seek
14 election or appointment to the second local governmental body
15 prior to resigning from the first.

16 (c) An elected or appointed member of one of two local
17 governmental bodies described in subdivision (a) shall not accept
18 election or appointment to the second local governmental body
19 without resigning from the first, and shall not exercise any of the
20 powers of the first after acceding to the second.

21 (d) This section shall not apply to a governmental body that
22 has only advisory powers.

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