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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1955

Introduced by Assembly Member De La Torre

February 17, 2010

~~An act to amend Section 1099 of the Government Code, relating to public officers.~~ *An act to amend Section 54957.6 of, and to add Sections 12531 and 54957.05 to, the Government Code, to add Section 33138 to the Health and Safety Code, and to add Section 17043.5 to the Revenue and Taxation Code, relating to public officers, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1955, as amended, De La Torre. ~~Public officers: incompatible offices.~~ *Local government: compensation.*

(1) Existing law charges the Attorney General with various duties, including, among others, attending the Supreme Court and prosecuting or defending all causes to which the state, or any state officer is a party in his or her official capacity.

Existing law authorizes a city council to enact an ordinance providing each member of the city council a salary based on the population of the city, and to provide for other forms of compensation, as specified.

This bill would require the Attorney General to determine whether a city is an excess compensation city, as defined. The bill would require

the Attorney General to notify the Franchise Tax Board and the redevelopment agency in the city of the city's status as an excess compensation city.

(2) The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities to address the effects of blight, as defined, in blighted areas in those communities known as project areas, and authorizes the agency to issue bonds.

This bill would prohibit the agency, once the agency has received written notice from the Attorney General that the city is an excess compensation city, from adopting a redevelopment plan for a new project area or amending an existing redevelopment plan for existing project areas; from issuing new bonds, notes, interim certificates, debentures, or other obligations, as specified; and from encumbering any funds or expending any moneys derived from any source except as specified.

(3) The Personal Income Tax Law imposes taxes based upon taxable income.

This bill would, for taxable years beginning on or after January 1, 2011, increase the tax rate applicable to 50% on that portion of the gross income of a city council member of an excess compensation city, as defined, that is in excess of the allowable amount.

(4) Existing law, the Ralph M. Brown Act, requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act authorizes a legislative body to hold a closed session with the local agency's designated representatives regarding various issues, including compensation, regarding its represented and unrepresented employees, but the legislative body is prohibited from taking final action on the proposed compensation of one or more unrepresented employees.

Existing law also requires that all contracts of employment with a local agency, as defined, for certain positions be ratified in an open session of the governing body and be reflected in the governing body's minutes.

This bill would require that any individual contract of employment with an employee who is or will be employed by, and report directly to, the legislative body of the local agency be ratified in an open session of the legislative body after prescribed information regarding the contract is made available on the local agency's Internet Web site, if it maintains one, and in a location that is freely accessible to the public, no later than 7 days prior to the meeting to ratify the contract. By

expanding the duties of local officials, these provisions would impose a state-mandated local program.

This bill would also specify that final action on the proposed compensation of one or more unrepresented employees who are to be employed by, and report directly to, the legislative body of the local agency only be taken in open session, consistent with the prescribed disclosure requirements. By expanding the duties of local officials, these provisions would impose a state-mandated local program.

(5) The bill would express a legislative finding and declaration that, to ensure the statewide integrity of local government, disclosure of compensation paid to officers and designated employees is an issue of statewide concern and not a municipal affair and that, therefore, all cities, including charter cities, would be subject to the provisions of the bill.

(6) 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.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law prohibits a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, from simultaneously holding 2 incompatible public offices, as specified.~~

~~This bill would provide examples of situations when 2 public offices are incompatible, and specify when a member holds an office that may exercise powers over another office, as provided.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: ~~no~~^{yes}.

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

- 1 SECTION 1. Section 12531 is added to the Government Code,
- 2 to read:
- 3 12531. (a) If the Attorney General determines that a city is an
- 4 excess compensation city, as defined in subdivision (e), the Attorney

1 *General shall notify the city council of that city in writing and*
2 *provide the city a hearing on the matter.*

3 *(b) At the hearing, the city shall be provided opportunity to*
4 *demonstrate that the city is not an excess compensation city, by*
5 *showing, among other things, evidence of compliance with Section*
6 *36516, evidence of submission of a salary ordinance to voters,*
7 *and evidence of an increase in salary of city council members of*
8 *no more than 5 percent per year over the base amount specified*
9 *in subdivision (a) of Section 36516.*

10 *(c) If, after notice and hearing, the Attorney General determines*
11 *that the city has failed to demonstrate that it is not an excess*
12 *compensation city, the Attorney General shall notify the city in*
13 *writing, and notify the Franchise Tax Board and the redevelopment*
14 *agency in that city, in writing, of the city's status as an excess*
15 *compensation city.*

16 *(d) A city that has been found to be an excess compensation city*
17 *may bring itself into compliance with Section 36516. Once the city*
18 *is in compliance with Section 36516, the city council may submit*
19 *a written request to the Attorney General to be relieved of the*
20 *status as an excess compensation city. If the Attorney General*
21 *determines that the city is in compliance with Section 36516, the*
22 *Attorney General shall immediately notify the Franchise Tax Board*
23 *and the city's redevelopment agency, in writing, of the change in*
24 *status.*

25 *(e) (1) For purposes of this section, "excess compensation city"*
26 *means any city, including a charter city, that compensates any*
27 *member of that city council in excess of the amounts specified in*
28 *Section 36516. An "excess compensation city" does not include*
29 *a charter city that specifies in the charter that the city council*
30 *members shall devote their entire time to duties related to their*
31 *office.*

32 *(2) Notwithstanding paragraph (1), if the office of mayor is*
33 *independently elected, the city may demonstrate that additional*
34 *compensation paid to the mayor other than compensation for the*
35 *mayor's position as a council member, has been provided by*
36 *ordinance or in the city's charter.*

37 *SEC. 2. Section 54957.05 is added to the Government Code,*
38 *to read:*

39 *54957.05. Notwithstanding any other law, any individual*
40 *contract of employment with an employee who is or will be*

1 employed by, and report directly to, the legislative body of the
2 local agency shall be ratified in an open session of the legislative
3 body. Prior to ratifying the contract, the legislative body shall
4 disclose information regarding the contract, including, but not
5 limited to, the employee's name, the position, and the total amount
6 of salary, benefits, retirement, and any other forms of
7 compensation, on the local agency's Internet Web site, if it
8 maintains one, and in a location that is freely accessible to
9 members of the public, no later than seven days prior to the
10 meeting to ratify the contract.

11 SEC. 3. Section 54957.6 of the Government Code is amended
12 to read:

13 54957.6. (a) Notwithstanding any other provision of law, a
14 legislative body of a local agency may hold closed sessions with
15 the local agency's designated representatives regarding the salaries,
16 salary schedules, or compensation paid in the form of fringe
17 benefits of its represented and unrepresented employees, and, for
18 represented employees, any other matter within the statutorily
19 provided scope of representation.

20 However, prior to the closed session, the legislative body of the
21 local agency shall hold an open and public session in which it
22 identifies its designated representatives.

23 Closed sessions of a legislative body of a local agency, as
24 permitted in this section, shall be for the purpose of reviewing its
25 position and instructing the local agency's designated
26 representatives.

27 Closed sessions, as permitted in this section, may take place
28 prior to and during consultations and discussions with
29 representatives of employee organizations and unrepresented
30 employees.

31 Closed sessions with the local agency's designated representative
32 regarding the salaries, salary schedules, or compensation paid in
33 the form of fringe benefits may include discussion of an agency's
34 available funds and funding priorities, but only insofar as these
35 discussions relate to providing instructions to the local agency's
36 designated representative.

37 Closed sessions held pursuant to this section shall not include
38 final action on the proposed compensation of one or more
39 unrepresented employees. *Final action on the proposed*
40 *compensation of one or more unrepresented employees who are*

1 *or will be employed by, and report directly to, the legislative body*
 2 *of the local agency shall occur in open session, and consistent*
 3 *with the disclosure requirements of Section 54957.05.*

4 For the purposes enumerated in this section, a legislative body
 5 of a local agency may also meet with a state conciliator who has
 6 intervened in the proceedings.

7 (b) For the purposes of this section, the term “employee” shall
 8 include an officer or an independent contractor who functions as
 9 an officer or an employee, but shall not include any elected official,
 10 member of a legislative body, or other independent contractors.

11 *SEC. 4. Section 33138 is added to the Health and Safety Code,*
 12 *to read:*

13 *33138. (a) Upon written notification by the Attorney General*
 14 *that the city in which the agency is established is an excess*
 15 *compensation city, pursuant to Section 12531 of the Government*
 16 *Code, all of the following shall apply:*

17 *(1) The agency shall not adopt redevelopment plans for a new*
 18 *project area or amend an existing redevelopment plan for existing*
 19 *project areas.*

20 *(2) The agency shall not issue new bonds, notes, interim*
 21 *certificates, debentures, or other obligations, whether funded,*
 22 *refunded, assumed, or otherwise, pursuant to Article 5*
 23 *(commencing with Section 33360) of Chapter 4.*

24 *(3) The agency shall not encumber any funds or expend any*
 25 *moneys derived from any source, except that the agency may*
 26 *encumber funds and expend funds to pay, if any, all of the*
 27 *following:*

28 *(A) Bonds, notes, interim certificates, debentures, or other*
 29 *obligations issued by an agency before the imposition of the*
 30 *prohibition in paragraph (2), whether funded, refunded, assumed,*
 31 *or otherwise, pursuant to Article 5 (commencing with Section*
 32 *33360) of Chapter 4.*

33 *(B) Loans or moneys previously advanced to the agency,*
 34 *including, but not limited to, loans from federal, state, or local*
 35 *agencies, or a private entity.*

36 *(C) Contractual obligations that, if breached, could subject the*
 37 *agency to damages or other liabilities or remedies.*

38 *(D) Obligations incurred pursuant to Section 33445.*

39 *(E) Indebtedness incurred pursuant to Section 33334.2 or*
 40 *33334.6.*

1 (F) Obligations incurred pursuant to Section 33401.

2 (G) Payments required under subdivision (a) of Section 33690
3 or subdivision (a) of Section 33690.5.

4 (b) The prohibitions identified in subdivision (a) shall be lifted
5 after the Attorney General determines that the city is no longer an
6 excess compensation city pursuant to subdivision (d) of Section
7 12531 of the Government Code.

8 SEC. 5. Section 17043.5 is added to the Revenue and Taxation
9 Code, to read:

10 17043.5. (a) For each taxable year beginning on or after
11 January 1, 2011, in addition to any other taxes imposed by this
12 part, an additional tax shall be imposed at the rate of 50 percent
13 on that portion of a qualified taxpayer's gross income that is
14 derived from the excess compensation city that is in excess of the
15 amounts specified in Section 36516 of the Government Code.

16 (b) For purposes of this section:

17 (1) "Qualified taxpayer" means a member of a city council of
18 an excess compensation city.

19 (2) "Excess compensation city" means a city that has been
20 determined by the Attorney General to be an excess compensation
21 city pursuant to Section 12531 of the Government Code.

22 (c) The following shall not apply to the tax imposed by this
23 section:

24 (1) The provisions of Section 17039, relating to the allowance
25 of credits.

26 (2) The provisions of Section 17041, relating to filing status
27 and recomputation of the income tax brackets.

28 (3) The provisions of Section 17045, relating to joint returns.

29 SEC. 6. The Legislature finds and declares that the fiscal
30 integrity and stability of local governmental agencies in this state,
31 including charter cities, has a direct impact on the long-term
32 well-being of all the residents of this state. The likelihood of
33 businesses locating to or staying in the state is affected by the
34 perception of a functioning, transparent, and practical
35 governmental structure in the local governmental bodies in
36 California. Therefore, the Legislature finds and declares that to
37 ensure the statewide integrity of local government, the disclosure
38 of compensation paid to officers and designated employees is an
39 issue of statewide concern and not a municipal affair, as that term

1 *is used in Section 5 of Article XI of the California Constitution.*

2 *Therefore, this act shall apply to all cities, including charter cities.*

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

8 *SEC. 8. This act is an urgency statute necessary for the*
 9 *immediate preservation of the public peace, health, or safety within*
 10 *the meaning of Article IV of the Constitution and shall go into*
 11 *immediate effect. The facts constituting the necessity are:*

12 *In order to preserve fiscal integrity and stability of local*
 13 *government agencies in this state and the perception of a*
 14 *functioning, transparent, and practical governmental structure in*
 15 *the local government bodies in California at the earliest possible*
 16 *time, it is necessary for this measure to take effect immediately.*

17 ~~SECTION 1. Section 1099 of the Government Code is amended~~
 18 ~~to read:~~

19 ~~1099. (a) A public officer, including, but not limited to, an~~
 20 ~~appointed or elected member of a governmental board, commission,~~
 21 ~~committee, or other body, shall not simultaneously hold two public~~
 22 ~~offices that are incompatible. Offices are incompatible when any~~
 23 ~~of the following circumstances are present, unless simultaneous~~
 24 ~~holding of the particular offices is compelled or expressly~~
 25 ~~authorized by law:~~

26 ~~(1) Either of the offices may audit, overrule, remove members~~
 27 ~~of, dismiss employees of, or exercise supervisory powers over the~~
 28 ~~other office or body.~~

29 ~~(2) Based on the powers and jurisdiction of the offices, there~~
 30 ~~is a possibility of a significant clash of duties or loyalties between~~
 31 ~~the offices.~~

32 ~~(3) Public policy considerations make it improper for one person~~
 33 ~~to hold both offices.~~

34 ~~(b) Examples of situations in which public offices are~~
 35 ~~incompatible under subdivision (a) include, but are not limited to,~~
 36 ~~the following:~~

37 ~~(1) An office has the power of eminent domain over property~~
 38 ~~that is under the geographic jurisdiction of the other office.~~

39 ~~(2) An office has the power to set a fee or a rate or to impose a~~
 40 ~~tax or a levy that may directly or indirectly affect the other office.~~

- 1 ~~(e) When two public offices are incompatible, a public officer~~
2 ~~shall be deemed to have forfeited the first office upon acceding to~~
3 ~~the second. This provision is enforceable pursuant to Section 803~~
4 ~~of the Code of Civil Procedure.~~
- 5 ~~(d) This section does not apply to a position of employment,~~
6 ~~including a civil service position.~~
- 7 ~~(e) This section shall not apply to a governmental body that has~~
8 ~~only advisory powers.~~
- 9 ~~(f) For purposes of paragraph (1) of subdivision (a), a member~~
10 ~~of a multimember body holds an office that may audit, overrule,~~
11 ~~remove members of, dismiss employees of, or exercise supervisory~~
12 ~~powers over another office when the body has any of these powers~~
13 ~~over the other office or over a multimember body that includes~~
14 ~~that other office.~~
- 15 ~~(g) For purposes of subdivisions (a) and (b), a member of a~~
16 ~~multimember body holds an office that may exercise powers over~~
17 ~~another office when the body has power over the other office or~~
18 ~~over a multimember body that includes the other office.~~
- 19 ~~(h) This section codifies the common law rule prohibiting an~~
20 ~~individual from holding incompatible public offices.~~