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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1955

Introduced by Assembly Member De La Torre
(Principal coauthor: Senator Correa)
***(Coauthors: Assembly Members Block, Eng, Ma, Norby, Portantino,
and Solorio)***

February 17, 2010

An act to amend Section 54957.6 of, and to add Sections ~~12531~~ 34096 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. Local government: compensation.

(1) Existing law charges the ~~Attorney General~~ *Controller* 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~~ *superintending the fiscal concerns of the state.*

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~~ *Controller* to determine whether a city is an excess compensation city, as defined. *The bill would authorize a city to request a hearing, as specified, to contest the Controller's determination.* The bill would require the ~~Attorney General~~ *Controller, if the Attorney General concurs with the Controller's determination,* to notify the Franchise Tax Board and the redevelopment agency in the city of the city's status as an excess compensation city, *as prescribed.*

(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~~ *Controller* 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 *or amendment to a 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 *or amendment to the contract* is made available *in a conspicuous location* 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 *or amend 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.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 *SECTION 1. Section 34096 is added to the Government Code,*
2 *to read:*

3 34096. (a) *If, based on a review of public records, the*
4 *Controller reasonably determines that a city meets the definition*
5 *of an “excess compensation city,” as defined in subdivision (e),*
6 *the Controller shall notify the city and the Attorney General of*
7 *that determination in writing.*

8 (b) (1) *Within 10 days of receiving the written notice from the*
9 *Controller, the city may request a hearing before the Controller*
10 *to determine if the city is in compliance with Section 36516. Upon*
11 *receipt of the written notice, the Controller shall conduct a public*
12 *hearing with at least 10 days’ notice for the purpose of determining*
13 *if the city is an excess compensation city. At the hearing, the city*
14 *may demonstrate that the city is not an excess compensation city*
15 *by showing any of the following:*

16 (A) *Evidence of the approval by the city council of an ordinance*
17 *or an amendment to an ordinance that increases the council*
18 *members’ salaries, pursuant to subdivision (a) of Section 36516.*

19 (B) *Evidence of the approval by the city’s electors of a question*
20 *that increases the council members’ salaries, pursuant to*
21 *subdivision (b) of Section 36516.*

22 (C) *Any other evidence of compliance with Section 36516.*

23 (2) *If the Controller determines that a city is an excess*
24 *compensation city after a hearing pursuant to this subdivision, the*
25 *Controller shall notify the Attorney General of that determination*
26 *and provide the Attorney General with any evidence submitted at*
27 *the hearing. The Attorney General shall be responsible for*
28 *reviewing the record of the hearing and shall concur or not concur*
29 *with the Controller’s determination in writing within a reasonable*
30 *time. If the Attorney General concurs with the Controller’s*
31 *determination that a city is an excess compensation city, the*
32 *Controller shall proceed with the notifications, as provided*
33 *pursuant to subdivision (c).*

34 (c) *If the city does not request a hearing or if the Controller*
35 *determines, at the hearing, with the concurrence of the Attorney*
36 *General that the city is an “excess compensation city,” the*
37 *Controller shall notify, in writing, the city, the Franchise Tax*

1 *Board, and the community redevelopment agency in that city of*
2 *the city's status as an excess compensation city.*

3 *(d) An excess compensation city may bring itself into compliance*
4 *with Section 36516. Once the city is in compliance with Section*
5 *36516, the city may submit a written request to the Controller to*
6 *be relieved of the status as an excess compensation city. If the*
7 *Controller determines that the city is in compliance with Section*
8 *36516, the Controller shall immediately notify, in writing, the city,*
9 *the Franchise Tax Board, and the community redevelopment*
10 *agency in that city of the change in status.*

11 *(e) (1) For purposes of this section, "excess compensation city"*
12 *means any city, including a charter city, that compensates any*
13 *member of that city council in excess of the amounts specified in*
14 *Section 36516. An "excess compensation city" does not include*
15 *a charter city that has a population of over 285,000 persons.*

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

21 **SECTION 1.** ~~Section 12531 is added to the Government Code,~~
22 ~~to read:~~

23 ~~12531. (a) If the Attorney General determines that a city is an~~
24 ~~excess compensation city, as defined in subdivision (c), the~~
25 ~~Attorney General shall notify the city council of that city in writing~~
26 ~~and provide the city a hearing on the matter.~~

27 ~~(b) At the hearing, the city shall be provided opportunity to~~
28 ~~demonstrate that the city is not an excess compensation city, by~~
29 ~~showing, among other things, evidence of compliance with Section~~
30 ~~36516, evidence of submission of a salary ordinance to voters, and~~
31 ~~evidence of an increase in salary of city council members of no~~
32 ~~more than 5 percent per year over the base amount specified in~~
33 ~~subdivision (a) of Section 36516.~~

34 ~~(c) If, after notice and hearing, the Attorney General determines~~
35 ~~that the city has failed to demonstrate that it is not an excess~~
36 ~~compensation city, the Attorney General shall notify the city in~~
37 ~~writing, and notify the Franchise Tax Board and the redevelopment~~
38 ~~agency in that city, in writing, of the city's status as an excess~~
39 ~~compensation city.~~

1 ~~(d) A city that has been found to be an excess compensation~~
 2 ~~city may bring itself into compliance with Section 36516. Once~~
 3 ~~the city is in compliance with Section 36516, the city council may~~
 4 ~~submit a written request to the Attorney General to be relieved of~~
 5 ~~the status as an excess compensation city. If the Attorney General~~
 6 ~~determines that the city is in compliance with Section 36516, the~~
 7 ~~Attorney General shall immediately notify the Franchise Tax Board~~
 8 ~~and the city’s redevelopment agency, in writing, of the change in~~
 9 ~~status.~~

10 ~~(e) (1) For purposes of this section, “excess compensation city”~~
 11 ~~means any city, including a charter city, that compensates any~~
 12 ~~member of that city council in excess of the amounts specified in~~
 13 ~~Section 36516. An “excess compensation city” does not include~~
 14 ~~a charter city that specifies in the charter that the city council~~
 15 ~~members shall devote their entire time to duties related to their~~
 16 ~~office.~~

17 ~~(2) Notwithstanding paragraph (1), if the office of mayor is~~
 18 ~~independently elected, the city may demonstrate that additional~~
 19 ~~compensation paid to the mayor other than compensation for the~~
 20 ~~mayor’s position as a council member, has been provided by~~
 21 ~~ordinance or in the city’s charter.~~

22 SEC. 2. Section 54957.05 is added to the Government Code,
 23 to read:

24 54957.05. Notwithstanding any other law, any individual
 25 contract of employment *or amendment to a contract of employment*
 26 with an employee who is or will be employed by, and report
 27 directly to, the legislative body of the local agency shall be ratified
 28 in an open session of the legislative body. Prior to ratifying the
 29 contract *or amending the contract*, the legislative body shall
 30 disclose information regarding the contract *or amendment to the*
 31 *contract*, including, but not limited to, the employee’s name, the
 32 position *title*, and the total amount of salary, benefits, retirement,
 33 and any other forms of compensation, *in a conspicuous location*
 34 on the local agency’s Internet Web site, if it maintains one, and in
 35 a location that is freely accessible to members of the public, no
 36 later than seven days prior to the meeting to ratify the contract *or*
 37 *amend the contract*.

38 SEC. 3. Section 54957.6 of the Government Code is amended
 39 to read:

1 54957.6. (a) Notwithstanding any other provision of law, a
2 legislative body of a local agency may hold closed sessions with
3 the local agency’s designated representatives regarding the salaries,
4 salary schedules, or compensation paid in the form of fringe
5 benefits of its represented and unrepresented employees, and, for
6 represented employees, any other matter within the statutorily
7 provided scope of representation.

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

11 Closed sessions of a legislative body of a local agency, as
12 permitted in this section, shall be for the purpose of reviewing its
13 position and instructing the local agency’s designated
14 representatives.

15 Closed sessions, as permitted in this section, may take place
16 prior to and during consultations and discussions with
17 representatives of employee organizations and unrepresented
18 employees.

19 Closed sessions with the local agency’s designated representative
20 regarding the salaries, salary schedules, or compensation paid in
21 the form of fringe benefits may include discussion of an agency’s
22 available funds and funding priorities, but only insofar as these
23 discussions relate to providing instructions to the local agency’s
24 designated representative.

25 Closed sessions held pursuant to this section shall not include
26 final action on the proposed compensation of one or more
27 unrepresented employees. Final action on the proposed
28 compensation of one or more unrepresented employees who are
29 or will be employed by, and report directly to, the legislative body
30 of the local agency shall occur in open session, and consistent with
31 the disclosure requirements of Section 54957.05.

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

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

39 SEC. 4. Section 33138 is added to the Health and Safety Code,
40 to read:

1 33138. (a) Upon written notification by the ~~Attorney General~~
2 *Controller* that the city in which the agency is established is an
3 excess compensation city, pursuant to Section ~~12531~~ 34096 of the
4 Government Code, all of the following shall apply:

5 (1) The agency shall not adopt redevelopment plans for a new
6 project area or amend an existing redevelopment plan for existing
7 project areas.

8 (2) The agency shall not issue new bonds, notes, interim
9 certificates, debentures, or other obligations, whether funded,
10 refunded, assumed, or otherwise, pursuant to Article 5
11 (commencing with Section 33360) of Chapter 4.

12 (3) The agency shall not encumber any funds or expend any
13 moneys derived from any source, except that the agency may
14 encumber funds and expend funds to pay, if any, all of the
15 following:

16 (A) Bonds, notes, interim certificates, debentures, or other
17 obligations issued by an agency before the imposition of the
18 prohibition in paragraph (2), whether funded, refunded, assumed,
19 or otherwise, pursuant to Article 5 (commencing with Section
20 33360) of Chapter 4.

21 (B) Loans or moneys previously advanced to the agency,
22 including, but not limited to, loans from federal, state, or local
23 agencies, or a private entity.

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

26 (D) Obligations incurred pursuant to Section 33445.

27 (E) Indebtedness incurred pursuant to Section 33334.2 or
28 33334.6.

29 (F) Obligations incurred pursuant to Section 33401.

30 (G) Payments required under subdivision (a) of Section 33690
31 or subdivision (a) of Section 33690.5.

32 (b) The prohibitions identified in subdivision (a) shall be lifted
33 after the ~~Attorney General~~ *Controller* determines that the city is
34 no longer an excess compensation city pursuant to subdivision (d)
35 of Section ~~12531~~ 34096 of the Government Code.

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

38 17043.5. (a) For each taxable year beginning on or after
39 January 1, 2011, in addition to any other taxes imposed by this
40 part, an additional tax shall be imposed at the rate of 50 percent

1 on that portion of a qualified taxpayer's gross income that is
2 derived from the excess compensation city that is in excess of the
3 amounts specified in Section 36516 of the Government Code.

4 (b) For purposes of this section:

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

7 (2) "Excess compensation city" means a city that has been
8 determined by the ~~Attorney General~~ *Controller* to be an excess
9 compensation city pursuant to Section ~~12531~~ 34096 of the
10 Government Code.

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

13 (1) The provisions of Section 17039, relating to the allowance
14 of credits.

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

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

18 SEC. 6. The Legislature finds and declares that the fiscal
19 integrity and stability of local governmental agencies in this state,
20 including charter cities, has a direct impact on the long-term
21 well-being of all the residents of this state. The likelihood of
22 businesses locating to or staying in the state is affected by the
23 perception of a functioning, transparent, and practical governmental
24 structure in the local governmental bodies in California. Therefore,
25 the Legislature finds and declares that to ensure the statewide
26 integrity of local government, the disclosure of compensation paid
27 to officers and designated employees is an issue of statewide
28 concern and not a municipal affair, as that term is used in Section
29 5 of Article XI of the California Constitution. Therefore, this act
30 shall apply to all cities, including charter cities.

31 SEC. 7. 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.

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

1 In order to preserve fiscal integrity and stability of local
2 government agencies in this state and the perception of a
3 functioning, transparent, and practical governmental structure in
4 the local government bodies in California at the earliest possible
5 time, it is necessary for this measure to take effect immediately.

O