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AB 1234 Update

2006 City Attorneys Spring Conference Indian Wells

JoAnne Speers
Executive Director, Institute for Local Government

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The good of the people is the chief law.
--*Cicero*

A man of honor should never forget what he is
because he sees what others are.
--*Baltasar Gracian*

Half of the harm that is done in this world is
due to people who want to feel important.
--*T. S. Eliot*

There's a big difference between what you have a right to do
and what is right to do.
-- *Potter Stewart*

You cannot reach good ends through evil means . . .
-- *Martin Luther King, Jr.*

Introduction

On January 1, 2006, California officials and their legal advisors found themselves facing a number of new ethics laws: AB 1234, AB 11 and SB 8. This set off a series of discussions among municipal lawyers and others about what the new laws require.

This paper explains how AB 1234 came to be and attaches updated versions of frequently-asked-questions relating to each new law.

In 2003, on a tip from a whistle-blower, a Sacramento water district came under heavy scrutiny from the local newspaper, the *Sacramento Bee*. The allegation was extensive misuse of public resources and a culture of corruption. The reporting led to revelations of similar practices by other special districts. Expense reimbursement practices were a key area of concern.

The water district scandal attracted the attention of the local state senator, Debra Ortiz, who vowed to introduce curative legislation.

The First Volley

On February 13, 2004 (which happened to be Friday the 13th), Senator Ortiz introduced legislation to require special district audits to be performed in accordance with General Accounting Office standards for financial and compliance audits. The bill would have also imposed various other requirements on these audits and required the State Controller to review the audits under specified procedures.¹

Mandatory ethics education and restrictions on expense reimbursement and compensation practices were later added to the bill, along with additional protections for employee whistle-blowers and restrictions on life and health insurance coverage for district board members.²

Because of the state's strapped financial condition and the costs associated with the bill, it did not get out of its house of origin in 2004. Undeterred, Senator Ortiz reintroduced a revised version of her bill in the next session.³

¹ SB 1272 (as introduced).

² SB 1272 (as amended April 27, 2004).

³ SB 393 (2005-2006 Legislative Session).

With Friends Like These . . .

The prospect that any version of an Ortiz bill might reach the Governor's desk was sufficiently unpalatable to special districts that they began crafting their own proposal.⁴ On February 22, 2005, the Chair of the Assembly Local Government Committee, Simon Salinas, introduced AB 1234. As ultimately adopted, the bill had three parts:

- Mandatory ethics training for all local elected and appointed officials who receive compensation or reimbursement of expenses (two hours every two years);
- Requirements relating to the adoption of expense reimbursement policies and standards relating to certain kinds of expenses;
- A description of when special district directors could claim their daily per diem compensation.

With the exception of the third requirement, AB 1234 applied not only to special districts, but cities and counties.

Assemblymember Salinas explained that the bill responded to reports by the State Auditor's Office, dozens of newspaper articles, and public requests regarding inappropriate uses of local tax dollars. The goal of the bill was to require more transparency relating to local government compensation and travel reimbursements.⁵

⁴ Although the bill did not have official sponsors, Assemblymember Salinas noted when he received the Association of California Water Agencies "Legislator of the Year Award" that "It has been a privilege to work closely with ACWA's Legislative Advocacy team on crafting language for Assembly Bill 1234." See "ACWA 2005 Legislative Leadership Award Presented to Assembly Member Simon Salinas; Friend to Special Districts Honored at ACWA Conference," Business Wire, December 2, 2005 (available at http://www.findarticles.com/p/articles/mi_m0EIN/is_2005_Dec_2/ai_n15892237#continue). In that same press release, the ACWA executive director signaled the importance of special districts not being singled out as he effused "Assemblyman Salinas has really hit the ball out of the park with his work on AB 1234. He provided needed reform without resorting to punitive measures that are aimed only at special districts."

⁵ Assembly Local Government Committee Analysis of AB 1234 (April 13, 2005 Hearing).

About AB 1234

Expense Reimbursement Requirements

AB 1234 contains certain requirements and restrictions on local agency practices relating to reimbursing local elected and appointed officials' expenses. AB 1234 requires local agencies to:

- Adopt expense reimbursement policies that specify the *kinds of activities* that will be reimbursable;⁶
- Identify a “reasonable time” within which requests for reimbursement must be submitted in those policies;⁷
- Use expense report forms; and
- Require that all expenses must be documented with receipts⁸ (these documents are public records subject to disclosure⁹).

AB 1234 says that such a reimbursement policy may specify what constitutes reasonable *rates* for travel, meals, lodging and other expenses. If a local policy does not specify reimbursement rates, then the reimbursable rates default to those in the Internal Revenue Service guidelines.¹⁰

If a legislative body member wants to seek reimbursement for levels of expenses not otherwise authorized under the agency's reimbursement policy, then the official may seek *prior* approval for such reimbursement from the governing body (before incurring the expense).¹¹

Note there may be clean-up legislation that clarifies that local officials have the option of personally paying for the difference between what an agency will reimburse and actual expense incurred.¹²

For more information about AB 1234's requirements relating to expense reimbursement, please see the attached FAQs.

⁶ Cal. Gov't Code § 53232.2(b).

⁷ Cal. Gov't Code § 53232.3(c).

⁸ Cal. Gov't Code § 53232.3.

⁹ Cal. Gov't Code § 53232.3(e).

¹⁰ Cal. Gov't Code § 53232.2(c).

¹¹ Cal. Gov't Code § 53232.2(f).

¹² See SB 1196 (Senate Local Government Committee Omnibus Bill).

Ethics Training Requirements

Under AB 1234, ethics training must cover *both* ethics principles and ethics laws.

Public Service Ethics Laws Defined

For purposes of mandatory ethics training, California's *ethics laws* now have been divided into four parts:¹³

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources and prohibitions against gifts of public funds;
- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act);
- Law relating to fair processes, including fair contracting requirements, common law bias requirements and due process.

Ethics Training Learning Objectives

The California Attorney General's guidelines implementing the bill said that the learning objectives of the mandatory ethics training should be to:

- Alert officials to the kinds of financial interests, relationships and/or activities that may either be prohibited or trigger disclosure or disqualification obligations under ethics laws described in Government Code section 53234(d).
- Advise officials to 1) avoid prohibited activities, 2) comply with disclosure, disqualification and other affirmative ethics law requirements, and 3) consult with qualified legal counsel and/or regulatory authorities regarding the specifics of any situation that may involve prohibited or required conduct.
- Note that ethics laws create minimum standards for ethical conduct by public officials; the public's expectations and ethics principles are likely to create a higher standard for behavior.
- Advise participants of the legal and other consequences of violating ethics laws.
- Include examples of conduct scenarios that are covered by the ethics laws in question.¹⁴

¹³ Cal. Gov't Code § 53234(d).

Public Service Ethics Principles

The requirement that mandatory ethics training go beyond ethics laws is a very interesting one. To assist local agency attorneys with this requirement, the Institute for Local Government has published a pamphlet entitled “Doing the Right Thing: Putting Ethics Principles into Practice in Public Service.” The information in the pamphlet is based on the Institute’s research on public service ethics issue and is designed to acquaint local officials with such principles as:

- How commonly held values apply in the public service context;
- The importance of appearances in ethical decision-making;
- Types of ethical dilemmas; and
- Dilemma resolution techniques (questions to ask oneself).

A copy of this pamphlet is available at www.ca-ilg.org/ab1234compliance.

For more information about AB 1234’s ethics training requirements, please see the attached FAQ.

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¹⁴ California Attorney General “Ethics Training for Local Officials” available at http://caag.state.ca.us/ethics/eth_loc_guide_final.pdf.



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Attachment 1: New State Ethics Training Requirements for Local Officials: Frequently Asked Questions

1. What requirements does AB 1234 create regarding ethics training for local officials?

The basic thrust of AB 1234 is to require covered officials (see next question) to take two hours of training in ethics principles and laws every two years.¹⁵

2. Who must receive mandatory ethics training?

Basically the requirement applies to those elected or appointed officials who are compensated for their service or reimbursed for their expenses.¹⁶ The specific trigger for this requirement is whether the agency either compensates or reimburses expenses for members of any of its Brown Act covered bodies; if it does, then all elected and appointed “local agency officials” (as defined) must receive this training.¹⁷ “Local agency official” means any member of a legislative body or any elected local agency official who receives compensation or expense reimbursement.¹⁸

“Local agency” means “a city, county, city and county, charter city, charter county, charter city and county, or special district.”¹⁹ Thus the training requirement does *not* include agencies on which local officials serve (for example, redevelopment agency governing boards or joint powers agencies), although many such officials will likely be covered by

¹⁵ Cal. Gov’t Code § 53235(a), (b).

¹⁶ The language is potentially confusing on this point. The new law says that if a local agency provides any type of compensation or reimbursement for members of its legislative bodies, then all “local agency officials” must receive training. See Cal. Gov’t Code § 53235(a). But the definition of “local agency official” means “any member of a local agency legislative body or any elected official who receives any type of compensation . . . or reimbursement for actual and necessary expenses incurred in the performance of official duties.” See Cal. Gov’t Code § 53234(c)(1).

¹⁷ Cal. Gov’t Code § 53235(a) (“If a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then all local agency officials shall receive training in ethics pursuant to this article”); § 53234(a) (defining legislative body by reference to the Brown Act, Government Code section 54952).

¹⁸ Cal. Gov’t Code § 53234(c)(1).

¹⁹ Cal. Gov’t Code § 53234(b).

virtue of their status with cities, counties and special districts. Note that it also does not include school districts.

Note that local agencies also have the option of requiring certain employees to receive this training.²⁰

3. What if an agency has a number of board members and commissioners who could theoretically get reimbursed for such expenses but as a practical matter haven't been for a long time?

Determining whether such officials should receive such training involves a judgment call in consultation with one's agency attorney. Some agencies are rethinking whether they want to reimburse the members of *all* their commissioners and board members or be more selective.

Another consideration is whether the nature of such officials' duties are such that the official would benefit from such training and the agency would benefit from having this official be trained (in terms of reducing the likelihood of missteps).

Another approach is for an agency to identify all commissioners and board members that have been reimbursed and/or compensated in the past year and notify them of their need to receive training. For others who haven't been reimbursed and/or compensated, the expense reimbursement forms required by AB 1234²¹ could include an advisory which alerts board members and commissioners of the need to get training if they are seeking reimbursement for expenses.

4. Where are local officials going to get this training?

Local agencies must provide covered officials with a list of options for satisfying this requirement at least once a year.²² The training can occur in-person, online or on a self-study basis (read materials and take a test).²³ Agencies are not required to provide the training themselves, although a number may choose to do so.

A variety of organizations are gearing up to offer options to help local officials satisfy these requirements. The Institute for Local Government is working with local agency organizations, local agencies and others to make training opportunities widely available as well.

For example, articles in the April and June issues of *Western City* will provide self-study options for local officials and will be available at www.ca-ilg.org/AB1234compliance. The Institute also has a grant to fund, partially, the development of an online course. The

²⁰ Cal. Gov't Code § 53234(c)(2).

²¹ Cal. Gov't Code § 53232.3(a).

²² Cal. Gov't Code § 53235(f).

²³ Cal. Gov't Code § 53235(d).

hope is to be able to offer such training in collaboration with the FPPC and Attorney General's office at no charge.

The Institute is also in the process of developing "train-the-trainer" programs and materials for in-house counsel and others who are interested in offering such training. The first such session is being offered May 5, 2006.

5. How do people or organizations become certified as AB 1234 ethics trainers?

Strictly speaking, they don't. The Attorney General and FPPC have adopted guidelines for course curriculum accuracy and sufficiency.²⁴ The FPPC adopted its guidelines as a regulation²⁵ and the Attorney General issued General Guidelines on Course Accuracy and Sufficiency, which are available on the Department of Justice website: http://caag.state.ca.us/ethics/eth_loc_guide_final.pdf. A summary of the state's guidelines for such training is also available at www.ca-ilg.org/AB1234compliance.

It may be helpful to know that the Attorney General's guidelines require that the ethics law portion of AB 1234 training be given only by attorneys licensed to practice law in California and knowledgeable about California's ethics laws.

6. What issues must AB 1234 ethics training programs address?

The training must cover general ethics principles relating to public service and ethics laws.²⁶ "Ethics laws" are defined as including:²⁷

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources and prohibitions against gifts of public funds;
- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act);
- Law relating to fair processes, including fair contracting requirements, common law bias requirements and due process.

The Institute has materials to address the "general ethics principles" aspect of AB 1234 training. The pamphlet is called Doing the Right Thing: Putting Ethics Principles into Practice and it is available for purchase and in electronic form at www.ca-ilg.org/AB1234compliance.

²⁴ See Cal. Gov't Code § 53235(c).

²⁵ See 2 Cal. Code of Regs. § 18371.

²⁶ Cal. Gov't Code § 53235(b).

²⁷ Cal. Gov't Code § 53234(d).

It's important to note that, given the breadth of the subjects that need to be covered, the goal of the training cannot be to teach local officials the law in each of these areas. Instead the goal needs to be to acquaint local officials with the fact that there are laws that govern their behavior in each of these areas, to motivate officials to comply with such laws (among other things by explaining the consequences of missteps) and to alert them on when they need to seek the advice of qualified legal counsel when issues arise with respect to such laws.

7. Can AB 1234's ethics training requirements constitutionally apply to charter cities?

Many city attorneys are not convinced that AB 1234 contains the necessary findings to make it applicable to charter cities, although the bill purports to apply to charter cities by including charter cities within the definition of local agency.²⁸ However, a number of charter cities already have such training programs and/or think they would be helpful and hence, are voluntarily complying with the spirit of AB 1234. Such an approach may reflect well on a city and city officials should the local media inquire about city officials' compliance with AB 1234.

8. When is the deadline for officials currently in office to complete mandatory ethics training?

Each local agency official in local agency service as of January 1, 2006 must receive ethics training by January 1, 2007. After that, the requirement is every two years.²⁹ Officials whose term of office ends before January 1, 2007 are excused.³⁰ There may be clean-up legislation that extends this deadline further to accommodate some county supervisors whose terms expire on January 8, 2007.³¹

9. How often must local officials receive ethics training?

Newly elected and appointed local agency officials must receive their first training within one year of commencing service.³² After that, the requirement is every two years.³³

Thus, if an official received the required training on May 15, 2006, the official would need to receive training again on or before May 14, 2008.

²⁸ Cal. Gov't Code § 53234(b).

²⁹ Cal. Gov't Code § 53235.1(a), (b).

³⁰ Cal. Gov't Code § 53235.1(a).

³¹ See Cal. Gov't Code § 24200; SB 1196 (Senate Local Government Omnibus Bill).

³² Cal. Gov't Code § 53235.1(b).

³³ Cal. Gov't Code § 53235.1(a), (b).

10. How do officials demonstrate compliance with the mandatory ethics requirements?

When local agency officials receive the training, they will be given proof of participation.³⁴ Copies of these certificates must be provided to the agency's custodian of records and maintained as public records subject to disclosure to the media, the public and others for at least five years.³⁵

11. What is the enforcement mechanism to assure that local officials receive such training?

The new law is directory; there is no specific penalty for failing to complete the required training. However, the law creates a public relations enforcement mechanism. Presumably there will be a number of public records requests by the media and others to verify which officials have and have not met the requirements.³⁶

Note: in addition to maintaining records on compliance with the minimum standards imposed by AB 1234, local agencies may also want to maintain records of any additional training local agency officials received. This will enable those inquiring to ascertain the agency's and individual's full scope of commitment to understanding the ethical and legal obligations associated with public service.

12. Can I get State Bar minimum continuing legal education credit for attending AB 1234 training?

No. At one point the bill allowed such double-counting, but the language was removed because of the fundamentally different nature of the two kinds of ethics education. MCLE ethics education is focused on the attorney's ethical duties to his or her client under the State Bar's Rules for Professional Conduct and similar laws, and the State Bar says that education about ethical issues in other contexts (in this case, public service ethics) does not qualify for MCLE credit.³⁷

³⁴ Cal. Gov't Code § 53235.1(e).

³⁵ Cal. Gov't Code § 53235.2.

³⁶ Cal. Gov't Code § 53235.2.

³⁷ See State Bar MCLE Rules 2.1.1 (specifying that four hours must be in *legal* ethics). See also December 2005 State Bar Statement: "In order to qualify for [legal ethics] credit, the CLE activity must relate to **LEGAL** ethics, not general ethical dilemmas encountered in society, not business or corporate ethics, not ethical issues in non-legal professions, etc.")



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Attachment 2: Summary State Guidelines on AB 1234 Course Sufficiency and Accuracy

- Attorney General : Key provisions include the following:
 - Attorney General will not review and comment on individual courses.
 - Courses must meet following requirements:
 - Ethics law portion should be delivered by an attorney licensed to practice in California and knowledgeable about California ethics laws.
 - Cover specified content.
 - Course content must be consistent with California law and publications/informational material issued by Attorney General and Fair Political Practices Commission.
 - General ethics principles include discussion of manner in which values such as trustworthiness, respect, fairness and responsibility promote public trust, as well as the importance of avoiding even appearance of impropriety.
 - Both in-person and self study materials should refer to additional resources, including those offered by the Attorney General, Fair Political Practices Commission and Institute for Local Government.
 - Once official completes first two hours, subsequent courses can focus more intensively on specific areas and provide a cursory review of core areas.
- The Attorney General encourages providers to:
 - Encourage local officials to receive more than minimum amounts of training.
 - Focus on the following learning objectives:

- Alert officials to the kinds of financial interests, relationships and/or activities that may either be prohibited or trigger disclosure or disqualification obligations under ethics laws described in Government Code section 53234(d).
 - Advise officials to 1) avoid prohibited activities, 2) comply with disclosure, disqualification and other affirmative ethics law requirements, and 3) consult with qualified legal counsel and/or regulatory authorities regarding the specifics of any situation that may involve prohibited or required conduct.
 - Note that ethics laws create minimum standards for ethical conduct by public officials; the public's expectations and ethics principles are likely to create a higher standard for behavior.
 - Advise participants of the legal and other consequences of violating ethics laws.
 - Include examples of conduct scenarios that are covered by the ethics laws in question.
- Fair Political Practices Commission (New [regulation 18371](#))

A course provider is considered to have consulted with the FPPC if it:

- Reviews [materials specified for Political Reform Act on Commission's website](#) no more than 60 days in advance of date training is conducted or training program is developed, and every year thereafter..
- Accurately reflects Commission statutes and regulations with respect to ethics laws under jurisdiction of Commission.

Note that FPPC says that offering/receiving two hours in segments is permissible.

Laws Required to be Covered

Laws relating to personal financial gain by public servants, including, but not limited to:

- Laws prohibiting bribery (Cal. Penal Code § 68).
- Conflicts of interest under the Political Reform Act (Cal. Gov't Code §§ 87100, 87103).
- Contractual conflicts of interest (Cal. Gov't Code §§ 1090 and following).
- Conflicts of interest and campaign contributions (Cal. Gov't Code § 84308).
- Conflicts of interest when leaving office (Cal. Gov't Code §§ 87406.1, 87406.3, 87407).

Laws relating to claiming perquisites of office, including, but not limited to:

- Limitations on the receipt of gifts (Cal. Gov't Code §§ 86203, 89503, 89506).
- Honoraria ban (Cal. Gov't Code § 89502).
- Misuse of public funds (Cal. Penal Code § 424; Cal. Gov't Code § 8314; *Fair Political Practices Commission v. Suitt*, 90 Cal. App. 3d 125 (1979); *Stanson v. Mott*, 17 Cal. 3d 206 (1976)).
- Prohibitions against gifts of public funds (Cal. Const. art. XVI, § 6).
- Mass mailing restrictions (Cal. Gov't Code § 89001).
- Prohibitions against acceptance of free or discounted transportation by transportation companies (Cal. Const. art. XII, § 7).

Government transparency laws, including, but not limited to:

- Economic interest disclosure under the Political Reform Act (Cal. Gov't Code §§ 87200 and following).
- Brown Act (Cal. Gov't Code §§ 54950 and following).
- Public Records Act (Cal. Gov't Code §§ 6250 and following).

Laws relating to fair processes, including, but not limited to:

- Common law bias prohibitions.
- Due process requirements.
- Doctrine of incompatible offices.
- Competitive bidding requirements for public contracts.
- Disqualification from participating in decisions affecting family members (anti-nepotism laws).



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Attachment 3: Top 10 Ethics Education Tips

1. **Affirm Your Audience's Sense of Personal Ethics.** Acknowledge that public service ethics is different—and sometimes counter-intuitive--because of its emphases on laws, public perceptions and avoiding even the appearance of impropriety.
2. **First Principles.** Take a step back and contemplate what a given law or set of laws is trying to accomplish (for example, keeping considerations relating to personal financial gain out of government decisions). Use such first principles as starting points for your explanations. Avoid explaining the laws in terms of how you understand it as an attorney (how it's written in the statutes or codes, or the kind of legal analysis that has to be undertaken to given good advice in a given situation).
3. **Be Clear on Your Role.** Explain that your goal is to keep them from making missteps and to protect the agency from the consequences (legal, financial and public trust) of mis-steps.
4. **Make it Real.** Include stories both as illustrations of the concepts you are presenting, as well as a way of underscoring that people do get in trouble for overstepping the bounds of the law.
5. **Consequences.** Explain the legal, financial and personal consequences of ethics law mis-steps.
6. **Provide Tools and References.** Checklists, analytic frameworks, resources for further reading and other informational materials can reinforce your messages and reduce the likelihood of information overload.
7. **The Relationship between Law and Ethics.** Note that the law creates only minimum standards for behavior. Just because a course of action is legal doesn't mean that it is ethical or the public will perceive it to be such.

8. **Focus on the Learning Objective.** Your ultimate goal is to encourage local officials to consult with counsel when issues arise. The intermediate goal is to help them identify when a given situation may present issues under the applicable ethics laws. The goal is *not* to teach them the law or encourage them to self-advise.
9. **Acknowledge the Laws Aren't Perfect or Even Intuitive.** Spare those in your audience (and yourself) the frustration associated with trying to rationalize those inevitable situations in which the application of the law does not achieve just or even rational results.
10. **Ethics Isn't Easy.** The hard truth is that doing the right thing often comes at a personal cost.



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Attachment 4: AB 1234's Requirements vis-à-vis Expense Reimbursement: Frequently Asked Questions

1. What, in a nutshell, does AB 1234³⁸ require in the area of expense reimbursement?

AB 1234 contains certain requirements and restrictions on local agency practices relating to reimbursing local elected and appointed officials' expenses. AB 1234 requires local agencies to:

- Adopt expense reimbursement policies that specify the *kinds of activities* that will be reimbursable;³⁹
- Identify a "reasonable time" within which requests for reimbursement must be submitted in those policies;⁴⁰
- Use expense report forms; and
- Require that all expenses must be documented with receipts⁴¹ (these documents are public records subject to disclosure⁴²).

AB 1234 says that such a reimbursement policy may specify what constitutes reasonable *rates* for travel, meals, lodging and other expenses. If a local policy does not specify reimbursement rates, then the reimbursable rates default to those in the Internal Revenue Service guidelines.⁴³

If a legislative body member wants to seek reimbursement for levels of expenses not otherwise authorized under the agency's reimbursement policy, then the official may seek *prior* approval for such reimbursement from the governing body (before incurring the expense).⁴⁴

³⁸ Chapter 700, Statutes of 2005.

³⁹ Cal. Gov't Code § 53232.2(b).

⁴⁰ Cal. Gov't Code § 53232.3(c).

⁴¹ Cal. Gov't Code § 53232.3.

⁴² Cal. Gov't Code § 53232.3(e).

⁴³ Cal. Gov't Code § 53232.2(c).

⁴⁴ Cal. Gov't Code § 53232.2(f).

Note there may be clean-up legislation that clarifies that local officials have the option of personally paying for the difference between what an agency will reimburse and actual expense incurred.⁴⁵

2. How broadly defined is the term “reimbursement”?

AB 1234 does not define “reimbursement.” However, the usual rule of statutory construction is that, when a term is not defined, the ordinary dictionary definition applies.⁴⁶ According to the *American Heritage Dictionary*, “reimburse” means to:

1. To repay (money spent); refund.
2. To pay back or compensate (another party) for money spent or losses incurred.

Thus, strictly speaking, AB 1234 only applies to those circumstances under which elected and appointed officials (for example, members of boards and commissions) seek payment from an agency for expenses incurred in the course of their service to the agency.

3. Does AB 1234’s restrictions, or the policies adopted pursuant to AB 1234, apply to expenses which are not reimbursed but are incurred by local agencies in the first instance (for example, on the agency’s credit card)?

No. The local agency has the option, of course, of adopting policies that apply to those kinds of expenses or drafting its AB 1234 policies broadly enough to cover expenses incurred as well as expenses for which reimbursement is sought. But AB 1234 does not require them to do so.

4. Which agencies must adopt reimbursement policies?

Any local agency that reimburses any of its elected and appointed officials on legislative bodies for expenses must adopt a policy.⁴⁷ Local agency includes “a city, county, city and county, charter city, charter county, charter city and county, or special district.”⁴⁸ The definition of “legislative body” is tied to the Brown Act definition of legislative body

⁴⁵ See SB 1196 (Senate Local Government Committee Omnibus Bill).

⁴⁶ See *People v. Siravo*, 17 Cal. App. 4th 555, 560, 21 Cal. Rptr. 2d 350, 352 (2d Dist. July 27, 1993), rev. denied (Oct. 21, 1993). See also *City of Berkeley v. Cukierman*, 14 Cal. App. 4th 1331, 1339, 1340, 18 Cal. Rptr. 2d 478, 481, 482 (1st Dist. 1993) (noting words of a statute must be given their ordinary meaning and looking initially to a dictionary for that meaning).

⁴⁷ Cal. Gov’t Code § 53232.2(b).

⁴⁸ Cal. Gov’t Code § 53232(c).

(see text in note below⁴⁹).

Again, the tie to “local agency” as defined in the bill, means that AB 1234’s requirements on reimbursement policies do not apply to some kinds of agencies on which local officials serve (for example, redevelopment agency governing boards or joint powers agencies), although of course voluntarily adopting expense reimbursement policies is a prudent course of action for non-covered entities. It also does not apply to school districts.

5. Is there a place where we can find sample reimbursement policies?

Yes, at www.ca-ilg.org/ab1234compliance . Keep in mind, however, that there is no one-size-fits-all approach to such policies and AB 1234 specifically allows local agencies to tailor their policies to their communities’ needs and standards.

⁴⁹ Government Code section 54952 provides in that regard:

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

6. Does AB 1234's restrictions apply to expenses incurred by local agency staff?

No. AB 1234's requirements relating to expense reimbursement policies and restrictions on reimbursement rates only apply to "reimbursements of members of a legislative body."⁵⁰ For consistency and ease of administration, some local agencies have elected to adopt policies that govern expense reimbursements for staff as well as elected and appointed officials, but AB 1234 does not require local agencies to do so.

7. What are the IRS rates for meal expenses?

The Internal Revenue Service establishes "per diem" thresholds for employees; any amounts in excess of the per diem for a given area is treated as additional wages for income tax purposes. For example, for 2006, the standard per diem rate for meals (breakfast, lunch and dinner) and incidental expenses in the continental United States is \$39. However the rate for Los Angeles, San Francisco, and San Diego areas (as defined) is \$64.⁵¹

AB 1234 gives local agencies latitude to adopt whatever standards for meal reimbursements that meet community standards.

Local officials sometimes want to know what the state's practices are in terms of reimbursements. Senators and Senate employees, for example, are reimbursed according to the federal government's General Services Administration's rates by geographic area; the web address for these rates is:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2006&contentType=GSA_BASIC&contentId=17943&queryState=California&noc=T.

Note that, under AB 1234, officials must still present receipts documenting expenses incurred, even if they are within the guidelines adopted by the IRS or the local agency.

8. If there are no mandatory reimbursement rates, is there no limit on what local officials may be reimbursed for?

The law specifies certain thresholds for what constitutes reasonable levels of expenses. For example, for lodging in connection with conferences, the rate may not exceed the maximum group rates published for the conference.⁵² If those rates are not available at the time the lodging is booked, the lodging rates must be comparable to those allowed by the Internal Revenue Service or government rates.⁵³ Local agency officials must use group or government rates for non-conference-related lodging and transportation

⁵⁰ Cal. Gov't Code § 53232.2(b).

⁵¹ See Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem.

⁵² Cal. Gov't Code § 53232.2(d).

⁵³ *Id.*

services.⁵⁴

But otherwise, AB 1234 retains agencies' discretion, subject to community standards relating to the judicious use of scarce taxpayer dollars.

9. When must these reimbursement policies be adopted? What do we do about reimbursing expenses before we adopt the policies contemplated by AB 1234?

These reimbursement policies should be adopted as soon as possible. AB 1234 took effect January 1, 2006.

Agencies should not reimburse expenses until they have a policy in place. An option is to ask their officials to retain any receipts for reimbursable expenses until the policy can be adopted and then submit their reimbursement requests consistent with those policies and AB 1234's requirements.

10. May local agencies grant car allowances or other expense allowances under AB 1234?

This is a very good question on which agency attorneys disagree. Some agency attorneys believe that AB 1234's requirement that expenses be reimbursed after the fact based on receipts means that vehicle and other expense allowances are not permitted.⁵⁵ Some local agencies had previously reimbursed auto expenses through an allowance, based on statute and case law⁵⁶ that seemed to permit allowances when based on empirically demonstrable information that the allowance matched actual and necessary expenses incurred.⁵⁷

A factor to keep in mind with expense allowances is that they may be taxable (and subject to withholding) if the official cannot document that his or her actual expenses met or exceeded the allowance.⁵⁸ This, and the requirement that any expense allowance be based on empirical information about actual expenses incurred, predate AB 1234's requirements.

11. If an agency has a current reimbursement policy, does AB 1234 require that it develop another policy if the current policy omits one of the identified items, like travel, meals, or lodging?

Agencies should consult with agency counsel to make sure that any existing policies comply with AB 1234's specific requirements.

⁵⁴ Cal. Gov't Code § 53232.2(e).

⁵⁵ Cal. Gov't Code § 53232.3.

⁵⁶ See Cal. Gov't Code § 1223 (authorizing local officials to "contract" for an allowance or mileage rate for automobile owned, rented or used in performance of duties); *Citizen Advocates, Inc. v. Board of Supervisors*, 146 Cal. App. 3d 171, 194 Cal. Rptr. 61 (1983).

⁵⁷ See *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975).

⁵⁸ Treas. Regs. § 1.62-2T(e), § 1.3401(a)-1T.

12. What about expenses related to cell phone and Internet use for local agency business?

These also can be reimbursed according to local agency policy with documentation.⁵⁹ In terms of kinds of documentation, one agency requires that telephone bills be submitted and that the official identify which calls were made on agency business. For cellular calls when the official has a particular number of minutes included in the official's plan, then the agency asks the official to identify the percentage of calls made on public business. For Internet access, if the officials submit an estimate of the percentage of agency-related usage for the period in question and proof of the amount of bill for such access.

Officials should keep in mind that all expense reimbursement requests and supporting documentation are public records.⁶⁰

13. How should local agencies interpret the requirement for members of a legislative body to provide brief reports on the meetings they attended at the expense of the local agency at the next regular meeting of the legislative body?

AB 1234 requires members of a legislative body to report on "meetings" attended at public expense at the next meeting of the legislative body.⁶¹ "Meetings" for purpose of this section are tied to the Brown Act meaning of the term:⁶² any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.⁶³

An example would be when a city council member or supervisor represents his or her agency on a joint powers agency board and pays for the official's expenses in serving in that representative capacity.

Presumably the report can be either written or oral. The report must be made at the next meeting of the legislative body that paid for its member to attend the meeting.⁶⁴

Note too that some public agencies have also voluntarily adopted requirements that any time an official attends a conference or similar gathering at public expense that a report be provided back to the body. Again, the report typically can be written or oral.

⁵⁹ Cal. Gov't Code § 53232.3(c).

⁶⁰ Cal. Gov't Code § 53232.3(e).

⁶¹ Cal. Gov't Code § 53232.3(d).

⁶² Cal. Gov't Code § 53232.3(d).

⁶³ See Cal. Gov't Code § 54952.2.

⁶⁴ Cal. Gov't Code § 53232.3(d).

14. Can AB 1234's requirements for expense reimbursement be constitutionally applied to charter cities?

A number of charter city attorneys argue that expense reimbursement falls under the category of "compensation" over which charter cities have plenary authority to the exclusion of state regulation.⁶⁵ Indeed, the portion of AB 1234 relating to expense reimbursement is part of a new article being added to the Government Code entitled "Compensation."⁶⁶

Of course individual charter requirements and good fiscal management practices may make voluntary adoption of the kind of expense reimbursement policy contemplated by AB 1234 advisable. The Institute's sample reimbursement policy includes a suggested finding for charter cities stating that the reimbursement policy would satisfy AB 1234's requirements in the event such requirements could be constitutionally applied to charter cities.

15. What are the penalties for misuse of public resources or falsifying expense reports?

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies include:⁶⁷

- Loss of reimbursement privileges
- Restitution to the local agency
- Civil penalties of up to \$1,000 per day and three times the value of the resource used⁶⁸
- Criminal prosecution and a lifetime bar from public office⁶⁹

Note that these potential penalties existed under the law prior to AB 1234.

⁶⁵ Cal. Const. art. XI, § 5. *County of Sonoma v. Commission on State Mandates*, 84 Cal. App. 4th 1264 (2000).

⁶⁶ Article 2.3 of chapter 2 of Part 1 of division 2 of title 5 of the Government Code.

⁶⁷ See Cal. Gov't Code § 53232.4.

⁶⁸ See Cal. Gov't Code § 8314.

⁶⁹ See Cal. Penal Code § 424.



Attachment 5: New State Ethics Compensation Requirements for Local Officials: Frequently Asked Questions

1. What impact does AB 1234 have on compensation for local officials?

AB 1234 limits direct compensation for some officials, primarily members of a legislative body of an independent special district, excluding irrigation districts that provide electricity, utility districts with boards having seven members, and harbor districts.⁷⁰ These limits do not apply to salaried officials of any local agency, including city council members and members of a board of supervisors, or charter cities.⁷¹

Agencies that are subject to these provisions may pay a stipend to members of a legislative body for:

- A meeting of any “legislative body” as defined by the Brown Act
- A meeting of an advisory body
- Conference attendance or educational activities, including ethics training⁷²

Agencies may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.⁷³

2. What about AB 11’s requirements with respect to city council member compensation?

AB 11 reiterates what some city attorneys considered to be existing law for general law cities: Unless specifically authorized by another statute, a city council may not enact an ordinance providing for compensation to elected city council members in excess of the schedules authorized under the Government Code.⁷⁴ The goal of AB 11 was to make it clear that, in general law cities, city council members could not augment their

⁷⁰ Cal. Gov’t Code § 53232.1(c).

⁷¹ Cal. Gov’t Code § 53232.1(c).

⁷² Cal. Gov’t Code § 53232.1(a).

⁷³ Cal. Gov’t Code § 53232.1(b).

⁷⁴ See Cal. Gov’t Code § 36516(d).

compensation by creating additional boards and commissions on which council members would serve and then receive a separate stipend for that service.

AB 11 also changed the law with respect to serving on community development commission formed to oversee both redevelopment and housing authority functions. AB 11 says that, under such circumstances, commissioner compensation may not exceed \$150 per commissioner per meeting, with a maximum of two meetings (\$300) per month.⁷⁵ If the body just serves as a redevelopment agency, the compensation is \$75 per commissioner, per meeting, with a maximum of two meetings.⁷⁶

3. When does AB 11 go into effect?

January 1, 2006, although a number of city attorneys have questioned whether the Legislature can reduce the compensation of sitting city council members (see question below).⁷⁷

4. Does AB 11 apply to city council members who were elected to office before January 1, 2006?

This question is being addressed by the California Attorney General's office,⁷⁸ inasmuch as there is a Government Code provision that says that city council member salaries cannot be reduced during a city council member's term.⁷⁹

This of course gives rise to the question of what one should do while waiting for the Attorney General's answer. One option is to keep funds put in question by AB 11 into a sort of escrow account until the Attorney General's office issues its opinion (which is likely to be in the spring).

5. Does AB 11 apply to charter cities?

The general compensation restrictions of AB 11 (including the ability to create commissions and committees and augment compensation levels) apply only to general law cities—unless a charter somehow incorporates general law with respect to council member salaries.⁸⁰

⁷⁵ Cal. Health & Safety Code § 34130.5(c).

⁷⁶ Cal. Health & Safety Code § 34130.5(b).

⁷⁷ 80 Cal. Op. Att'y Gen. 119 (1997) (interpreting Government Code section 36516.5 as precluding a change of council member salaries during the council member's term).

⁷⁸ See Attorney General Request for Input on pinion No. 05-1204 circulated December 8, 2005 and asking for input by February 6, 2006.

⁷⁹ 80 Cal. Op. Att'y Gen. 119 (1997) (interpreting Government Code section 36516.5 as precluding a change of council member salaries during the council member's term).

⁸⁰ Government Code section 36516, which is the section AB 11 amended, is the code section specifying general law city council member compensation. Charter cities generally have absolute authority over city council member compensation. See Cal. Const. art. XI, § 5. *County of Sonoma v. Commission on State Mandates*, 84 Cal. App. 4th 1264 (2000).

To the extent that a charter city has a community redevelopment commission overseeing both housing authority and redevelopment functions, then those aspects of AB 11 are likely to apply, since redevelopment agencies are creatures of state law.⁸¹

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⁸¹ See *Andrews v. City of San Bernardino*, 175 Cal. App. 2d 459, 462 (1959).



INSTITUTE FOR LOCAL GOVERNMENT

Attachment 6: New Revolving Door Restrictions For Local Officials: Frequently Asked Questions

1. What does SB 8 basically do?

State officials have been precluded from representing individuals before their agencies for one year after leaving office.⁸² Now that requirement also applies to a number of local officials, including elected officials and city and county managers.⁸³

2. To whom more specifically does the restriction apply?

These restrictions apply to:

- ⇒ Local elected officials;
- ⇒ Chief administrative officers of counties;
- ⇒ City managers; and
- ⇒ General managers and chief administrators of special districts.⁸⁴

The law is a bit unclear on whether it applies to school district or joint powers authorities officials. The law cross references Government Code section 82041, which defines local government agencies as including counties, cities or districts “of any kind including school district[s], or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.”

⁸² See Cal. Gov't Code § 87406.

⁸³ See Cal. Gov't Code § 87406.3.

⁸⁴ See Cal. Gov't Code § 87406.3(a).

3. What kinds of activities are prohibited?

The threshold question to ask is whether the former official is being paid. If so, the next question is whether the former official is acting as an agent or attorney for someone, or otherwise representing them before the former official's agency for the purpose of:

- Influencing administrative or legislative action;
- Influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a
 - Permit,
 - License,
 - Grant, or
 - Contract.
- Influencing the sale or purchase of goods or property.⁸⁵

The revolving door prohibitions go on to leave virtually no room for misunderstanding of the kind of activities that are prohibited.

For example, the definition of “administrative action” is very broad. It means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial.⁸⁶ So if the former official were paid to influence any of these kinds of activities, the activities would be unlawful under the new revolving door restriction.

What about the definition of “legislative action?” Those activities mean the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body (or any of its members, committees, subcommittees or employees acting in their official

⁸⁵ See Cal. Gov't Code § 87406.3(a), which reads as follows:

A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041 shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

⁸⁶ See Cal. Gov't Code § 87406.3(d)(1).

capacities).⁸⁷ So if the former official were paid to influence any of these kinds of activities, the official's actions would be impermissible.

The law goes on to specify what kinds of contact are impermissible:

- Making any formal or informal appearance before the official's former agency, including its governing body, committees or subcommittees, and
- Making any oral or written communication to the official's former agency (including its governing body, committees or subcommittees, as well as officers or employees).

Again the key is whether the former official is paid to make these kinds of appearances or communications for the purpose of influencing the former official's agency's administrative or legislative actions.⁸⁸

4. What is the timing?

The section is effective July 1, 2006.⁸⁹ The prohibition applies for one year after leaving office.⁹⁰ Thus, if a city manager leaves office on May 31, 2006, she technically would not be violation of state law (and this assumes no local revolving door proscriptions) if she were to be paid to represent a private developer before her city during the month of June. But she would need to discontinue that representation beginning July 1 and discontinue such activities until May 30, 2007.⁹¹

And, of course, the law sets only minimum standards for ethical behavior. Even though the law does not kick in until July 1, covered officials should carefully evaluate the costs, in terms of public perceptions, of delaying compliance.

⁸⁷ See Cal. Gov't Code § 87406.3(d)(2).

⁸⁸ See Cal. Gov't Code § 87406.3(a).

⁸⁹ See Cal. Gov't Code § 87406.3(e).

⁹⁰ See Cal. Gov't Code § 87406.3(a).

⁹¹ In *People v. Henderson*, 107 Cal.App.3d 475, 166 Cal.Rptr. 20 (3d Dist.1980), the court explained the purpose of having a different operative date this way:

Under the California Constitution, a statute enacted at a regular session of the Legislature generally becomes effective on January 1 of the year following its enactment except where the statute is passed as an urgency measure and becomes effective sooner. (Cal. Const., art. IV, § 8, subd. (c)(1).) In the usual situation, the "effective" and "operative" dates are one and the same, and with regard to ex post facto restrictions, a statute has no force and effect until such effective-operative date. [citation omitted] Yet, as here, the Legislature may deem it necessary to postpone the operation of certain statutes until a later time. (See 26 Ops.Cal.Atty.Gen. 141, 143 (1955).) Just as the Legislature may provide for an operative date subsequent to an effective date of a statute to allow persons affected to become acquainted with and implement its provisions [citation omitted] . . .

See *id.* at 488, 166 Cal. Rptr. at 28. See also *Sutherland's Statutory Construction*, § 33:7 at page 23 ("The purpose of a future effective date is to inform people of the provisions of a statute before it becomes effective so that they may . . . discharge their obligations.")

5. Are there any exceptions to the state-imposed revolving door restrictions?

The law applies only to conduct for which the former official is compensated. Volunteer activities are not covered. Note, too that the regulation interpreting the *state official* revolving door ban says that volunteers can accept reimbursement for necessary travel, meals, and accommodations directly related to their volunteer services and still remain in compliance with the restrictions.⁹²

There also is an exception if the former official is an employee of or serves in a leadership capacity (board member or officer) at another public agency and the official is representing that agency before his or her former agency.⁹³

Note too that the definition of “administrative action” does not include any action that is solely ministerial.⁹⁴ This term is not defined in SB 8, but generally refers to mandatory, nondiscretionary actions where the agency must grant (or deny) an application based on the presence (or absence) of a predetermined set of conditions.⁹⁵ An example is a final map approval under the Subdivision Map Act, when the agency only determines whether the applicant has met the conditions in the tentative map.

6. Do the state-imposed restrictions supersede any local revolving door restrictions?

No. The state law specifically says that it does not preclude a local government agency from adopting an ordinance or policy that restricts the appearance of a former local official before that local government agency if that ordinance or policy is more restrictive than the state law restriction

7. What about arrangements in which an official contracts with his or her former agency to provide services to ease the transition?

This does not present an issue under the state revolving door laws. However extreme caution and close consultation with one’s agency attorney is advisable whenever one contemplates a contract with one’s agency. Another state law has a very strict

⁹² See Cal. Code of Regs. § 18746.1(b)(3).

⁹³ See Cal. Gov’t Code § 87406.3(b) (the prohibition does “not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another local **government** agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency”).

⁹⁴ See Cal. Gov’t Code § 87406.3(d)(1).

⁹⁵ *Rodriguez v. Solis*, 1 Cal. App. 4th 495 (1991). Typical examples include approval of a final subdivision map and issuance of building and occupancy permits. *Youngblood v. Board of Supervisors*, 22 Cal. 3d 644 (1978); *Thompson v. City of Lake Elsinore*, 18 Cal. App. 4th 49 (1993).

prohibition against self-dealing on contracts.⁹⁶ The consequences of violating this prohibition are severe, including not getting paid for one's services under the contract and felony criminal prosecution.⁹⁷

Legally, the prudent course of action may be to negotiate any contracts for services only *after* one has left the agency's service. There also can be issues relating to how much one can work while drawing retirement benefits. If this is an issue, consult with the applicable regulations for your retirement system.

8. Are there any other considerations of which one should be aware in this area?

It is always important to remember that the law sets a floor for ethics in public service—not a ceiling. Even when all legal requirements relating to one's activities after leaving an agency have been satisfied, the media and the public can still have a perception of impropriety. Don't forget to engage in a worst-case scenario of how a hostile media might characterize one's activities and how such a characterization may shape the public's trust in both you and the agency you used to serve.

8. Where can I go for further information?

The Fair Political Practices Commission has prepared a booklet for *state* officials on this topic. It is called [Revolving Door and Other Post-Employment Issues: Leaving Your State Job? Post-Employment Restrictions May Affect You.](#) Keep in mind as you are reviewing it that the state restrictions tend to be much more extensive though.

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⁹⁶ See Cal. Gov't Code § 1090 ("Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members . . .").

⁹⁷ See Cal. Gov't Code § 1097.