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Legislature Mandates Ethics Training for Local Government Officials

by

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Governor Schwarzenegger is expected to sign into law A.B. 1234 (Salinas, D-Salinas) which regulates the way in which non-salaried local elected officials are paid, how most local elected officials receive reimbursement for their expenses, and requires most local elected officials to receive at least 2 hours of ethics training every two years, with the first two hours to be completed by January 1, 2007. This requirement applies to charter and general law cities, counties, and special districts, all of which are referred to in this paper as “local governments” or “agencies.” This paper provides an overview of the law.

I. Expense Reimbursement Requirements

Under AB 1234, local agencies which have authority under other statutes to reimburse legislative body members for “actual and necessary expenses incurred in the performance of official duties” (as most do) must adopt a written expense reimbursement policy which covers “travel, meals, lodging, and other actual and necessary expenses.” Gov. Code § 53232.2(a), (b).¹ That policy must be adopted “in a public meeting” and must specify the expenses which will be reimbursable. *Id.*, § 53232.2(b). Assuming A.B. 1234 takes effect, local agencies may not make expense reimbursements after January 1, 2006 without complying with this statute, so we recommend agencies adopt such policies by the end of this year. A model policy is available from the Institute for Local Government, an affiliate of the League of California Cities, at www.ilsg.org.

While an expense reimbursement policy need not specify reimbursement rates for particular expenses such as mileage, hotel stays, and airfares, if it does so, those rates must be “reasonable.” If the policy does not state permissible rates, IRS rules will apply, such as the rule (current through the end of this year) that mileage may be reimbursed at up to 48.5 cents per mile. Gov. Code § 53232.2(c).

The law also provides that the cost for hotel stays for conferences, ethics education, or other official business activities must be at conference or government rates published by the

¹ Government Code citations in this paper are to the California Government Code as it will be amended if, as expected, A.B. 1234 takes effect in January 2006.

conference or activity sponsor. If those rates are not available, the legislative body member must get a room at a cost authorized by IRS rules or the legislative body's expense reimbursement policy, or through an exception approved by the governing body in a public meeting in advance. §§ 53232.2(d), (c), (e), (f).

Any local agency which provides expense reimbursements must provide "expense report forms to be filed by the members of the legislative body" which must document compliance with the agency's or IRS policies regarding expense reimbursements. Expense reports must "be accompanied by . . . receipts." §§ 53232.3(a), (b), (c). This provision will bar the currently common practice of paying flat monthly mileage allowances without requiring a mileage log or other proof of travel. Of course, use of agency vehicles for agency business and payments of up to the IRS rate (currently 48.5 cents) per mile of official travel will still be permissible.

Expense reports must be submitted "within a reasonable time . . . as determined by the legislative body." § 53232.3(c). "Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body." § 53232.3(d). It may be helpful for agency staff to agendize these reports following conferences which their elected officials attend to remind them of the duty to report. While the statute seems to envision oral reports, we see no reason why a written report included in the agenda materials for the meeting will not suffice.

Finally, agency expense report policies and expense reports are public records. § 53232.3(e). Given the nature of local politics and press habits, these reports can be expected to draw substantial scrutiny.

II. Ethics Training Requirements

AB 1234 will also require that, beginning January 1, 2006, elected officials of local agencies which provide compensation, salary, stipend or expense reimbursements to their officials must receive two hours of ethics training every two years. Gov. Code § 53234(c), §§ 53235(a), (b). Officials who will leave office before the end of 2006 are exempt.

The ethics training requirement also applies to "any employee designated by a local agency legislative body." Gov. Code § 53234(c)(2). Thus, local governments should consider whether to designate any non-elected officials and staff to receive ethics training. The down-side of doing so is that the agency is creating a reimbursable mandate under Proposition 13 for which state funding may be late and inadequate.² The upside is the enhanced public confidence in the

² The bill was written with the expectation that it is not a reimbursable mandate because it is conditioned upon a local decision to reimburse expenses. However, it is not clear that this legislative expectation will hold up to a test claim before the Commission on State Mandates or judicial review of a Commission decision

agency that may flow from such a public commitment to ethics training. An agency which designates employees to file annual statements of economic interest under the Political Reform Act (as most do) should consider its rationale for mandating disclosure of economic interests but not training requirements, as that distinction may or may not be readily accepted by the press and public.

The required training is to cover:

- (1) laws relating to personal financial gain by public servants, including laws prohibiting conflicts of interest and bribery;
- (2) laws relating to “claiming [perquisites] of office” such as gifts and travel, use of public resources or gifts of public funds, mass mailing restrictions, and prohibitions on the receipt of free or discounted transportation;
- (3) “Government transparency laws” such as financial interest disclosure requirements, the Brown Act, and the Public Records Act, and
- (4) “Laws relating to fair processes” including those covering bias, due process, incompatible offices, competitive bidding, nepotism.

Gov. Code § 53234(d). Training in local ethics policies is also permissible. Gov. Code § 53235(c), § 53234(d) (ethics laws “include, but are not limited to,” the four items listed above).

Training programs or materials established by a local agency or groups such as the California Special Districts Association (CSDA), the California State Association of Counties, or the League of California Cities must be prepared in consultation with the Attorney General and Fair Political Practices Commission (“FPPC”). Gov. Code § 53235(c). Self-study materials with accompanying test to be taken at home, in person or online will also qualify, Gov. Code § 53235(d), but all training providers must provide attendees proof of participation, Gov. Code § 53235(e), and local agencies must maintain records of attendance by their officials including date of study and the entity that provided the training for at least five years from the date of study. Gov. Code § 53235.2(b). Thus, officials subject to training requirements would do well to keep a copy of certificates of attendance for their own records and to provide a copy to the local agency as well.

Local agencies must inform officials of training opportunities at least annually. Gov. Code § 53235(f). It would be advisable to do this in writing or at a public meeting to document compliance with the law. All attendance records are public records, Gov. Code §§ 53235.2(b), and policies designating employees to receive training would be as well.

As noted above, the law generally requires two hours of training for each local official every two years. Training must be completed by January 1, 2007 for those in office on January 1, 2006, and within one year of taking office for those who take office after that date. Thereafter, each local agency official must receive the training at least once every two years. Gov. Code §§ 53235.1(b), (a). Officials who hold more than one covered position, such as service on a local government and on a Local Agency Formation Commission, joint powers board, or other regional or multi-agency entity, need only complete two training hours every two years as to all positions. Gov. Code § 53235.1(c).

It can be expected that many local government associations will establish training programs. The author of this paper serves on the CSDA's Ethics Curriculum Committee, which is developing an ethics training program now. Once curricula are approved by the Attorney General and FPPC, it can be expected that local governments, public lawyers, and for profit entities will be available to provide this training.

III. Compensation Limitations

In addition to expense reimbursements, AB 1234 provides limitations on direct compensation for some officials. These compensation limitations do not apply to salaried officials of any local agency, including but not limited to, councilmembers and mayors of most cities and members of the boards of supervisors of most counties, members of the board of irrigation districts which provide electricity, directors of utility districts with boards having seven members, and harbor district directors. Thus, it will primarily apply to officials of independent special districts who do not fall within these last two exceptions. With regard to nonsalaried officials, the law provides that stipend for attending a meeting or for a day of service can be paid for: (i) a meeting of any "legislative body" of the agency (as the Brown Act defines that term), a meeting of an advisory body (such as a less-than-a-quorum, temporary, ad hoc advisory subcommittee of a legislative body), and conference attendance including ethics training conferences, assuming that the stipend is authorized by another statute. Gov. Code § 53232.1(a). If the agency wishes to compensate officials for attendance at other events, it may do so "only if the governing body has adopted, in a public meeting, a written policy specifying" the other events which "constitute the performance of official duties" allowing compensation. Gov. Code § 53232.1(b). Thus, in order to compensate officials for service other than conference attendance and meetings of Brown Act bodies and advisory bodies, local governments must have an adopted, written policy which authorizes those payments. If such payments are desirable, such a policy should be adopted before the end of 2005.

IV. Penalties for Noncompliance

AB 1234 also provides new penalties “for misuse of public resources or falsifying expense report[s].” Gov. Code § 53232.4. Those penalties include “but are not limited to”:

- (1) loss of reimbursement privileges;
 - (2) a duty to pay restitution to the local agency;
 - (3) civil penalties of up to \$1,000 per day and three times the value of the resources used;
- and,
- (4) criminal prosecution and lifetime bar from public office.

Although these penalties do not apply to failures to comply with the ethics training provisions, such failures will certainly have political consequences, could be the subject to a writ action to compel an official to comply, and could bring a grand jury accusation of misconduct in office under Gov. Code § 3060 et seq. which, if proven at trial, leads to exclusion from office.

For further information regarding the mandates of A.B. 1234, you may contact Michael G. Colantuono in the Sierra Foothill office of Colantuono & Levin, P.C. at (530) 432-7359 or via email at MColantuono@CLLAW.US.