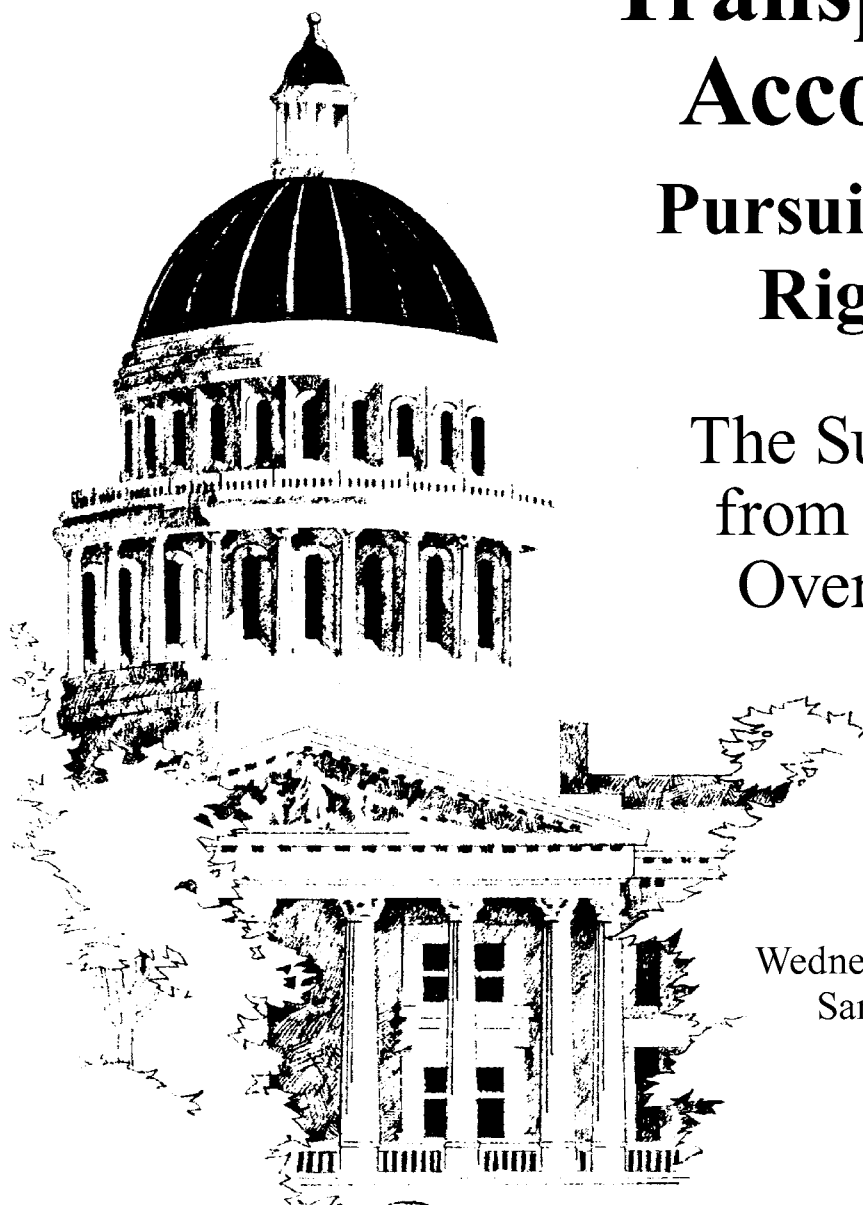




# Transparency and Accountability

## Pursuing the Public's Right to Know

The Summary Report  
from the Legislative  
Oversight Hearing



Wednesday, October 20, 2010  
Santa Ana, California

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**Transparency & Accountability:  
Pursuing the Public's Right to Know  
A Legislative Oversight Hearing**

On Wednesday afternoon, October 20, 2010, the Senate Local Government Committee held an oversight hearing on the requirements for public officials to disclose their compensation. The hearing began promptly at 1:00 p.m. and continued until 4:35 p.m. The Committee met in the Rancho Santiago Community College District's Board of Trustees' chambers in Santa Ana. About 80 people attended the hearing.

Three of the Committee's members participated in the oversight hearing:

Senator Christine Kehoe, Vice Chair  
Senator Sam Aanestad  
Senator Mark DeSaulnier

Four other legislators joined the Committee members' hearing:

Senator Lou Correa  
Assembly Member Hector De La Torre  
Assembly Member Chris Norby  
Assembly Member Jose Solorio

This report contains the staff summary of what happened at the Committee's hearing [see the *white pages*], reprints the Committee staff's briefing paper [see the *blue pages*], and reproduces the written materials provided by the speakers and others [see the *yellow pages*].

Although there was no video record of the hearing, Senate staff audio-recorded the comments by the legislators and other speakers. That CD recording is part of the Committee's official records for the Santa Ana hearing.

**Staff Findings**

After reviewing the speakers' presentations and written materials, and thinking about the comments that the legislators made during the afternoon's hearing, the Committee's staff reached six findings. Following the format of the policy questions raised in the briefing paper, the Committee staff found:

- Unanimous support for statutory changes that will require more public disclosure of public officials' compensation.
- General support that public officials should disclose all forms of their compensation. However, there was no consensus on whether public officials should disclose their reimbursement payments, and there were cautionary notes about privacy concerns regarding medical benefits and worksites.
- General support for requiring all public officials to disclose their compensation. However, K-12 schools, community colleges, and the University of California contended that the current laws are adequate.
- General support for public disclosure methods that produce public disclosure reports which are precise, reliable, accessible, and inexpensive.
- Mixed advice on how to collect, store, and distribute reports. Should the Legislature use the "Form 700" approach in SB 501 (Correa, 2010) or build on the State Controller's recent work?
- After the hearing, State Controller John Chiang posted an online database of the salaries, pensions, and other compensation for nearly 600,000 county and city employees: [www.sco.ca.gov/compensation\\_search.html](http://www.sco.ca.gov/compensation_search.html)

### **Opening Remarks**

The Committee's Vice Chair, **Senator Kehoe**, presided over the afternoon hearing. At her request, **Senator Correa** led the Pledge of Allegiance. Senator Kehoe thanked the Rancho Santiago Community College District for allowing legislators to use its board chambers. She also introduced her legislative colleagues, thanking Senator Correa for encouraging the Committee to hold the hearing.

Senator Kehoe declared that "elected officials, public employees, and the constituents we serve are appalled by the waste of public money and the lack of personal ethics" that surfaced in the news stories about the City of Bell. Noting that "court proceedings, both criminal and civil, are underway," Senator Kehoe said that "legislators also need to respond." The oversight hearing is a chance to learn what the current law says, to explore reform proposals, to get advice from local officials, and to "listen carefully to our constituents."

Legislators need to go beyond talking about transparency, honesty, and integrity, said **Senator Aanestad**. They should ask, "What should be the consequences of

this ... behavior?" This summer's headlines "personally offended" him and he wanted to use the hearing to get more information.

**Assembly Member De La Torre** noted that he had authored reform bills on these topics over the past six years and especially the last three months. But, he cautioned, "what we saw in Bell was not an isolated incident." While Bell officials combined "bits and pieces" of bad practices, other cities have also been doing similar "bits." Legislators need to "stop what's happening. That's our responsibility," he stated.

Noting that public officials "can't go back in time," **Assembly Member Solorio** said that legislators can learn lessons to prevent future problems.

**Senator Correa** explained that Bell is a community of blue collar working families who had to "trust the local electeds" to do the right thing. Echoing former President Ronald Reagan, Senator Correa added that "trust is not enough. You also have to verify." With legislators authoring many bills on the topic, it was clear to him that there is no consensus about what should be done. The Committee's hearing should find that consensus. "People need [their] trust in government restored," he declared.

### The Speakers

The Committee asked 11 people to speak, organized into three panels. Legislators invited the speakers to provide written materials to supplement their remarks. The speakers who names appear with an asterisk (\*) provided written materials. The appendix reprints what the speakers gave the Committee. [*See the yellow pages.*]

### Background & Current Law

The first panel consisted of speakers who set the context for those who followed:

Peter Detwiler, Consultant  
Senate Local Government Committee

Lori McGartland, Chief, Employer Services Division\*  
California Public Employees Retirement System

Thomas W. Newton, General Counsel\*  
California Newspaper Publishers Association

Committee consultant **Peter Detwiler** said that the hearing gave the Committee an opportunity to explore the legislative responses after the Bell pay scandals. He referred to the briefing paper which the Committee had released the previous week. The appendix reprints that document. [See the *blue pages*.] Detwiler explained that the Committee's briefing paper focused attention on four policy questions:

- Should state law require more compensation disclosure?
- What compensation should public officials disclose?
- Which public officials should disclose their compensation?
- How should public officials disclose their compensation?

**Lori McGartland**, representing the California Public Employees Retirement System, explained that each public retirement system relies on its own definitions to compute retirement benefits. CalPERS focuses on pay rate and special compensation, but engages in a "pretty robust review of compensation" with more than 7,000 annual reviews. While there is no standard for supporting documents, CalPERS looks at "quite a spectrum of information" to determine applicants' compensation.

"I think I have an encouraging story to tell," said **Tom Newton** of the California Newspaper Publishers Association. "Californians love their sunshine," he added, referring to the California Constitution and statutory provisions that guarantee public access to public information. Newton described the California Supreme Court's 2007 decision in a case where a labor union tried to prevent the disclosure of public employees' compensation. He said that this decision is now universally understood to apply to all public employees and their gross compensation, although the Legislature may need to define "gross compensation." As his organization likes to say, "Public pay is the public's business." Newton also reviewed the statutory requirements for open government. He pointed out what he termed an "anomaly" in the Brown Act that could allow local officials to vote on labor contracts in closed sessions, provided that they publicly report the results.

**Senator Aanestad** explored the question of labor negotiations with Newton and learned that school districts follow more stringent procedures. **Senator Correa** asked how hard it is for reporters to get information about public compensation. Newton said that it depends on who asks; the *Los Angeles Times* and the *San Diego Union-Tribune* can back up their requests with lawyers, but smaller papers usually don't. There's a difference between statutory theory and actual practice, Newton said. **Senator DeSaulnier** asked Newton if there was a good model from other states that California should follow. California's "presumption to access" is the

right approach, Newton answered, but legislators should also push information “out there” by requiring posting on websites.

Responding to a question by **Assembly Member De La Torre**, McGartland explained that CalPERS can look at about 100 items that might qualify as salary. “If it’s on the list, that’s the first step, but there are nine other criteria.” She then quickly ran through the other criteria. After exploring the question of access to public documents with Newton, **Assembly Member De La Torre** noted that how public agencies structure their websites influences how transparent they are to the public. Web-based disclosure is fine, the legislator said, but he wants to see paper copies in a binder on the counter.

**Assembly Member Solorio** discussed with Newton what happens when public officials stall on requests to provide public records.

**Assembly Member Norby** asked if the *Los Angeles Times* was tipped off by police officers who were unhappy with the consolidation of Bell’s police department with another city’s department. He also asked about allegations involving the City of Vernon. Legislators should look into reorganizing city governments, he said.

### Public Disclosure Proposals

The Committee then turned its attention to proposals to expand public disclosure of public officials’ compensation, listening to:

Elaine M. Howle, CPA\*  
California State Auditor

Fred Smoller, Ph.D., Public Administration Program Director\*  
Brandman University

State Auditor **Elaine Howle** noted that she based her observations on the employee compensation audits that her agency conducted on the University of California and the California State University. She found three problems: (1) the lack of a central database to track compensation, (2) policies that were circumvented and ignored, and (3) failure to fully disclose to oversight boards. Those audits prompted Howle to make six recommendations: centralize and standardize information, specify the compensation categories that determine retirement benefits, set and enforce limits on nonsalary compensation, require full disclosure for employees who exceed



thresholds, consider total compensation when considering raises, and monitor compliance. Howle then described the findings of two nationwide reports:

“Public Attitudes Toward Government Accountability and Transparency” (Association of Government Accountants, February 2010)

[www.agacgfm.org/downloads/SurveyWhitePaper10.pdf](http://www.agacgfm.org/downloads/SurveyWhitePaper10.pdf)

“Following the Money: How the 50 States Rate in Providing Online Access to Government Spending Data” (U.S. Public Interest Group, April 2010)

<http://cdn.publicinterestnetwork.org/assets/b3ba157e28d82952ee5b7a3f84e88499/Following-the-Money-USPIRG.pdf>

In this second report, USPIRG gave California a “D” grade, classifying it as an “emerging state.” Howle concluded by paraphrasing USPIRG’s five “best practices” from its Transparency 2.0 initiatives, involving what the group called a “new standard of comprehensive, one-stop, one-click budget accountability and accessibility.”

“Bell is the outlier, but there are several baby Bells out there,” declared Brandman University’s **Fred Smoller**. His graduate students researched and wrote the Orange County City Manager Compensation Report in May 2010 which triggered “a firestorm of criticism” from local officials. Professor Smoller sketched seven findings and offered seven recommendations. He called for all public employees making over \$75,000 a year to report their compensation to “a searchable, user friendly, data archive ... housed in an official state agency.” Using cloud computing, the costs should be less than \$1 million, he said, mostly for software development. Professor Smoller told legislators that “your efforts are a first step” in response to resolving the crisis in confidence resulting from the Bell scandals.

**Senator Correa** suggested that his SB 501 offered a cheaper method of collecting and reporting compensation data, relying on the “Form 700” process. **Assembly Member Norby** commented that legislators’ first priority should be disclosure, then review the thresholds. Professor Smoller replied that the public sector’s “arrogance” surprised him, noting the city managers’ reactions to his students’ project. Academic “tenure only goes so far” to protect researchers, he said. **Assembly Member De La Torre** said that reactions by the “real city managers of the O.C.” troubled him. All kinds of lobbyists worked against his proposed reforms, including taxpayer-funded lobbyists who argued against the public interest. Professor Smoller urged legislators to “make it real ... follow through.”

### Local Officials' Reactions and Advice

The Committee members then turned to local officials and asked for their reactions, listening to six invited speakers:

Nick Berardino, General Manager\*  
Orange County Employees' Association

Honorable Kim Dolbow Vann, Colusa County Board of Supervisors\*  
California State Association of Counties

Honorable Judy Mitchell, Rolling Hills Estates Council Member\*  
League of California Cities

Honorable Bette Boatman, Contra Costa Water District\*  
California Special Districts Association

Richard Bray, Superintendent, Tustin Unified School District\*  
Association of California School Administrators

James Walker, Ed.D., Community College Search Services\*  
Community College League of California

Speaking for the Orange County Employees' Association, General Manager **Nick Berardino** applauded legislators for looking into elected officials' compensation practices. But he asked them to "come back in three months" to follow-up on what the hearing uncovered. Berardino criticized the \$765 a month car allowances paid to Orange County officials who laid off county employees because of budget problems. The County provides cash benefits to its management staff as well as contributions to their 401 (a) accounts in addition to their pension benefits. Because of these criticisms, "we need you back or they will bury us," Berardino declared.

Colusa County Supervisor **Kim Dolbow Vann** spoke to the legislators on behalf of the California State Association of Counties. Reacting to the previous speaker's comments about the compensation provided by Orange County, Supervisor Vann told legislators that she makes \$34,800 a year as the chair of her County's board of supervisors. Counties were "quick and thorough" to respond to the State Controller's recent requirement to disclose compensation information, but "counties are concerned about adding additional mandatory reports ... that might not add additional benefit to the public." Supervisor Vann urged legislators to require reporting

of “any and all” compensation, but to be very precise in defining what public officials --- local, state, and federal --- must disclose. Compensation information should be available in a single location that makes sense to the public, perhaps the State Controller’s Office.

“Disgraceful, embarrassing, deeply disturbing,” is how Rolling Hills Estates City Council Member **Judy Mitchell** described events in Bell and Vernon. Speaking for the League of California Cities, Council Member Mitchell told legislators that the League publicly condemned Bell “for its outrageous actions.” Her organization produced and posted a city managers’ salary survey on its website. Compensation disclosure should apply to all public agencies and the League supported both SB 501 (Correa) and AB 2064 (Huber). Council Member Mitchell offered five recommendations from the League, most of which involve improving the State Controller’s reporting processes.

**Senator Kehoe** asked if the State Controller’s disclosure requirements applied to the car allowances that some cities provide. Council Member Mitchell replied that those costs appear in the “Box 5” amount. **Senator Correa** noted that the State Controller’s disclosure requirements applied only to counties and cities and not to special districts and schools.

On behalf of the California Special Districts Association of California, **Bette Boatman** told the legislators that she serves on the Contra Costa County Water District’s Board of Directors. “This is the public’s right to know,” she said, adding that the State Controller’s current efforts should be the “starting point” for more action because, for her Association, “transparency is a focus.” The public needs accurate, uniform, efficient, and useful reporting about public officials’ compensation that should apply “equally to all state and local agencies.” Although local officials are continuing to learn as they comply with the State Controller’s requirements, “the answer to the scandal in Bell is transparency.”

**Richard Bray** represented the Association of California School Administrators and spoke from his experience as the Tustin Unified School District’s Superintendent. “Should schools be involved in this process?” was his rhetorical opening question. Superintendent Bray said that the Bell situation can’t happen in a school district because salaries are public information set in open and public meetings, with contracts reviewed by the county schools superintendent. State law controls school board trustees’ stipends; Tustin’s trustees get \$536 a month, but only if they attend all meetings. The State Teachers Retirement System has a “hard cap” on retirement benefits, computing payments on annual salaries of no more than

\$245,000. Further, school districts rely on annual independent audits. While Superintendent Bray supported public disclosure at the agency level, he asked legislators to consider the privacy and security problems that might result from revealing employees' work sites.

As the representative of the Community College League of California, **Jim Walker** began by introducing the Rancho Santiago Community College District's Chancellor **Raúl Rodríguez** who was in the audience. Dr. Walker then explained that state law already requires "complete information" about compensation by community colleges. Chancellors, deans, presidents, and others have employment contracts and state law caps their compensation when they leave their jobs. Dr. Walker gave legislators copies of a table prepared by the Association of California Community College Administrators (ACCCA) as a sample of the types and amounts of compensation that some community college chancellors receive. Fewer educators are interested in becoming community college leaders over the last 20 years because of political pressures and lack of competitive salaries. Walker specifically opposed a requirement for a 180-day delay between retirement and subsequent employment, a provision that was in two bills [AB 1987 (Ma, 2010) and SB 1425 (Simitian, 2010)] that Governor Schwarzenegger vetoed.

"I don't buy it," **Senator Aanestad** told the last two speakers, reacting to their requests for exemptions from proposed reform bills. Rural school districts pay their school superintendents too much, he told Superintendent Bray. He disagreed with Dr. Walker's argument that compensation levels make it hard for community colleges to recruit out-of-state applicants. "I don't believe it at all." He also disagreed with Professor Smoller's \$75,000 suggested threshold; some elected officials make less, but they need to disclose.

**Senator Correa** repeated his intention to build on the "Form 700" process.

**Senator Kehoe** said that the community college chancellors' salaries on Dr. Walker's chart seemed modest for the amount of responsibility. She contended that the recruitment for a chancellor in San Diego lacked sufficient disclosure until the current superintendent was hired.

Summarizing what she had heard during the hearing, **Senator Kehoe** listed these themes:

- "It's all taxpayers' dollars. The same people pay for all of us," so public officials' compensation should be transparent.

- Labor contract negotiations can be a vehicle for greater accountability and transparency.
- There should be “ease of access” to public compensation information.
- There should be “full information” about all types of compensation.
- She was unwilling to endorse a statewide database today.
- Reporting should be uniform and delivered in a single format.
- Legislators should eliminate or minimize conflicts with other reporting.
- The reform bills should have “teeth” and operate “faster.”
- The State Auditor’s recommendations for best practices are helpful.

Agreeing with Senator Correa and Nick Berardino, **Senator Kehoe** agreed that the Committee should hold a follow-up hearing to make sure the recommendations were implemented.

#### Advice and Comment

Following the invited speakers, Senator Kehoe invited advice and comments from the audience. Ten people accepted her invitation and spoke to legislators:

Barbara Kogerman  
Laguna Hills resident

John McKibben\*  
California Association of Clerks and Election Officials

Reed L. Royalty, President\*  
Orange County Taxpayers Association

Honorable Randy Brissette, Mayor  
City of Laguna Hills

Honorable Cheryl Brothers\*  
Orange County Division of the League of California Cities

Mike Tardif\*  
Santa Ana resident

Sandra Genis\*  
Costa Mesa resident

Albert Castillo  
Santa Ana resident

Theresa Sears\*  
Orange resident

Robin Cook  
Santa Ana resident

Using a large chart to display the results, **Barbara Kogerman** told legislators about the survey of Orange County city managers' pay. While about half of the cities responded within 10 days, others took almost three months to reply. "A lot of what's critical is under the radar," Ms. Kogerman said, explaining that this information had never before been pulled together in a single, easily-understood format. To prevent what she called "a rush to obscurity," Ms. Kogerman urged public officials to reveal all forms of compensation, including payments for travel reimbursements. "It needs to be every single dime."

**John McKibben** spoke on behalf of the California Association of Clerks and Election Officials, offering three suggestions: (1) require compensation disclosure only by "true decision makers," (2) gather the data at the agency level, and (3) make statewide compensation information available from a single source.

President of the Orange County Taxpayers Association, **Reed Royalty** asserted that the hearing's narrow focus diverted attention from bigger problems which includes public officials who "mislabel proposed taxes as 'fees'." He urged the Committee to expand its scope to include "dishonorable practices [by] all levels of government, including your own."

"I'm here to ask for your help," said **Randy Brissette**, Mayor of the City of Laguna Hills. Reform legislation must "be as specific as possible" and require disclosure down to the departmental level. This information needs to be available on the front page of every agency's website. He told legislators that he tried for a year to get his city manager to disclose more compensation information, but he failed to find a majority of council members to support his request. While the City now has an 11-page document on its website, it's not an "at-a-glance table" that helps the public. Local resistance can't be changed without a state law.

**Senator Correa** called Mayor Brissette's testimony "very troubling" because elected officials should know how much they're paying their staffs.

The President of the Orange County Division of the League of California Cities, **Cheryl Brothers** is also the Mayor Pro Tem of the City of Fountain Valley. She warned the legislators that if state reporting is too complex, cities will see it as an unfunded mandate. Salary requirements should be "very narrowly defined," she said. Mayor Pro Tem Brothers endorsed the "Form 700" approach in SB 501 (Correa) over the dollar threshold proposed by Professor Smoller. "Cheaters are creative," she explained. Legislators should understand that cities must compete with other agencies and private firms when recruiting and hiring good employees. Disclosing individual medical benefits may "cross the line" of protecting personal privacy. Regarding website disclosure, Mayor Pro Tem Brothers reminded the legislators that there's competition for limited space, but state law could "set a standard title" that would help the public find the information. One reason that some cities avoid scrutiny is that the state cable television franchise law resulted in less public education government (PEG) money to cover public meetings.

**Senator Correa** responded with interest to Mayor Pro Tem Brothers' request to spend PEG money on salaries for cable coverage of local public meetings.

**Mike Tardif** is a Santa Ana resident who does not necessarily agree that his City should be described as a "Baby Bell." Nevertheless, he told the legislators how City officials discourage public participation at their meetings. He gave them copies of two web articles on that topic. Mr. Tardif told the legislators that they should be "putting some real teeth into the Brown Act."

**Sandra Genis**, a resident of Costa Mesa, reminded the legislators that local officials often sit on multiple boards and panels. There's a need to cross-reference all of their various positions so that the public can see their total compensation. She described the problems she's had when using the Public Records Act, citing experiences with the City of Anaheim and the City of Newport Beach. City practices can be "intimidating to the public," Ms. Genis said.

Another Santa Ana resident, **Albert Castillo**, wanted the legislators to know that during an August 2 City Council meeting he was cut-off from criticizing the mayor. Mr. Castillo asked the legislators to get a consent decree or a RICO order to stop Santa Ana from using bad practices. The Orange County Grand Jury is looking into Brown Act violations, he said, although the Attorney General did not

act on similar complaints. Look into Santa Ana and you will find a situation like Bell, Mr. Castillo contended.

**Theresa Sears** is a self-described “citizen activist” from the City of Orange who told the legislators that she asks for public records when “a red flag” shows up. When comparing two agencies’ records on the same topic, she worries that one agency may keep only “sanitized records,” while another has more complete files. Ms. Sears’ written materials recommended specific reforms regarding public records, transparency, special district appointments, enterprise funds, uniform pay scales, taping meetings, campaign disclosure, and regulation of lobbyists. She concluded her presentation by reminding the legislators that compliance “is a mindset” which goes beyond merely following the rules.

Also a Santa Ana resident, **Rob Cook** said that legislators should quickly pass reforms. “You guys [should] go ahead and move mountains” and not wait until “a French Revolution” in which people lose their heads.

Will the Legislature’s interest in statutory reforms after the Bell scandals blow over, **Senator Correa** asked. No, he predicted. He and his colleagues “will apply real political solutions” to these problems.

Before closing the hearing, Senator Correa noted that the Committee’s hearing was Senator Aanestad’s last official duty as a state legislator and he thanked him for his public service. The hearing ended at 4:35 p.m.

### **Additional Advice**

In addition to the 21 speakers at the October 20 hearing, the Committee also received written advice from three other people:

Pamela Lee\*  
Apple Valley resident

Steve Juarez, Associate Vice President, State Government Relations\*  
University of California

Neil McCormick, Executive Director\*  
California Special Districts Association



As a former city clerk who worked with Robert Rizzo before he became Bell's City Manager, **Pamela Lee** wrote to the legislators about her experiences. After describing six particular situations, Ms. Lee wrote that "You can enact laws until the cows come home, and nothing will change." She claimed that public agencies' attorneys can "circumvent" reforms and that legislators should improve the enforcement of existing laws. An independent body, funded by charges levied against public attorneys, city managers, and top executives, would help the public "be their own watchdog on their elected officials."

The University of California's **Steve Juarez** sent the Committee written summaries of "the key components of the University's transparency regarding compensation," including this link to a 30-page document on the University's website:

[www.universityofcalifornia.edu/news/compensation/compensation\\_report\\_cy2009-0910.pdf](http://www.universityofcalifornia.edu/news/compensation/compensation_report_cy2009-0910.pdf)

Mr. Juarez's materials also reviewed the UC Regents' principles for reviewing executive compensation, the open meetings law that UC must follow, UC's policies for disclosing compensation, and the California Public Records Act.

In a letter submitted after the Committee's hearing, the California Special Districts Association's **Neal McCormick** declared that CSDA supports compensation disclosure "equally for all levels of government," based on the State Controller's requirements for cities and counties. Effective alternatives should be explored, provided that they "uniformly apply to all local and state agencies," McCormick wrote.

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# Transparency & Accountability: Pursuing the Public's Right to Know

## A Legislative Oversight Hearing

Wednesday, October 20, 2010  
Board of Trustee Chambers  
Rancho Santiago Community College District  
2323 North Broadway, Santa Ana, California

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**Sunlight is said to be the best of disinfectants.**

Louis Brandeis, "Other people's money."  
Harper's Weekly, December 20, 1913

**The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.**

California Constitution, Article I, §3 (b)  
Added by Proposition 59 (2004)

**Openness in government is essential to the functioning of a democracy.**

*International Federation of Professional & Technical Engineers, Local 21 v. Superior Court*  
California Supreme Court, 42 Cal.4th 319 (2007)

**Transparency & Accountability:  
Pursuing the Public's Right to Know  
A Legislative Oversight Hearing**

This briefing paper prepares the members of the Senate Local Government Committee for their October 20, 2010 oversight hearing on the requirements for public officials to disclose their compensation.

At the request of Senator Lou Correa, the Committee agreed to hold a hearing in Santa Ana to explore legislative reforms in light of recent disclosures about unusual compensation practices in the City of Bell and elsewhere. The October 20 hearing gives legislators a chance to explore four broad policy questions:

- Should state law require more compensation disclosure?
- What compensation should public officials disclose?
- Which public officials should disclose their compensation?
- How should public officials disclose their compensation?

**Introduction**

Beginning in July, newspaper articles reported that the City of Bell's city council members received salaries that total \$1,800 annually for their council service.

However, most of Bell's city council members also received annually:

\$18,895 for serving on the Public Financing Authority.

\$18,895 for serving on the Surplus Property Authority.

\$18,895 for serving on the City Housing Authority.

\$18,895 for serving on the Planning Commission.

\$720 for serving on the Community Redevelopment Agency.

Bell's contract with its former city manager paid him \$23,000 for each biweekly pay period. The contract provided automatic 12% raises if the City had a "positive cash position" in the previous fiscal year. Among other benefits, the contract required the City to pay for the employee's costs of PERS membership for retirement benefits. The City agreed to fully reimburse any expenses of the employee and his dependents that were not covered by the City's medical, dental, and vision insurance policies. The contract also allowed the former city manager to borrow up to \$80,000 from the City, repaid with his vacation leave time.

Reacting to the Bell stories, legislators proposed these reforms:

**SB 501 (Correa)** would have required local officials and key staff to file annual compensation forms. Status: Died on the Senate Floor.

**AB 192 (Gatto)** would have limited PERS liability for an employee's excessive compensation. Status: Died in the Senate Rules Committee.

**AB 194 (Torrico)** would have limited the amount of compensation used to calculate a public employee's pension. Status: Vetoed.

**AB 827 (De La Torre)** would have required performance reviews before raises to executive staff and would have prohibited automatic raises and contract renewals. Status: Vetoed.

**AB 900 (de León)** requires the City of Bell to pay for reimbursing excess property tax bills for retirement benefits. Status: Signed; Chapter 223, Statutes of 2010.

**AB 1955 (De La Torre)** would have required local governments to adopt staff contracts in public and would have stopped redevelopment activities in cities with excess compensation. Status: Failed on the Senate Floor.

**AB 2064 (Huber)** would have required the state government and local agencies to post their officers and employees' annual salaries on their websites. Status: Died in the Senate Government Organization Committee.

On August 3, State Controller John Chiang required cities and counties (but not special districts and school districts) to identify elected officials and public employees' compensation as part of their required fiscal reports to the state. The Controller plans to post this information on his website, starting in November.

On August 13, State Controller John Chiang reported that the initial phase of his audit of Bell's finances discovered that the City overcharged property taxpayers for retirement benefits.

On September 15, Attorney General Edmund G. Brown Jr., filed civil suits against four Bell council members and four city officials, charging fraud, civil conspiracy, waste of public funds, and breach of fiduciary duty.

On September 21, Los Angeles County District Attorney Steve Cooley arrested eight former and current Bell officials and officers on felony charges connected with their compensation practices.

On September 22, State Controller John Chiang released an audit of Bell's finances that found a lack of accounting controls resulted in fiscal mismanagement in compensation practices, bond funding, contracts, local taxes, and real estate deals.

On September 22, the Joint Legislative Audit Committee, the Assembly Accountability and Administrative Review Committee, and the Assembly Local Government Committee jointly held an oversight hearing in Sacramento. Called "Local Government Transparency & Compensation," the hearing was an opportunity for the Assembly Members to hear from the State Auditor, the State Controller's Office, and the Attorney General's Office. Local officials and members of the public also talked to the Assembly Members.

On October 18, the Assembly Accountability and Administrative Review Committee will hold a hearing in the City of Bell to listen to residents' concerns and consider legislative responses.

### **What State Law Requires**

The laws that govern public officials' compensation appear in several constitutional provisions and statutory locations. Although not exhaustive, this summary explains some of those limits and procedures. The Appendix, prepared by the Assembly Local Government Committee, provides citations.

#### **Compensation Amounts**

The California Constitution requires all *county boards of supervisors* to set their own compensation by ordinance. Some counties link their supervisors' pay to the compensation received by superior court judges or to the counties' own management employees. The California Constitution also allows *charter counties* to set county employees' compensation.

The California Constitution allows *charter cities* to determine the process for setting the compensation of their municipal officers and employees.

**General law cities** may pay salaries to their council members, using a statutory schedule based on population:

Up to and including 35,000 residents	\$300 a month
Over 35,000 and up to and including 50,000	\$400 a month
Over 50,000 and up to and including 75,000	\$500 a month
Over 75,000 and up to and including 150,000	\$600 a month
Over 150,000 and up to and including 250,000	\$800 a month
Over 250,000 residents	\$1,000 a month

By ordinance, a city council can increase its salaries beyond these statutory amounts, but a raise can't exceed 5% a year since the last increase. State law prohibits automatic salary increases. With majority-voter approval, city council members can receive salaries that are higher or lower than the statute prescribes.

Unless specifically authorized by state law, **general law cities** can't provide higher compensation for their council members' service on other commissions, committees, boards, or authorities. Some state laws limit the compensation that city council members can receive when they serve on other bodies. However, if another statute allows compensation, but does not set an amount, state law limits the maximum amount to \$150 a month. These statutory limits on general law cities do not apply to what a city can provide its council members for retirement, health and welfare, and federal social security benefits, if the city pays the same benefits for its employees. These statutory limits do not apply to the reimbursement of council members' actual and necessary expenses (AB 11, De La Torre, 2005).

Most **special districts** pay stipends to the members of their governing boards; usually a statutorily set amount for each meeting or each day of service. A few special districts have statutory authority to pay monthly salaries to their governing boards.

State law allows the governing boards of **school districts** and **community college districts** to receive monthly salaries, based on the districts' average daily attendance and the counties' populations. The **county boards of education** may receive monthly salaries based on their counties' populations.

### Procedural Requirements

While the California Constitution appears to give counties and charter cities control over their compensation practices, a series of court decisions explains "that there is a clear distinction between the *substance* of a public employee labor issue

and the *procedure* by which it is resolved. The District Court of Appeal's decision in *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322 repeated the rule that "procedural statutes do not conflict with the constitutional powers of local governments."

Counties, cities, and special districts (but not school districts) must adopt written policies that control their reimbursements for expenses. In addition, if a local agency compensates its governing body or key staff, those local officials must receive ethics training every two years (AB 1234, Salinas, 2005).

The ***Meyers-Milias-Brown Act*** governs local governments' relations with their employees and portions of the Education Code govern school districts and community college districts' employee relations. These collective bargaining and representation procedures generally do not apply to executive employees --- county administrators, city managers, special district managers, school superintendents, community college presidents --- who are employed by, and report directly to, local elected governing boards.

The governing bodies of all local agencies (including school districts) must ratify their executive employees' contracts of employment in open session and reflect those decisions in their minutes. This requirement applies to superintendents, deputy superintendents, assistant superintendents, associate superintendents, community college presidents, community college vice presidents, community college deputy vice presidents, general managers, city managers, county administrators, or similar chief administrative or executive officers. These employment contracts and settlement agreements must be publicly available (SB 1996, Hart, 1992).

The ***California Public Records Act*** requires public records to be open to inspection during office hours and gives every person a right to inspect public records, with specific exceptions. The Act also provides the procedures for requesting copies of public records. Among the specific exemptions are employment contracts between public agencies and public officials or employees.

The ***Ralph M. Brown Act*** requires local agencies' meetings to be "open and public," with specific exceptions. For example, a local agency's legislative body may meet in closed session to consider the appointment, employment, evaluation, discipline, or dismissal of an employee unless the employee requests a public session. However, the Brown Act prohibits local officials from taking final action in a closed session on an unrepresented employee's compensation.





The California Supreme Court explored the tension between personal privacy and public information in *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319. The Supreme Court said “that disclosure of government salary information serves a significant public interest.” The Court also explained that a “public employee’s salary relates to a particular person, but ... it is a matter of public interest and not primarily a matter of the individual’s private business.”


The *Political Reform Act* requires public officers and key employees to file annual statements of economic interest that disclose their investments, property interests, and sources of income. Local officials and key employees file their annual statements with their agencies’ clerks. Statements of economic interest (“Form 700”) are open for public inspection; copies must be available within two business days of receipt.


### **Should State Law Require More Compensation Disclosure?**

The first of the four policy questions facing state legislators is whether state law should require more compensation disclosure. Some observers believe that if Bell’s residents had known how much money their council members were making, they would have resisted sooner. Similarly, if Bell’s council members knew more about their key staff’s compensation, they might not have approved increases.

 *Does state law give Californians enough information about the compensation paid to their public officers and officials?*

 *Should state law require public agencies to disclose the compensation they pay to their officers and officials?*

 *Do constitutional and statutory guarantees of personal privacy prevent public agencies from disclosing the amounts or types of compensation they pay their public officers and officials?*

 *Should the Legislature codify the California Supreme Court’s conclusions from its 2007 “Engineers” decision? Should there be exemptions for peace officers and other public safety employees?*

## **What Compensation Should Public Officials Disclose?**

Even among those who advocate for more compensation disclosure, not everyone agrees about what constitutes compensation. Some believe that listing public officers and key staffs' salaries is enough information. Others point out that the public cost of employees' benefits offsets what may appear to be lower salaries.


Consider the hypothetical example of two chief executive officers who are employed by two different agencies to perform identical duties. Agency A pays its chief executive officer \$110,000 a year, while the chief executive officer of Agency B makes \$130,000. Comparing only their annual salaries is misleading if Agency A fully pays its CEO's PERS premiums, while CEO B pays half of her PERS cost. Although her annual salary is higher, CEO B's net income may be lower. From the taxpayer's point-of-view, the public cost to Agency A of its CEO's total compensation may be more than what Agency B spends to compensate its CEO.


Responding to public concerns after the Bell disclosures, about 90% of the city managers responded to a survey by the League of California Cities. The League asked city managers to report the amount of money in "Box 5" of their 2009 federal W-2 forms. The League explained that the Box 5 amount includes salaries and many fringe benefits that are subject to federal income taxation. Box 5 does not include the cities' payments for defined benefit retirement programs or the cities' costs of health insurance. Some city managers included additional information about their compensation. The League of California Cities posted these results online: [www.cacities.org/index.jsp?zone=locc&previewStory=28201#](http://www.cacities.org/index.jsp?zone=locc&previewStory=28201#).


Some cities have started posting their officials' compensation online. For example, the website for the City of Laguna Hills (Orange County) now includes a "Public Officials' Compensation Report" which describes the salaries and stipends paid to its city council members. It also includes salary information for seven key staff positions plus the combined total of each staff member's annual compensation. However, the report does not identify the cost of each compensation category: [www.ci.laguna-hills.ca.us/civica/inc/displayblobpdf2.asp?BlobID=3307](http://www.ci.laguna-hills.ca.us/civica/inc/displayblobpdf2.asp?BlobID=3307).


The County Administrative Officers Association of California conducted a survey similar to the League of California Cities' survey, asking county administrators to report their "Box 5" compensation and to comment on the other types of compensation they received in 2009. That survey is not available online.


This summer the California State Senate began posting its employees' salaries online: [www.senate.ca.gov/~newsen/senate\\_payroll\\_081510.pdf](http://www.senate.ca.gov/~newsen/senate_payroll_081510.pdf). Also, the California State Assembly posts online the salaries of Assembly Members and their staff: [www.assembly.ca.gov/defaulttext.asp](http://www.assembly.ca.gov/defaulttext.asp).

 Salaries. *Should public officials disclose their annual salaries?*

 Benefits. *Should public officials disclose the employers' costs of their benefits? Which benefits? Defined benefit retirement programs? Deferred compensation programs? Employer costs of health benefits, including medical, dental, eyewear, and counseling programs? Life insurance premiums? The costs of providing benefits to dependents and family members?*

 Reimbursements. *Should public officials disclose the employer's payments to reimburse officials for travel and out-of-pocket costs?*

 Perquisites. *Should public officials disclose the other monetary and nonmonetary perquisites of office that their employers provide? Which perks? Vehicle allowances? Telecommunication allowances? Housing and clothing allowances? Professional dues?*


 Ethics training. *Should public officials disclose if state law requires them to receive ethics training? If so, should public officials report the date of their most recent ethics class?*


### **Which Public Officials Should Disclose Their Compensation?**


One hallmark of the American federal system is the deliberate fragmentation of government institutions --- no public agency has enough political power to operate alone. In addition to the separation of state government's powers into legislative, executive, and judicial branches, governance in California relies on many directly elected constitutional officers. One result of this deliberate institutional fragmentation is how hard it is to keep track of who is responsible for what.


State law also sets up regional agencies and local governments. In all of these state, regional, and local governments there are *public officers* (both elected and


appointed) who make public policy and **public officials** (employees) who carry out those policies.

 Constitutional officers. Should state law require constitutional officers and their key employees to disclose their compensation?

 State agencies and departments. Should state law require state agency secretaries and state department directors and their key employees to disclose their compensation?

 The Legislature. Should state law require legislators and their key employees to disclose their compensation?

 The courts. Should state law require justices and judges and their key employees to disclose their compensation?

 University of California. Should state law require the UC Regents and key UC employees to disclose their compensation?

There are literally thousands of regional and local entities: 58 counties, 481 cities, about 3,300 special districts (of which about 1,800 have directly elected or appointed governing boards), perhaps 1,200 joint powers agencies (JPAs), about 1,100 school districts, 72 community college districts, 58 local agency formation commissions (LAFCOs), and 31 air pollution control districts and air quality management districts (APCDs and AQMDs).


In other words, there may be about 18,000 local elected officers who employ tens of thousands of local executives and senior managers.


In determining who should disclose compensation, SB 501 (Correa, 2010) proposed to use the standard set by the Political Reform Act. If the Political Reform Act requires a local officer or official to file an annual statement of economic interests (“Form 700”), then SB 501 would have required that person to also file an annual compensation disclosure form.


SB 501 specifically referred to Government Code §87200:

87200. This [disclosure] article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

The Fair Political Practices Commission says that more than 100,000 public officials must file Form 700 annual statements of economic interests. The Commission annually receives about 23,000 Form 700 filings from state officials and multi-county agencies, while local officials file their annual statements with their own agencies.

 Local governments. *Should state law require local government officers and officials to disclose their compensation? Which? Counties? Cities? Special districts? Joint powers agencies?*


 Schools. *Should state law require school entities' officers and officials to disclose their compensation? Which? School districts? Community college districts? County offices of education, county boards of education, and county superintendents?*


 Regional agencies. *Should state law require regional agencies' officers and officials to disclosure their compensation? Which? LAFCOs? APCDs and AQMDs? Regional land use commissions like San Francisco Bay Conservation and Development Commission, the Tahoe Regional Planning Agency, the Coastal Commission, the Delta Planning Commission, and the Delta Stewardship Council?*


## **How Should Public Officials Disclose Their Compensation?**

Advocates differ over how public agencies and public officials should disclose their compensation. Some believe that there should be a statewide database that annually collects information about public officials' compensation and posts the results online.


Others worry that the state government's experience with building online databases suggests that technological approaches result in expensive cost overruns and missed deadlines. They suggest following the approach in the Political Reform Act, with public officials filing public documents with their own agencies' clerks. SB 501 (Correa) would have used that method.


 *Should a statewide electronic database collect and manage compensation disclosure information?*

 *If so, who should be responsible for designing and operating the database? The Fair Political Practices Commission? The Attorney General? The Secretary of State? The State Auditor?*

 *What is a realistic cost to construct and operate a statewide database?*

 *Should public officials annually report their compensation to their own agencies' clerks?*

 *If so, who should be responsible for designing and disseminating a standard reporting form and instructions? The Fair Political Practices Commission? The Attorney General? The Secretary of State? The State Auditor?*


 *What is a realistic cost to develop and disseminate a reporting form?*


The California Constitution requires the state government to pay for the costs of new state mandated local programs. State law contains complex and sometimes cumbersome procedures for local governments to file reimbursement claims with


the Commission on State Mandates which then adjudicates the local claims and recommends reimbursement amounts to the Legislature.

Some requirements which seemed inexpensive when enacted have become the subject of significant claims for state reimbursement. For example, the Legislature amended the Brown Act to require local officials to prepare and then post their meeting agendas 72-hours before public meetings (AB 2674, Connelly, 1986; SB 26, Kopp, 1993; SB 1426, Burton, 1993). Legislators thought that the compliance costs would be minor. Nevertheless, the Legislative Analyst's Office reports that local officials claim over \$20 million annually to prepare agendas, post agendas, disclose the results of closed sessions, and train local officials.

SB 501 (Correa) attempted to avoid significant reimbursement claims by imposing its disclosure requirements on the public officers and officials and not on the local agencies. However, if the local government had a website, SB 501 would have required the agency to post the compensation disclosure information.

 *Who should disclose compensation information? The public agency that pays compensation? The individual who receives compensation?*

 *Should legislators expect local governments to file reimbursement claims for the costs of computing and then disclosing their public officials' compensation?*

 *Are there ways to reduce the compliance costs?*

**Appendix: Existing Law**

- 1) Authorizes a city council to enact an ordinance providing that each member of the city council shall receive a salary. *[Government Code §36516 (a) (1)]*
- 2) Prescribes population-based limits on salaries that general law cities are authorized to pay city council members. These limits range from a maximum of \$300 per month for cities with a population of 35,000 or less to a maximum of \$1,000 per month for cities with over 250,000 residents. *[Government Code §36516 (a) (2)]*
- 3) Authorizes the salary of council members to be increased, beyond the statutorily provided amount, by an ordinance or by an amendment to an ordinance, but the amount of the increase shall not exceed an amount equal to 5% for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted. *[Government Code §36516 (a)(4)]*
- 4) Prohibits an ordinance from being enacted or amended to provide automatic future increases in council member salaries. *[Government Code §36516 (a)(4)]*
- 5) Provides that at any municipal election, the question of whether city council members shall receive a salary for services, and the amount of that salary, may be submitted to the electors. *[Government Code §36516 (b)]*
- 6) States that if a majority of the electors voting at the election favor it, all of the council members shall receive the salary specified in the election call. *[Government Code §36516 (b)]*
- 7) Allows city council members to be reimbursed for actual and necessary expenses incurred in the performance of official duties. *[Government Code §36514.5]*
- 8) Specifies that a city council may not authorize compensation to any of its members for any purpose in an amount exceeding the salary city council members currently receive unless that additional compensation is authorized by statute. *[Government Code §36516 (c)]*
- 9) States that unless otherwise specified by statute, an elected member of a city council who serves on a commission, committee, board, authority, or similar body that is created by, or is under the jurisdiction of, a city council shall not receive compensation for that service in excess of \$150 per month for each commission, committee, board, authority, or similar body upon which the member serves. *[Government Code §36516 (c)]*
- 10) States that any amounts paid by a city for retirement, health and welfare, and federal social security benefits shall not be included for purposes of determining salary, provided that the same benefits are available and paid by the city for its employees. *[Government Code §36516 (d)]*
- 11) Requires, under Article XI of the Constitution of California, that properly adopted city charters supersede any existing charter, and with respect to municipal affairs shall supersede all



laws inconsistent therewith.

- 12) States, in Article XI of the Constitution of California, that it shall be competent in all city charters to provide, in addition to those provisions allowable by the Constitution, and by the laws of the state for:
- a) The constitution, regulation, and government of the city police force;
  - b) Subgovernment in all or part of a city;
  - c) Conduct of city elections; and,
  - d) Plenary authority is hereby granted, subject only to the restrictions of Article XI, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation.
- 13) Requires, under Article XI of the Constitution of California, a county charter to provide for:
- a) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance; and;
  - b) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.
- 14) Provides that any ordinance which changes supervisorial salaries shall become effective 60 days after its adoption. *[Government Code §25123.5]*
- 15) Requires the board of supervisors to prescribe the compensation of all county officers and provide for the number, compensation, tenure, appointment and conditions of employment of county employees. Except as otherwise required by Section 1 or 4 of Article XI of the California Constitution, such action may be taken by resolution of the board of supervisors as well as by ordinance. *[Government Code §25300]*
- 16) Requires, under the Brown Act, 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. *[Government Code §54953]*
- 17) Requires, at least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, to post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed

session. *[Government Code §54954]*

- 18) Authorizes a legislative body of a local agency to hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation. *[Government Code §54957.6]*
- 19) Prohibits closed sessions from including final action on the proposed compensation of one or more unrepresented employees. *[Government Code §54957.6]*
- 20) Governs, under the Meyers-Milias-Brown Act, labor-management relations and collective bargaining in California local government. *[Government Code §3500-3511]*
- 21) Provides that all contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes. *[Government Code §53262]*
- 22) Requires all contracts of employment between an employee and a local agency employer to include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18. *[Government Code §53260]*
- 23) Provides that in enacting the Public Records Act, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. *[Government Code §6250]*
- 24) Provides that every employment contract between a state or local agency and any public official or public employee is a public record. *[Government Code §6254.8]*

Prepared by Katie Kolitsos, Chief Consultant, Assembly Local Government Committee (September 2010).

### Sources & Credits

The following publications and reports helped the Senate Local Government Committee's staff prepare this briefing paper:

Chancellor's Office, California Community Colleges, Executive Compensation In the California Community Colleges, 2008-09 and 2009-10, December 2009.

City of Laguna Hills, "Public Officials' Compensation Report," August, 2010.  
[www.ci.laguna-hills.ca.us/civica/inc/displayblobpdf2.asp?BlobID=3307](http://www.ci.laguna-hills.ca.us/civica/inc/displayblobpdf2.asp?BlobID=3307)

Legislative Analyst's Office, "Open Meeting Act Mandate," June 16, 2010.  
[www.lao.ca.gov/handouts/Conf\\_Comm/2010/Open\\_Meeting\\_Act\\_6\\_16\\_10.pdf](http://www.lao.ca.gov/handouts/Conf_Comm/2010/Open_Meeting_Act_6_16_10.pdf)

Senate Local Government Committee, Deregulating Local Officials' Compensation: Summary Report (279-S), October 1987.



Elvia Diaz, the Committee Assistant to the Senate Local Government Committee, produced this briefing paper which staff consultant Peter Detwiler wrote. The mistakes are his, but he gratefully acknowledges the help he received from: Katie Kollitsos, Marianne O'Malley, Roman Porter, and Brian Weinberger, among others.

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**Written Materials Received by the Committee**  
**Transparency & Accountability: Pursuing the Public's Right to Know**

Senate Bill 501 (Correa)  
As amended August 20, 2010

Lori McGartland, Chief, Employer Services Division  
California Public Employees Retirement System

Thomas W. Newton, General Counsel  
California Newspaper Publishers Association

Elaine M. Howle, CPA  
California State Auditor

Fred Smoller, Ph.D., Public Administration Program Director  
Brandman University

Nick Berardino, General Manager  
Orange County Employees' Association

Honorable Kim Dolbow Vann, Colusa County Board of Supervisors  
California State Association of Counties

Honorable Judy Mitchell, Rolling Hills Estates Council Member  
League of California Cities

Honorable Bette Boatmun, Contra Costa Water District  
California Special Districts Association

Richard Bray, Superintendent, Tustin Unified School District  
Association of California School Administrators

James Walker, Ed. D., Community College Search Services  
Community College League of California

John McKibben  
California Association of Clerks and Elections Officials

Reed L. Royalty, President  
Orange County Taxpayers Association

Honorable Cheryl Brothers, Mayor Pro Tem  
City of Fountain Valley

Mike Tardif  
Santa Ana resident

Sandra Genis  
Costa Mesa resident

Theresa Sears  
Orange resident

Pamela Lee  
Apple Valley resident

Steve Juarez, Associate Vice President, State Government Relations  
University of California

Neil McCormick, Executive Director  
California Special Districts Association

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY AUGUST 13, 2010

AMENDED IN ASSEMBLY AUGUST 12, 2010

AMENDED IN SENATE APRIL 20, 2009

**SENATE BILL**

**No. 501**

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**Introduced by Senator Correa**

(Principal coauthor: Assembly Member De La Torre)

(Coauthors: Assembly Members Block, Caballero, Gatto, Norby,  
Portantino, Smyth, and Torres)

February 26, 2009

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An act to add Section 53060.2 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 501, as amended, Correa. Local government: compensation disclosure.

Existing law provides for the compensation of local government officers and employees, as specified.

This bill would require ~~officers and designated employees~~ *filers*, as defined, to annually file a compensation disclosure form, as specified. This bill would require the Secretary of State to develop the form, which would provide for the disclosure of, among other things, salaries and stipends ~~and reimbursements received by the officer or designated employee, and the employer's cost of providing benefits, automobile and equipment allowances, and incentive and bonus payments~~. This bill would also require a county, city, city and county, school district, special district, or joint powers agency that maintains an Internet Web site to post the information contained on the filed form on that Internet

Web site, as specified. The bill would authorize a district attorney or any interested person to commence an action by mandamus to enforce the provisions of the bill, as specified. *The duties imposed on local departmental agencies by the bill would create a state-mandated local program.*

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~~ *filers* 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.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

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

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

1 SECTION 1. Section 53060.2 is added to the Government  
2 Code, to read:  
3 53060.2. (a) For purposes of this section, the following terms  
4 have the following meanings:  
5 (1) "City" means a general law city or a charter city.  
6 (2) ~~"Designated employee" means a designated employee of a~~  
7 ~~county, city, city and county, school district, special district, or~~  
8 ~~joint powers agency formed pursuant to the Joint Exercise of~~  
9 ~~Powers Act (Chapter 5 (commencing with Section 6500) of~~  
10 ~~Division 7 of Title 1) who is required to file a statement of~~  
11 ~~economic interests pursuant to Chapter 7 (commencing with~~  
12 ~~Section 87100) of Title 9.~~  
13 (3) ~~"Officer" means an elected or appointed officer of a county,~~  
14 ~~city, city and county, school district, special district, or joint powers~~  
15 ~~agency formed pursuant to the Joint Exercise of Powers Act~~  
16 ~~(Chapter 5 (commencing with Section 6500) of Division 7 of Title~~

1 1) who is required to file a statement of economic interests pursuant  
2 to Chapter 7 (commencing with Section 87100) of Title 9.

3 (2) "Filer" means both of the following:

4 (A) An elected or appointed officer of a county, city, city and  
5 county, school district, special district, or joint powers agency  
6 formed pursuant to the Joint Exercise of Powers Act (Chapter 5  
7 (commencing with Section 6500) of Division 7 of Title 1) who is  
8 required to file a statement of economic interests pursuant to  
9 Section 87200.

10 (B) Any person who is a superintendent, deputy superintendent,  
11 assistant superintendent, associate superintendent, community  
12 college president, community college vice president, community  
13 college deputy vice president, general manager, city manager,  
14 county administrator, other similar chief administrative officer or  
15 chief executive officer of a local agency who is required to file a  
16 statement of economic interests pursuant to Chapter 7  
17 (commencing with Section 87100) of Title 9.

18 (3) "School district" means a school district, community college  
19 district, county board of education, and county superintendent of  
20 schools.

21 (b) Each ~~officer or designated employee~~ filer shall annually file  
22 a compensation disclosure form that provides compensation  
23 information for the preceding year, pursuant to this section. The  
24 annual filing deadline for a compensation disclosure form shall be  
25 the same as the filing deadline established for annual statements  
26 of economic interest, pursuant to Sections 87203 and 87302.

27 (c) (1) ~~An officer or designated employee~~ A filer shall file his  
28 or her compensation disclosure form with the same office of the  
29 local agency that receives that ~~officer's or designated employee's~~  
30 filer's statement of economic interest pursuant to Section 87500.  
31 The office receiving the compensation disclosure form shall make  
32 and retain a copy and return the original to the ~~officer or designated~~  
33 ~~employee~~.

34 (2) As an alternative to paragraph (1), if a county, city, city and  
35 county, school district, special district, or joint powers agency  
36 maintains an Internet Web site, it may compile the information  
37 required by subdivision (d) for each filer and post that information  
38 on the Internet Web site. The information for each filer shall be  
39 available upon request pursuant to subdivision (f).

40 (2)



1 (3) If the county, city, city and county, school district, special  
2 district, or joint powers agency maintains an Internet Web site, it  
3 shall ~~post the information contained on the filed compensation~~  
4 ~~disclosure form on that Internet Web site.~~

5 (d) ~~The compensation disclosure form, which shall be developed~~  
6 ~~by the Secretary of State, shall, at a minimum, provide for the~~  
7 ~~disclosure of each of the following by an officer and a designated~~  
8 ~~employee:~~

9 (1) ~~Salaries and stipends paid.~~

10 (2) ~~Total reimbursements for expenses received in a year.~~

11 (3) ~~The employer's cost of providing benefits.~~

12 (4) ~~Any other monetary or nonmonetary perquisites provided.~~

13 *shall post the following information on that Internet Web site:*

14 (A) *The information contained on the filed compensation*  
15 *disclosure form.*

16 (B) *The written policy for the reimbursement of actual and*  
17 *necessary expenses adopted pursuant to Section 53232.2, if*  
18 *applicable.*

19 (d) *The Secretary of State shall develop the compensation*  
20 *disclosure form. When developing the compensation disclosure*  
21 *form, the Secretary of State shall review and consider whether the*  
22 *amounts listed in the Internal Revenue Service Form W-2 for the*  
23 *purposes of calculating Medicare taxes are sufficient or, in the*  
24 *case of a contractor, the amounts listed in the Internal Revenue*  
25 *Services Form 1099. If the filer is a contractor, the compensation*  
26 *disclosure form shall require disclosure of the contract's*  
27 *compensation provisions. The compensation disclosure form shall*  
28 *provide for the disclosure of each of the following:*

29 (1) *Annual salary or stipend.*

30 (2) *Local agency payments to the filer's deferred compensation*  
31 *or defined benefit plans.*

32 (3) *Automobile and equipment allowances.*

33 (4) *Supplemental incentive and bonus payments.*

34 (5) *Local agency payments to the filer that are in excess of the*  
35 *standard benefits that the local agency offers for all other*  
36 *employees.*

37 (e) ~~The items information disclosed pursuant to subdivision (d)~~  
38 ~~shall also include any items amounts received by an officer or~~  
39 ~~designated employee a filer as a result of membership with, or~~  
40 ~~employment by, any local agency, municipal corporation, public~~

1 benefit corporation, or community redevelopment agency, if the  
2 membership of the ~~officer's or designated employee's~~ *filer's*  
3 governing body is sufficient in number to constitute a quorum or  
4 a majority of the governing body membership of the local agency,  
5 municipal corporation, public benefit corporation, or community  
6 redevelopment agency.

7 (f) Every compensation disclosure form filed pursuant to this  
8 section shall be open for public inspection and reproduction during  
9 regular business hours, commencing as soon as practicable, but  
10 not later than the second business day following the day on which  
11 it was received. No conditions shall be imposed upon a person  
12 desiring to inspect or reproduce a compensation disclosure form  
13 filed pursuant to this section, nor shall any information or  
14 identification be required from the person. Copies shall be provided  
15 at a charge not to exceed ten cents (\$0.10) per page. In addition,  
16 a retrieval fee not to exceed five dollars (\$5) per request may be  
17 charged for copies of reports and statements that are more than  
18 five years old. A request for more than one compensation  
19 disclosure form at the same time shall be considered a single  
20 request.

21 (g) (1) The district attorney or any interested person may  
22 commence an action by mandamus or injunction to compel ~~an~~  
23 ~~officer, designated employee a filer,~~ county, city, city and county,  
24 school district, special district, or joint powers agency to comply  
25 with the requirements of this section. Nothing in this section shall  
26 be construed to prevent ~~an officer, designated employee a filer,~~  
27 county, city, city and county, school district, special district, or  
28 joint powers agency from curing or correcting an action challenged  
29 pursuant to this section.

30 (2) Prior to any action being commenced pursuant to this  
31 subdivision, the district attorney or interested person shall make  
32 a demand of the ~~officer, designated employee filer,~~ county, city,  
33 city and county, school district, special district, or joint powers  
34 agency to cure or correct the action alleged to have been taken in  
35 violation of this section. The demand shall be in writing and clearly  
36 describe the nature of the alleged violation.

37 (3) Within 30 days of receipt of the demand, the ~~officer,~~  
38 ~~designated employee filer,~~ county, city, city and county, school  
39 district, special district, or joint powers agency shall cure or correct  
40 the alleged violation and notify the demanding party in writing of

1 the decision to cure or correct the alleged violation or inform the  
2 demanding party in writing of its decision not to cure or correct  
3 the alleged violation.

4 (4) Within 15 days of receipt of the written notice of the decision  
5 to cure or correct an alleged violation, or not to cure or correct, or  
6 within 15 days of the expiration of the 30-day period to cure or  
7 correct, whichever is earlier, the demanding party shall be required  
8 to commence the action pursuant to this subdivision or thereafter  
9 be barred from commencing the action.

10 (5) If the ~~officer, designated employee~~ *filer*, county, city, city  
11 and county, school district, special district, or joint powers agency  
12 takes no action within the 30-day period, the inaction shall be  
13 deemed a decision not to cure or correct the alleged violation, and  
14 the 15-day period to commence the action described in paragraph  
15 (1) shall commence to run the day after the 30-day period to cure  
16 or correct expires.

17 (6) During any action seeking a judicial determination pursuant  
18 to this subdivision if the court determines, pursuant to a showing  
19 that an alleged violation has been cured or corrected by a  
20 subsequent action, the action filed pursuant to this subdivision  
21 shall be dismissed with prejudice.

22 SEC. 2. In enacting this act, the Legislature finds and declares  
23 that the disclosure of compensation paid to ~~officers and designated~~  
24 ~~employees~~ *filers* furthers the intent and purposes of Section 3 of  
25 Article I of the California Constitution which declares that the  
26 people have the right of access to information concerning the  
27 conduct of the people's business.

28 SEC. 3. The Legislature finds and declares that the fiscal  
29 integrity and stability of local governmental agencies in this state,  
30 including charter cities, has a direct impact on the long-term  
31 well-being of all the residents of this state. The likelihood of  
32 businesses locating to or staying in the state is affected by the  
33 perception of a functioning, transparent, and practical governmental  
34 structure in the local governmental bodies in California. Therefore,  
35 the Legislature finds and declares that to ensure the statewide  
36 integrity of local government, the disclosure of compensation paid  
37 to ~~officers and designated employees~~ *filers* is an issue of statewide  
38 concern and not a municipal affair, as that term is used in Section  
39 5 of Article XI of the California Constitution. Therefore, this act  
40 shall apply to all cities, including charter cities.

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

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**Written Testimony by Lori McGartland**  
**Division Chief, Employer Services Division**  
**Senate Committee on Local Government**  
**Transparency & Accountability: Pursuing the Public's Right to Know**  
**Wednesday, October 20, 2010**

Good afternoon. Thank you for the opportunity to share with you CalPERS' view on an important topic in the discussion about public employee retirement benefits – the link between employee compensation and pension benefits.

As the nation's largest public pension fund, we believe compensation transparency and accountability is a critical issue that needs to be addressed as policymakers, employers and stakeholders discuss the future of pensions.

Today I intend to cover three areas:

- What type of employee compensation is applicable to CalPERS retirement benefits
- How we validate compensation to ensure compliance with our statutes and regulations; and
- Our experiences in performing that validation.

**Compensation for CalPERS Retirement Purposes**

Each public retirement system has its own unique set of requirements that determine the compensation they use for calculating the retirement benefits payable from that system. The Public Employees' Retirement Law (PERL) defines what compensation CalPERS will recognize for retirement purposes.

The PERL defines compensation as the sum of payrate and special compensation. Payrate is basically a person's normal full-time rate of pay or salary. Special compensation is pay that individuals may receive that is paid in addition to payrate for special skills, knowledge, abilities etc. An example would be Emergency Medical Technician Pay which is paid to those who have to maintain an EMT certification.

The PERL and our regulations lay out very specific rules that each of those two compensation components must meet to be considered reportable for retirement purposes. Payrate must be the normal monthly rate of pay, which is paid to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal work hours. It must also be paid pursuant to publicly available salary schedules.

Generally, special compensation is reportable for retirement purposes if it is listed in statute or Regulation 571 of the PERL. In addition, the compensation must meet all of the following nine criteria in Regulation 571:

1. The special compensation item must be contained in a written labor policy or agreement. A labor policy or agreement means any written policy, agreement,

memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of the represented and unrepresented employees.

2. It must be available to all members in the group or class of employees. A group or class of employees are individuals considered together because they share similarities in job duties, collective bargaining unit, or other logical work-related grouping. One employee may not be considered a group or class. The concept of group or class was put in place as a means of preventing pension spiking. The assumption was that whenever similar pay increases were granted to an entire group or class, pension spiking would not occur.
3. It must be paid as part of normally required duties.
4. It must be performed during normal working hours of employment.
5. It must be paid periodically as earned. This requirement ensures that payments are not held and paid as lump sum amounts within the same one year period.
6. The item must be treated historically consistent with prior payments for the job classification.
7. It must not be paid exclusively in the final compensation period.
8. It may not be final settlement pay. Final settlement pay is compensation or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with, or in anticipation of, a separation from employment.
9. It may not create an unfunded liability over and above CalPERS actuarial assumptions.

Given these specific requirements, it is fairly common for a public employee's total compensation package to include elements that are paid in addition to what we would use for retirement purposes. For example, overtime pay or lump-sum vacation cash outs do not meet our definition of reportable compensation. Therefore, the employer should not report these amounts to us and the pay will not be used to calculate retirement benefits.

### **CalPERS review of compensation**

As the administrator of the plan, CalPERS reviews employee compensation to ensure what is being reported to us and what is paid out in retirement benefits are in compliance with statutory and regulatory requirements. We perform thousands of compensation reviews each year. They are mainly performed when someone asks for a retirement benefit estimate or applies for retirement. The purpose of each review is to validate that both the payrate and the special compensation reported to us meets each of its own specific rules. To perform a review, staff must obtain various pieces of information. The three most important pieces of information for today's discussion are salary schedules, employment contracts, and bargaining agreements or MOU's.

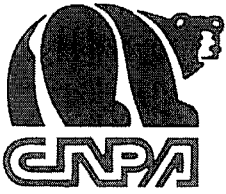
Given the volume of reviews we do, we have quite a bit of experience with these documents. We have worked with various types of public employers – the state, public schools, and local public agencies. From our experience, there is an overly wide range of accessibility and content relative to those documents. These disparities exist because there are no consistent standards or requirements that public employers must follow for reporting employee compensation.

With regard to accessibility, some agencies post all three documents on their websites. For these agencies, we are able to go online, obtain the information we need, and the reviews can be conducted quickly and efficiently. The ability to quickly access relevant documents expedites service to our members.

Unfortunately, we have also experienced the opposite end of the spectrum. Some agencies do not have a website or do not post all three documents on their websites. This makes it difficult to locate the relevant information because it is not clearly identified or the information is imbedded in other documents, such as policy board meeting minutes. Many agencies post only the most recent documents online. However, CalPERS must review several years of historical salary schedules and contracts because the compensation used in calculating the retirement benefit may be for a period other than, or in addition to, the current year. In these cases, we have to contact the agency and request the information. This can result in lengthy delays in the compensation review process, which can delay payment of full benefits to our members.

CalPERS has also seen considerable disparity in the content of the salary schedules. For example, some agencies have salary schedules that are comprehensive and up to date. The information in these documents is clear and can be relied upon to perform our compensation reviews. However, some salary schedules do not list all of the agency's personnel positions. The salaries for other positions are contained in other documents or are only identified in individual employment contracts. Salary schedules are sometimes outdated or have not been regularly maintained. We have seen salary schedules that list unrealistic and meaningless pay ranges for certain positions (\$1 - \$500/hour), so it is impossible to determine what someone in that pay range would typically and realistically earn. Lastly, some salary schedules do not use a consistent time base. Within a single schedule some positions are listed with a monthly payrate while others are listed with a bi-weekly payrate, which makes it too easy to mistake a bi-weekly payrate for a monthly payrate.

As you can imagine, having such a wide disparity of accessibility and content of compensation information presents significant challenges for us. Consistent and increased transparency of employee compensation information would be very helpful in our administration of the retirement system. We strongly support your efforts in this area as you move forward.



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**Senate Committee  
on Local Government  
Transparency and Accountability:  
Pursuing the Public's Right to Know  
October 20, 2010**

Respectfully submitted in support of the testimony of Thomas W. Newton, General  
Counsel of the California Newspaper Publishers Association

**Prop. 59**

Californians like their Sunshine. In 2004 nearly 83 percent of voters approved Prop 59 – the Constitutional Sunshine Act – to enshrine in the state Constitution these eloquent words: The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

***IFPTE v. Sup. Court***

Public pay is the public's business. It is that simple. This notion, however, that the public has the right to control the institutions it has created by understanding the exact and complete compensation paid each and every identified public employee, is one that was not completely and finally settled until only a short time ago. On August 27, 2007, the California Supreme Court filed its opinion in the case of International Federation of Professional and Technical Engineers, Local 21 v. Sup.Ct. of Alameda County (IFPTE v. Sup. Ct.).

For top level public employees that serve the public pursuant to an individual written contract, the law has long held that that contract is required to be disclosed (Govt. Code Sec. 6254.8).

In the 1980s and 1990s several newspapers initiated litigation to compel the release of exact compensation data for identified public employees under the California Public Records Act (CPRA). Enacted in 1968, the Act presumes all records held by state and local agencies, with the exception of the courts and legislature, are accessible to the public upon request. The law creates specific exemptions from disclosure, and both case law and the state constitution require those exemptions to be narrowly construed.

In every case in which the newspapers, like the Visalia Times-Delta, sought this information, the public agencies sought to deny disclosure and argued the information



was exempt from disclosure under the so-called personnel exemption (e.g., records that are “Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” Govt. Code Sec. 6254 (c)), or because the records were exempt pursuant to the Act’s public interest balancing test (e.g., that, “on the facts of the particular case the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records.” Govt. Code Sec. 6255)

In all of these cases the trial courts were uniformly unmoved by public agency arguments and found that the public’s interest in accessing public employee salary information was paramount to the individual privacy interests of public employees in keeping that information secret. None of these cases were appealed, so they were controlling only for the litigants.

That changed in 2003 when an appellate court granted a preliminary injunction sought by a number of employee unions, requiring the cities to withhold salary records pending resolution of the case. (*Teamsters Local 856 v. Priceless, LLC* (2003) 112 Cal.App.4th 1500 (*Priceless*)). To use a legal term, the case was, procedurally, screwed up. Since the unions sought a TRO, the case was not forwarded as a public records act case, so the strong presumption of access required by the CPRA was subordinated to the low TRO standard that on the bare record presented, the employees might have an interest in privacy that would be tested later in the case when evidence was presented.

Post *Priceless*, every local public agency in the state refused CPRA requests for salary information, including the City of Oakland, which had, in previous years, disclosed this information. The city received a request from the Contra Costa Times for names and salaries of all of its employees whose annual salary exceeded \$100,000. The city said no, the Times sued, and, again, under the CPRA, both the trial court and appellate court held the Act required disclosure. The city appealed to the California Supreme Court.

The Supreme Court in *IFPTE v. Sup. Court* affirmed once and for all the public’s right of access to the gross salaries of identified public employees. While the decision ruled on the limited facts – salaries of high-earning public employees – the principles established in the case have been universally interpreted to apply to the salaries of all public employees. The only potential exception to public disclosure to the names and salaries of public employees, the court said, was the possible nondisclosure of an undercover law enforcement officer’s name in connection with his or her salary, if, on the facts of the particular case, disclosure of the name would place the officer in jeopardy.

The court said “The salary information sought by the Newspapers in the present case . . . is not private information that happens to be collected in the records of a public entity. Rather, it is information regarding an aspect of government operations, the disclosure of which contributes to the public’s understanding and oversight of those operations by allowing interested parties to monitor the expenditure of public funds. The disclosure of such information under the Act does not violate the right of privacy protected by the California Constitution.”

## **Open meeting Laws**

The Brown Act and the Bagley-Keene Act are the basic laws that Californians use to access meetings of local and state governmental bodies. The Brown Act covers meetings of local legislative bodies, for example, city councils, county boards of supervisors and school districts. The Bagley-Keene Act applies to legislative bodies of state agencies, such as the Air Resources Board, the Industrial Welfare Commission and the Integrated Waste Management Board. Other open meeting laws apply specifically to the state Legislature, the U.C. Board of Regents and federal executive agencies.

Additionally, Article I, Section 3 of the California Constitution establishes that Californians have a constitutional right of access to information concerning the conduct of the people's business, the meetings of public bodies and the writings of public officials and agencies.

The various laws that govern open meetings have five basic tenets: (1) The public has a presumptive right to attend meetings of a legislative body, which are required to be open unless a specific exemption allows the body to meet in closed session; (2) The public is entitled to advance notice of the date, time and location of open and closed meetings, as well as an agenda describing the items the legislative body intends to discuss or act upon; (3) The public has the right to obtain copies of memos, background materials and any other writings related to matters for public discussion as soon as the materials are distributed to members of the legislative body; (4) The public has the right to speak at a meeting of a legislative body; and (5) After meeting in closed session, legislative bodies are required to publicly disclose the actions taken and any documents approved in closed session.

The Brown Act provides two exemptions relating to public employees allowing closed sessions. The first allows a body to enter a closed session to discuss the appointment, employment, discipline or dismissal of a public employee. It specifically disallows discussion of a public employee's salary in this session, unless the discussion relates to a reduction of salary resulting from the imposition of discipline (Govt Code, Sec. 54957). The second allows a body to meet in closed session to discuss collective bargaining issues, including salary and all compensation issues, with the agency's negotiator (Govt. Code Sec. 54957.6).

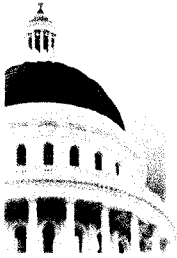
## **Access to Public Records**

The California Public Records Act (CPRA) is the law that allows the public and journalists to access the records of government. The law covers all state and local agencies with the exception of the state Legislature, which is covered by its own law, and the courts. On the national level, the Freedom of Information Act covers records held by the federal government. The CPRA presumes that all records held by government are accessible to the public unless expressly made exempt from disclosure. It gives members of the public two main rights: the right to inspect records free of charge and the right to

obtain a copy of records after paying for the direct costs of duplication or a statutory fee. Copies of records held in an electronic format must generally be provided in any form in which the agency holds the information. The law gives agencies time periods for responding to a request and provides that no provision of the law can be used to delay or obstruct access. There are hundreds of exemptions to access in the law. However, these exemptions must be narrowly applied by agencies and the courts. If a record contains exempt and public information, agencies are generally required to segregate the exempt information and disclose the rest. Once a request is made, the agency must either produce the records in a reasonable amount of time or justify its decision to withhold the record by showing that the record is exempt under an express provision of law or that the public interest in disclosure of the record is clearly outweighed by the public interest in nondisclosure. The CPRA allows a member of the public to sue to enforce the law and provides that a prevailing plaintiff can recover attorney fees and costs of bringing the suit.

### **Investigations of Employee Misconduct**

The California courts have established standards for disclosure of public records relating to complaints or investigations of misconduct by public employees. They have held that while there is a public policy against disclosure of trivial or groundless charges, where the charges are found true, or discipline is imposed, the strong public policy against disclosure vanishes. This is true even where the sanction imposed is a private reproof. In such cases a member of the public is entitled to information about the complaint, the discipline, and the information upon which it is based. *American Federation of State, County and Municipal Employees v. Regents of the University of California*, 80 Cal. App. 3d 9134, 918. (1978). Accord, *Bakersfield City School Dist. v. Sup. Ct.* 118 Cal. App. 4<sup>th</sup> 1041 (2004). Furthermore, with respect to high-level public servants, public disclosure of an investigation into misconduct is required even if the charges or found not to be reliable and the official is exonerated. "In this circumstance, the public's interest in understanding why the official was exonerated and how the agency treated the accusations outweighs the official's interest in keeping the allegations confidential. *BRV, Inc. v. Sup. Ct.* 143 Cal. App. 4<sup>th</sup> 742 (2004).



# CALIFORNIA STATE AUDITOR

Elaine M. Howle, State Auditor

BUREAU OF STATE AUDITS

## Senate Committee on Local Government

### Transparency & Accountability Pursuing the Public's Right to Know

Statement by  
**ELAINE M. HOWLE**  
California State Auditor  
October 20, 2010

## Audits on Government Transparency and Compensation

California law grants the State Auditor (Bureau of State Audits) the authority to audit any publicly created entity, including local governments such as cities and counties. Although the Bureau of State Audits has not conducted audits of compensation issues at the local level, we have conducted similar audits at institutes of higher education as requested by the Joint Legislative Audit Committee. Specifically, my office issued reports in 2006 regarding employee compensation at the University of California and in 2007 on compensation at the California State University. These audits were triggered by concerns about salary increases for highly paid individuals while at the same time the university systems were raising student fees stemming from budget concerns. The scope of these audits included identifying the highly paid individuals and the extent to which their compensation was disclosed to the respective boards and the public.

## Key Issues Identified in the Bureau's Audits of UC and CSU Employee Compensation

### Lack of Central System/Database to Track Compensation

Neither institute of higher education had tools such as databases that could accurately track salaries and other forms of compensation. This lack of systemwide comparable data makes it difficult for the Board of Regents, Board of Trustees, and the various campuses to monitor compliance with compensation policies or to measure the impact of decisions regarding compensation on the universities' finances.

### **Policies Circumvented and Violated and Exceptions Granted**

At the UC, the Office of the President regularly granted exceptions to compensation policies. For example, the university set a limit of \$53,300 for housing allowances; however, the Office of the President granted exceptions to provide allowances totaling \$270,000 for a dean at UCLA and \$187,500 for a dean at UC Riverside.

In some cases, individual campuses violated university policy. For example, despite being on sabbatical for much of fiscal year 2004–05, a vice chancellor at UC San Diego received an \$8,900 auto allowance and also continued to receive a \$68,100 administrative stipend for an acting chancellor position she had vacated. The university had already appointed a new chancellor; therefore, we question why the campus would continue to pay the stipend.

The CSU has established a broad policy for reimbursing employees for moving and relocation expenses; however, while the policy identifies the types of expenses that can be reimbursed, it allows the Chancellor and campus presidents to grant exceptions. For example, CSU Sacramento reimbursed its President \$65,000 in closing costs for former and new residences and \$19,000 in moving expenses. Although the policy provides that the university may reimburse actual, necessary, and reasonable relocation expenses, it does not establish monetary limits for several types of relocation costs.

### **Disclosure to Oversight Boards**

Although the UC Board of Regents' policies require them to approve all forms of compensation for officers of the university, the university did not always submit officers' nonsalary compensation such as auto and housing allowances. In addition, although the Office of the President prepares an annual report on compensation, it did not submit the reports for fiscal years 2003–04 and 2004–05 to the Regents until March 2006.

At the CSU, neither the Chancellor nor the campus presidents are required to obtain Board of Trustee approval for moving and relocation reimbursements, and they typically do not disclose these payments to the board.

### **RECOMMENDATIONS**

- Create a centralized information structure to categorize university compensation by individual, payment type, and funding source. Classify compensation into standard categories and define each of those categories.

- Specify those categories that can be included in the calculation of retirement compensation.
- Set limits for nonsalary compensation such as auto and housing allowances and abide by those limits.
- Require disclosure of all forms of compensation for employees whose total compensation exceeds a certain threshold.
- Consider total compensation when deciding on future salary increases for executives, faculty and other employees.
- Establish a process to ensure proper monitoring and oversight of compliance with compensation policies.

### Transparency in Government: A Growing Movement

Government openness strengthens our democracy and promotes efficiency and effectiveness in government. Transparency and easy access to government spending can result in various positive outcomes:

- Drives accountability
- Promotes fiscal responsibility
- Encourages efficiency
- Reduces waste, fraud, and abuse
- Restores and bolsters public confidence
- Boosts civic engagement
- Often results in self-correcting behavior

A report published in February 2010 titled *Public Attitudes Toward Government Accountability and Transparency 2010*, reaffirms the public’s overwhelming belief that government officials should be accountable to citizens and that government officials should provide transparent financial information. The Association of Government Accountants first polled Americans on the subject in January 2008, and although the 2010 report indicates satisfaction levels have improved, the public perceptions of government accountability and transparency are far from favorable.

Level of Satisfaction	Federal Government	State Government	Local Government
Not Satisfied	52 Percent	48 Percent	40 Percent
Somewhat	34 Percent	36 Percent	41 Percent
Very/Extremely	15 Percent	15 Percent	19 Percent

In recent years there has been movement at the federal level to provide greater transparency and accessibility to government information. For example, in 2006 the Federal Funding Accountability and Transparency Act (Transparency Act) was signed into law requiring, among other things, the U.S. Office of Management and Budget to maintain a single, searchable Web site (USAspending.gov) that contains information on federal contracts and awards. The Transparency Act was amended in 2008 to require disclosure of the names and total compensation of the five most highly compensated officers of the entities (including states and local governments) receiving federal awards. Additionally, the American Recovery and Reinvestment Act of 2009 (Recovery Act) called for the creation of a Web site (Recovery.gov) to track Recovery Act spending.

Moreover, many states also have begun the task of creating central transparency Web sites showing state expenditures. Some of these Web sites include searchable data that can be organized by department, job title, fiscal or calendar year, vendor, and even employee name.

In an April 2010 report, the U.S. Public Interest Research Group (PIRG) graded states' ability to provide online access to government spending data. PIRG rated states' Web sites based on characteristics, such as ease of use, whether the information was in a searchable form, and the range of information available (i.e. spending, salary information, vendors, type of product). Despite the transparency movement, PIRG gave only seven states an A or B grade for providing online access to state government spending.

- **7** states identified as **"LEADERS."** The Web sites for these states are searchable and contain comprehensive information on a range of government expenditures such as tax subsidies and economic development grants.
- **25** states were deemed **"EMERGING."** These states' Web sites provided less comprehensive information and in some cases are not searchable by vendor or service. California is included in the emerging state category and received a "D" grade.
- **18** "lagging states" whose online transparency efforts **fail** to meet standards.

Additionally, only eight states provide information about local or county spending.

According to the evaluation, some of the states that scored well in transparency used their existing budget to create their current transparency portal, including Missouri’s transparency portal, which is updated daily. In addition to low implementation costs, transparency can lead to savings through more efficient government administration, fewer information requests, more competitive bidding and lower risk of fraud while also contributing to public confidence.

## **Best Practices**

- Provide comprehensive and detailed information on spending by all government agencies.
- Disclose all spending—no dollar threshold.
- Disclosure must be timely and accurate.
- Track performance of public policy goals, purpose of expenditures.
- Disclose current and past expenditures (allows one to look for patterns).
- Web sites should be user-friendly and easily searchable.
- Information should be available with “one-stop viewing—centralized portal.”



TO: Peter Detwiler  
FROM: Fred Smoller, Ph.D.  
RE: Testimony before the Senate Local Government Committee  
DATE: 10/20/ 2010

I am Fred Smoller. I am the director of the Masters of Public Administration Program at Brandman University. Thank you for inviting me to speak today. In February of this year, Barbara Kogerman, a candidate for the Laguna Hills City Council, said that she needed two students to assist her in gathering data on city manager compensation for the 34 cities in Orange County. The Orange County City Manager Compensation Report was released May 22, two months before the Los Angeles Times broke the story on the City of Bell. It was greeted with a firestorm of criticism from local city managers, elected officials, and the Southern California League of Cities.

These are some of the things we learned.

Findings:

1. No transparency. It took four months and 100s of hours to get information on city manager salaries.
2. No uniform reporting standards.
3. Salaries do not reflect full compensation. So, the IRS Box "5" does not capture many benefits such as city paid medical and pension contributions.
4. "Eye-popping" compensation—the city manager of Los Alamitos (population 11,000, with a handful of employees) makes as much as the governor of California.
5. No "rhyme or reason" to salaries—City Manager of Laguna Hills (population 34,000, with 27 employees) makes \$100,000 more than the City Manager of Santa Ana (population of \$350,000 and has several thousand employees).
6. Fragmented government is costly. The cost for all city managers for Orange County is about 11 million per year. However, 8 of those city managers manage 1.5 million people, whereas it takes 24 to manage the remaining 1.6. In short, we have too much "small" government.
7. Resistance to Transparency—Political pressure applied to me when study was released. Complaints were made to my university president and members of the Board of Trustees about a number of trivial issues to distract attention from the report's major findings—to prevent "Baby Bells" from being day-lighted in Orange County.

Need for data archive:

1. Data is not information. While many cities are now posting salaries on their websites, these numbers do not mean much unless they can be compared to other cities. That is why a searchable, user friendly, data archive is necessary.
2. In addition to compensation, demographics or other characteristics cities and others find useful (for example, city population, and city square mileage, the number of employees or median income of residents) need to be included. This will provide a context for interpreting the salary data.

3. The archive should be housed in an official state agency such as the Secretary of State or the Fair Political Practices Commission (FPPC), or some other agency that has the technical expertise in gathering and posting data. Academics can assist with designing the interface, suggesting variables, and writing reports based on data.
4. The data base should include provide information regarding all public agencies However, reporting should be limited to people making over **\$75,000 a year**. This would cut down the work considerably and allow for more agencies to be included.
5. Cost: no more than 1 million. The use of “cloud” commuting, such as Amazon’s “cloud” means agencies will not have to purchase and maintain hardware. Instead, they pay a modest monthly fee to “rent” space in a “cloud.” Individual governmental entities should be required to upload salary information. Follow—up phone calls and emails will have to be made to increase compliance. The bulk of the money will go into software development.
6. Stiff fines—that accrue over time—need made against those who do not comply.
7. Research should be done on “best transparency” practices.

# ORANGE COUNTY MANAGEMENT PERKS

**Board of Supervisors and Executive  
Management Car Allowances:**

\$765 per month at a cost to the county of nearly \$1 million per year.

**Management Optional Benefit Plan:**

\$3,500 to \$4,500 cash benefit per year, costing an estimated \$4.4 million in 2008.

**Board of Supervisors and County  
Executive Management 401(a):**

Taxpayers contribute 3 to 8 percent of salary. Estimated annual cost is approximately \$4.3 million.

**Executive and manager pensions:**

Taxpayers pay both the employee and employer contribution. The cost of the employee contribution was an estimated \$12 million in 2009.

If these management perks were eliminated, critical community services, including public safety, and jobs could be preserved. OCEA and its members have already stepped up to the plate, leading the way with a groundbreaking hybrid pension option and saving taxpayers nearly \$1 billion in retiree medical costs. It's time for the county's executives and managers to follow their employees who, in fact, are the true leaders.

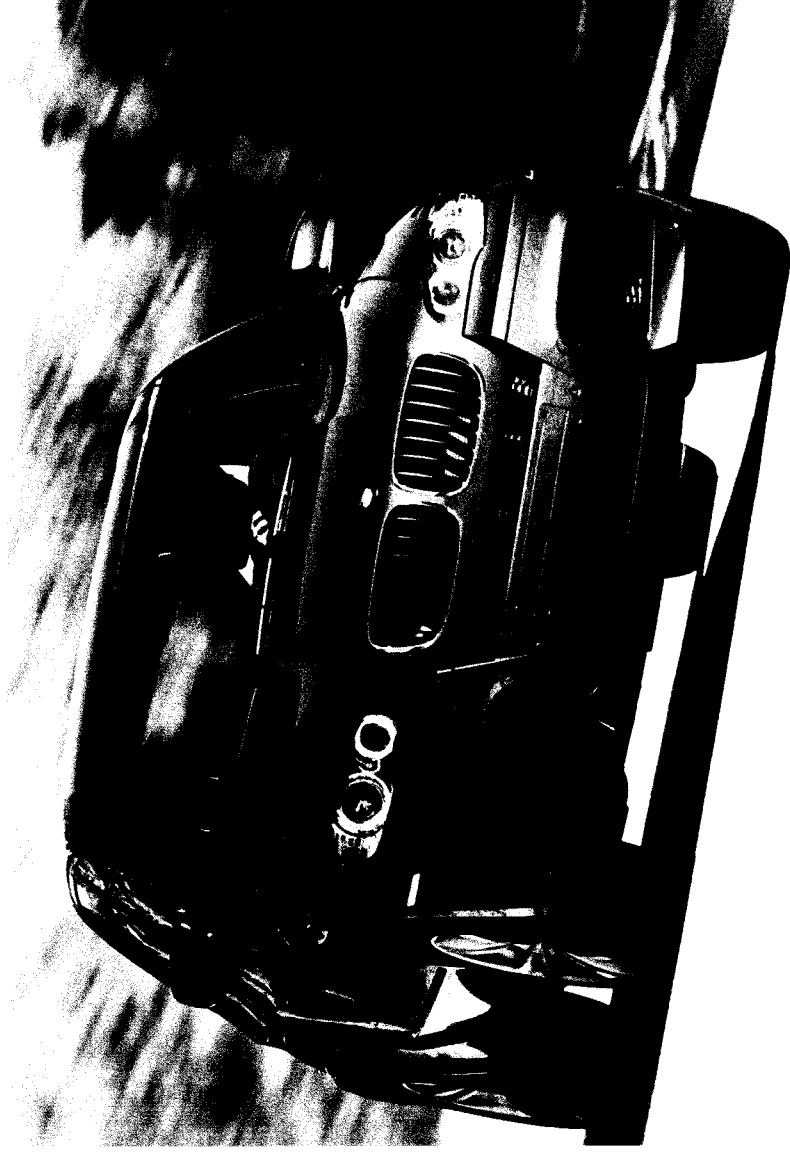


**Orange County Employees Association**

830 N. Ross St., Santa Ana, CA 92701 • (714) 835-3355 • (714) 835-7654 Fax • [www.oceamember.org](http://www.oceamember.org)



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**Transparency and Accountability: Pursuing the Public's Right to Know  
A Legislative Oversight Hearing—October 20, 2010  
Written Statement by Supervisor Kim Dolbow Vann**

Thank you Senator Kehoe. I am Kim Dolbow Vann, board member of the California State Association of Counties (CSAC), 2<sup>nd</sup> Vice President of the Regional Council of Rural Counties (RCRC), and Chairperson of the Colusa County Board of Supervisors. I will make some brief statements on behalf of California's 58 counties. In addition to some general comments, my remarks will address the questions your staff have raised in the briefing document provided to the Committee.

First, I'll make a few general remarks about the situation. Counties believe that transparency and accountability is the solution to the problem of excessive salaries paid to public employees and officials. California's counties have long had such transparency. The California Constitution requires each Board of Supervisors to prescribe the compensation of its members by ordinance and that compensation is subject to referendum. This process is done in open session with the opportunity for the public to participate. The Board of Supervisors must also provide for the number, compensation, tenure, and appointment of employees in public secession. In addition, the California Government Code provides that the compensation of all other county officers and employees is set by the Board of Supervisors.

Counties support compensation packages that recognize the career service generally provided by public employees. We also want to maintain the ability to offer pay and benefits that allow counties to recruit and retain the best employees possible. Counties need to hire lawyers, engineers, medical professionals, highly educated and highly trained individuals and be competitive with the private sector.

Colusa County operates without a County Administrative Officer - so unlike most counties, our department heads report directly to the Board of Supervisors. Transparency and accountability are achieved in Colusa by having compensation packages discussed and adopted in open session for appointed department heads as well as elected department heads. This has been the practice in Colusa County for decades.

In response to the questions raised by your staff. I offer the following responses.

**Should state law require more compensation disclosure?**

The State Controller issued mandatory reporting requirement for cities and counties that began on October 1. The report requires comprehensive wage and benefit information for all employees and officials. Counties were quick and

thorough in responding to this request; however counties are concerned about adding additional mandatory reports that will result in new workloads that may not add additional benefit to the public.

**What compensation should public officials disclose?**

Any and all compensation disclosed should be streamlined and specific enough to allow apples to apples comparisons. We do not want or need different agencies requesting slightly different items that will likely confuse anyone who reviews the information in total.

**Which public officials should disclose their compensation?**

All compensation of public officials and employees is public information. There may be policy reasons to require disclosure only by elected officials and/or senior staff. Since county elected officials salaries are already disclosed by adoption of an ordinance, the more important concern for counties is that there are not duplicate and confusing reporting requirements.

**How should public officials disclose their compensation?**

Development of a costly statewide database is not sensible; however a single location for the information may make sense to the public. If the State Controller can maintain lists of all cities and counties, they may be the appropriate host of the information. Local agencies can easily link to the information kept there.

County staffs as well as those that represent us in Sacramento are ready to work with you and your staffs to develop appropriate and effective measures to address these important questions. Counties' practices have been transparent and open to the public; we welcome the opportunity to incorporate our practices into proposed policy changes.

Thank you, Madam Chair for the opportunity to be here.

**Testimony of  
Rolling Hills Estates Council Member Judy Mitchell  
On Behalf of League of California Cities**

**Senate Local Government Hearing  
Transparency & Accountability: Pursuing the Public's Right to Know**

**Wednesday, October 20, 2010  
Board of Trustee Chambers  
Rancho Santiago Community College District  
2323 North Broadway, Santa Ana, California**

**INTRODUCTION:**

Good afternoon Chairwoman Kehoe and Members of the Committee. My name is Judy Mitchell. I am a council member in the City of Rolling Hills Estates and former President of the League of California Cities.

Thank you for the opportunity to be here and provide testimony today.

I think we all agree that what happened in the City of Bell is disgraceful and an embarrassment to all public officials.

Yet, as you know, what has happened in Bell and more recently in Vernon are not examples of the norm in local government but are anomalies. The conduct of those public officials does not reflect the professionalism and commitment to public service of the vast majority of municipal professionals throughout California.

**LEAGUE'S RESPONSE TO BELL:**

When first learning of the City of Bell compensation scandal the League responded in a variety of ways:

- The League board of directors publicly condemned Bell for its outrageous actions and pledged to work with the Legislature to enact reforms to ensure much greater transparency on compensation for elected officials and highly paid staff.



- The League sent letters to the Los Angeles County District Attorney’s Office, California’s Attorney General, and the State Controller to offer professional expertise and assistance in investigating Bell.
- Through our City Managers Department, the League was intricately involved in developing and fielding a survey of city manager compensation as well as new *Guidelines for City Manager Compensation*.
  - The compensation survey is available on the League’s website. ([www.cacities.org](http://www.cacities.org))
  - The League Board of Directors adopted the *Guidelines for City Manager Compensation* at its September meeting. These guidelines now serve as League policy and are recommended “best practices” for city councils in negotiating compensation packages with city manager candidates.
- The League drafted legislation focused on salary and compensation transparency as the most effective policy solution to the issues raised by Bell.
  - The primary focus of our proposed legislation would have required compensation transparency for all high-salaried public officials (earning over \$100,000 per year), and all elected officials as well. We proposed to apply the same standard across-the-board to apply equally to all public agencies, because we believe that salary transparency is good public policy for all state and local agencies.
- In a separate effort, we also began working with the State Controller beginning in July in support of his efforts to expand transparency. The State Controller announced expanded financial reporting requirements for all cities and counties that included comprehensive salary and compensation data for all public employees and elected officials. (I will come back to this point later.)
- The League also worked with, and supported the efforts of Senator Correa in the development of SB 501, and Assembly Member Huber on AB 2064. The League supported both bills (together) because *combined* they reflected the concept embodied in the League’s legislative proposal: promoting a uniform compensation transparency standard for public employees and elected officials that would apply equally to all state and local agencies.

**RECOMMENDED NEXT STEPS:**

So, where do we go from here?

When it comes to public transparency of city employee and elected official compensation it should be recognized and appreciated that we have come a very long way since mid-summer when the LA Times revealed what was going on in Bell.

- Now there is a comprehensive survey of city manager compensation published and available on the League's website; AND,
- Many cities are reporting broad compensation information on their websites, making access to this information easier for the general public.

Additionally, the State Controller's new compensation disclosure requirements are taking city and county compensation disclosure to an entirely new level.

While the committee report only briefly touches on the Controller's new reporting requirement, you should know that in November compensation data for ***all city and county employees and elected officials*** will be displayed on the State Controller's website.

Almost 90% of cities have reported their information to the Controller and we are working to make that 100%.

Also, with the Controller's new database the following information for ***every*** city employee and elected official will be available to the public online:

- salary range
- actual wages (as reported in Box 5 of the IRS W-2 Form)
- pension formula
- employer-paid employee pension contributions
- employer contributions to deferred compensation, and
- employer's share of health, dental, and vision care benefits

We are continuing to work with the Controller's office to give cities the option to link directly from their website to their individual report on the Controller's website. This will allow the public to view compensation information from either the Controller's website or a city's website.

Taking into account, the current status of all of these disclosure and transparency accomplishments, the League recommends the following:

- First, we should all congratulate the State Controller for his efforts to expand public compensation transparency. The Controller has gone beyond even the League's compensation survey by extending his disclosure requirements to apply to all city and county employees and elected officials -- and by including the disclosure of such things as pension formulas and other information in a *uniform* format;
- Second, given that the Controller's requirements will become a standard feature of city and county annual financial reports, it seems to make sense to use this process that is already underway so that efforts are not duplicated elsewhere.
- Third, we realize that any new comprehensive process will need technical adjustments. Changes may be needed to the Controller's reporting form to expand, clarify or streamline the information being gathered. The League is committed to working with the Controller to identify these issues or concerns and to making any appropriate improvements; and,
- Fourth, once cities and counties complete their initial reports to the Controller, we should examine the costs involved with this process to both local agencies and the Controller's office. This review may help us identify ways to reduce costs.
- Fifth, The League maintains that any additional salary transparency and disclosure legislation must take into account, harmonize with, and not duplicate or conflict with the comprehensive and extensive information already being provided to the State Controller.

Any additional, differing compensation reporting requirements will be confusing to the public and a burden on public agencies.

If changes are made to the Controller's requirements we only ask that they apply in a uniform fashion across the board to all local and state agencies.

On behalf of the League of California Cities, I want to thank you for your time and efforts on this very important issue. We look forward to working with you to

achieve the level of transparency required to fully inform the public of local and state government compensation practices.

Transparency & Accountability: Pursuing the Public's Right to Know  
Senate Local Government Informational Hearing

1:00pm – 3:30pm  
October 20, 2010

Rancho Santiago Community College District Board Room  
2323 North Broadway, Santa Ana, CA

## CSDA TESTIMONY

- Madame Chair and Senators, thank you for inviting me to participate in this important discussion. My name is Bette Boatman and I am a Director on the Board of the Contra Costa Water District.
- I have over 36 years of experience in public service, including leadership roles in statewide associations such as the California Special Districts Association and the Association of California Water Agencies, as well as our local special districts association chapter in Contra Costa County.
- I am a strong advocate for transparency, and look forward to working with this committee and my colleagues throughout the state as we all seek to best serve the residents of California openly and effectively...which is exactly what many special districts are now striving to do.
- The California Special Districts Association has been working with its membership and highlighting those districts that are leading the way in transparency. Through educational, written, and online resources, transparency is a focus for CSDA and its special district members.

- In fact, the next *California Special District* magazine, which your offices receive, and the next Special Districts Legislative Days will be transparency themed.

## COMPENSATION DISCLOSURE

- As you can see, transparency is something that special districts believe is important, and something we are committed to on a long-term basis. We want to instill policies and best practices that are *useful, accurate, efficient, and uniform*
- *Useful*, meaning that the information is of value to the public; it should be in an easily understandable format that does not lend to misconceptions.
- *Accurate*, meaning that every agency clearly understands exactly what information is being requested and how to report it, so that the numbers are interpreted appropriately.
- *Efficient*, meaning that agencies are able to report the information in one, easy-to-use format. There is no sense in wasting more taxpayer and ratepayer dollars by filling out multiple forms required by multiple agencies...
- *Uniform*, meaning the public should be able to compare “apples to apples” across different types and levels of government. True transparency is dependent upon uniformity.
- With this commitment in mind, CSDA’s Legislative Committee has approved a framework in support of statewide compensation disclosure.

- CSDA supports compensation disclosure that applies equally to all local and state entities.
- It further supports utilizing the State Controller's existing disclosure form and process for cities and counties as a starting point.
- Public dollars are public dollars at all levels of government, and taxpayers and ratepayers have a right to know how their money is being spent.
- Uniform disclosure across all *types* and *levels* of government will improve *comparability* and *usability* for Californians, including the press.
- Using the State Controller's existing form and process as a starting point makes a lot of sense. He and his staff have already invested significant time and energy into their system, and have undoubtedly already gained valuable experience from their efforts.
- Why reinvent the wheel and lose institutional knowledge from previous successes and mistakes?
- Furthermore, cities and counties have already responded to the Controller's first request, are gaining familiarity with the form, and are setting up systems to provide their information in an accurate and timely manner.
- The State Controller currently collects financial data from cities, counties, and special districts, and he signs the paychecks for state employees. His office is familiar with compensation data at all levels of government and serves as a natural clearinghouse for this type of information.

- As to the contents and the details of the information that is disclosed, the Controller's form is an excellent starting point.
- Once we have the framework in place for who the disclosure requirements apply to and who is collecting it, we should then work together with all stakeholders to improve and refine the elements of the form.
- CSDA is prepared to engage in that process, and is committed to good-faith collaboration on how we might improve the usefulness, accuracy, efficiency, and uniformity of the Controller's current form by adding or deleting various elements.
- Of course, CSDA is also open to other suggestions, concepts, and ideas, as long as they are based on a uniform format that applies to all levels of local and state government.

## CONCLUSION

- The answer to the scandal in the City of Bell is *transparency*. Let's remember that what uncovered the situation in Bell was the press. And the voters in Bell are correcting the situation, as are the legal authorities, as appropriate.
- Local control is important, as is local accountability. The best way to maintain the most honest and effective public services is to promote local control and local accountability. We do that by promoting transparency and empowering the local electorate.



- We do not see transparency as a city issue or a special district issue. Neither do we see it as a local issue or a state issue. Transparency is a government-wide public responsibility to all Californians that we take to heart.
- There is much work ahead. However, special districts look forward to working together with our local and state government colleagues and setting an example to our mutual constituents.

**Richard Bray, Superintendent  
Tustin Unified School District**

**DISCLOSURE OF HEARING ON COMPENSATION  
BY PUBLIC OFFICIALS**

First and foremost is the question of if school officials should be included? You may not be aware of all of the checks and balances already in place uniquely for schools:

- School personnel are paid based on very public salary schedules. These salary schedules must be acted on by the school board in public session and noticed prior in the publically noticed board agenda per the Brown Act. Superintendent contracts are likewise public documents and any action by the Board of Education involving compensation must be voted on in public session after being noticed on the public agenda.
- School board member compensation is severely limited by the Education Code with most board members earning \$500-\$600 a month. For instance, Tustin Unified Board members earn \$536 a month (less 3.7% for furlough days). School board members in California must attend all board meetings that month or their stipend is reduced proportionally. Most board members also receive medical insurance benefits.
- All negotiated salary increases must be approved by the school board in open session with prior agenda notice. Then the proposed increase goes to the County Superintendent of Schools for fiscal review. Under AB 1200 the county superintendent has veto power over a negotiated salary increase by a district if he believes that it would jeopardize the district financially. This independent oversight means a Bell type situation could not occur with a school district.
- School personnel retirements are closely governed by the State Teachers Retirement System (STRS) (teachers and administrators) and the Public Employees Retirement System (PERS) (classified employees, e.g., secretaries, custodians, aides, maintenance).

- Each County Superintendent of Schools monitors and codes the amount and types of compensation going to STRS and PERS for each district employee. Not everything counts toward the defined benefit.
- STRS already has a hard cap on the maximum retirement payout for all employees entering the system after July 1, 1996 (\$245,000 max.).
- Teachers and administrators under STRS do not also receive social security when they retire even if they would otherwise qualify by having paid into social security for 40 or more quarters. This is the federal “windfall and offset” provision. This greatly penalizes California teachers and administrators.
- STRS already has very strong anti-spiking regulations which they actively enforce. They make unilateral determinations to lower retirement amounts if spiking is suspected. Appeal is difficult and most often futile.
- STRS already has a provision that a retired employee may only earn up to about \$30,000 a year from a public school district before their retirement is reduced dollar for dollar.
- Public school districts do not hold their own money or write their own checks. The County Superintendent of Schools provides this service and exercises fiscal oversight. They are a true independent fiscal oversight authority that cities do not have.

In summary, a City of Bell situation cannot happen in a California public school district because:

- School Board member compensation is severely limited by the Education Code. This is monitored by the independent County Superintendent of Schools. School Board members, unlike City Councilmen, do not sit on multiple boards with additional salaries.

- Virtually all school district employees are paid according to publically adopted salary schedules. Superintendents/Asst. Superintendents with individual contracts must have the contracts publically adopted and their contracts are public documents. The County Superintendent has independent oversight monitoring and veto authority over negotiated salary agreements (AB 1200).
- Teacher and administrator retirement under STRS has a hard cap limit on the maximum retirement amount of \$245,000 for those who first entered STRS after July 1, 1996.
- The County Superintendent of Schools actually cuts the checks, reviews expenditures and approves budgets for public school districts. This independent fiscal oversight is not present for cities and counties.
- Typically, all school districts have independent third party auditors who review expenditures and processes and submit an annual audit report to the Board of Education at a public meeting.

Second, with respect to an annual disclosure of salaries for public school employees please consider the following:

- Most Southern California newspapers have began publishing the name, credential, job title, work site, years of service and salary of all public school employees making over \$100,000. The Freedom of Information Act is used to generate the data. This is viewed as a huge invasion of privacy by the teachers, counselors, administrators and senior classified staff. Listing by employee name and location has led to some explosive safety issues for employees with restraining or other orders and who do not want ex-spouses to know where they work. Listing salary schedules and how many employees at each step would accomplish the same public purpose. Personal information must be kept out of listings.
- In education, comparing salaries is difficult because of the wide variation in work year, work day, value of tenure protection, value of fringe benefits, levels of responsibility, required credentials, etc. For instance, the top teacher salary in Tustin Unified is \$97,074 for 180 days of work, a 7.5 hour day and tenure protection after two years. This equates to \$72/hr. plus the value of tenure protection. An

elementary principal must have an Administrative Credential, earns \$110,650 for a work year which is 18 work days longer (almost a month—22 work days), a work day that starts at eight hours but is routinely longer, and is an “at will” employee—no tenure protection. This equates to \$70/hr. without any tenure protection. Just listing salary without adjusting for other factors does not give anything close to an accurate picture. Ideally, levels of responsibility should also be factored in because they reflect real factors in determining appropriate compensation for a particular position.

- Schools are unique and really can't (and shouldn't) be compared or grouped with city or county government. Consider the following:
  - School districts and school boards are highly regulated and monitored under both the Government Code and the Education Code—much more so than city governments. School district oversight is pervasive, ongoing and very public. We are regulated and monitored by the State Department of Finance, State Department of Education, County Superintendent of Schools and undergo a full independent audit each year. School districts operate with a much higher degree of both transparency and oversight than city or county governments. Situations like the City of Bell simply don't happen in school districts.
- If the legislature wishes to go forward with legislation in response to the City of Bell scandal, I would suggest the following:
  - Report base salary only expressed as an hourly rate that compensates for various work year and work days. If school districts are not included, then annual amounts could be used.
  - Report required for elected officials and top administrators (City Manager, County Administrative Officer, and School Superintendent).
  - Report by position only—no names.

- Require reporting only for cities, counties and special districts (with the much higher regulation and oversight of K-12 and community college districts, a City of Bell situation simply can't happen).
- State officials are also highly regulated and monitored and should not be included because a City of Bell situation is virtually impossible.
- Disclosure should be at agency level. This is a problem that should be addressed within the context of the local community. Another state bureaucracy is not needed.
- No unfunded state mandates. If reporting mandated, then the state should help with the costs involved.

October 20, 2010

Transparency & Accountability:  
Pursuing the Public's Right to Know

Legislative Oversight Hearing

James Walker, Ed.D.  
Community College Search Services  
Community College League of California

On behalf of the Community College League of California I want to thank you for the opportunity to participate in this hearing and to comment on the issues before us.

Before retiring in 2003, I spent 44 years in education in the State of California. The last 11 years were as the President of Moorpark College and Interim Chancellor of the Ventura County Community College District. Since 2003 I have worked with Community College Search Services providing consulting services to college districts seeking to fill executive level management positions.

Pursuant to several State Laws (Meyers-Miliias-Brown Act, Ralph M. Brown Act, SB 1996, California Public Records Act, Government Code Sec. 53262) community colleges have provided the public with complete information about all forms of compensation for all employees. These include administrators, faculty, and support staff, both full and part time.

Faculty and staff compensation is the result of collective bargaining agreements and must be ratified by the governing bodies of the college districts. Items such as salary schedules, health benefits, reassigned time and any other forms of compensation are available in the respective employee contract, provided on request, and in most cases posted on the district web page.

Those employees, not covered under a collective bargaining agreement have contracts that are from 1 to 4 years in duration. These are typically deans, vice presidents, provosts, vice chancellors, presidents, superintendent/presidents, and chancellors. These employment contracts and the details must be publicly available (Government Code Section 53260, SB 1996, Chapter 962 of 1992). This same law also limits the maximum cash settlement that a community college can pay to an amount equal to 18 months' salary when a contract with an executive employee is terminated. These provisions also apply to general law counties, general law cities, special districts, and school districts.

In addition to base salary, contracts for executive level managers often include such items as: health benefits, vacation days, consulting days, relocation allowances, housing expenses, and car/travel allowance. However, these must be approved by the governing body and the details made available to the public. In addition, the Association of

California Community College Administrators publishes a survey listing the forms of compensation for each district. I have attached one page of this survey as an example.

The Community College League of California strongly supports the continuation of what it believes to be full disclosure of all forms of compensation paid to all employees in the California community colleges.

Regarding the concern that may be expressed over what some perceive as the high salaries for executive level administrators in the California community colleges, may I say this: the number of community college educators who have leadership as their career goal has been declining rapidly in the past 20 years. This is due primarily to the increase in the complexity and difficulty of the jobs. In addition, the length of CEO tenure has been dropping significantly over the past few years, from 5.4 years in 2003 to 4.3 years in 2008. Also, the number of CEO's that are leaving "under pressure" doubled in the years 2007-08 compared to the 4-year span of 2003-06. Thus, it should be no surprise that the number of applicants for CEO positions has been declining. Because of this and the need to recruit outside of California, I would posit that salaries must be competitive to attract qualified applicants as well as to retain successful administrators.

Finally, I would like to comment on the mandatory 180-day separation before post-retirement employment. This would create huge problems for districts that need a retiree to return to help out because of a failed search, illness, or limited availability of personnel with specialized expertise or curriculum discipline. It is especially critical in our small rural districts where a qualified business manager, for example, cannot be found.

Again, thank you for the opportunity to participate. It has been a pleasure.



# 2009 ACCCA Benchmark Survey

(see page 2 for the basis of the survey)

POSITION 1: Chief Executive Officer

Panelist for Employer & Family

District	Title	Without Doctorate Maximum Annual Salary	Without Doctorate, With Longevity Pay	Number of Years to Maximum Longevity	Without Doctorate, With Longevity Pay	With Doctorate, Maximum Annual Salary	With Doctorate and Longevity Pay, Number of Years to Maximum Longevity	With Doctorate and Longevity Pay, Maximum Salary	# of Paid Holidays	Length of Contract	Top Value of Benefits Package	Number of Family Members Included	Health Benefits	Vision Benefits	Dental Benefits	Life Insurance	Other Benefits	Other Benefits, LTD, and Life Insurance > \$K	Cost of Longevity Pay	Expenses Allowed	Days of Provided De Fronto	Days of Provided Home Office Computer	Foundation Funds	Specialty Allowances/ Stipends	Cost of Amount of Allowance/ Stipend
Chabot-Las Positas CC	Chancellor	\$242,998	\$242,998	17	22	\$245,000	17	\$245,000	17	4	\$7,983	all	X	X	X	X	X	Other Benefits	\$8,400A	\$2,000	\$400	\$2,500	Community Relations - \$400	\$7,500	
Coast CCD	Chancellor	\$247,000	\$247,000	19	25	\$248,212	19	\$248,212	19	4	\$22,377	all	X	X	X	X	X	Employee Accidents Payor	\$7,200	\$3,600	\$400	\$2,500	Community Relations - \$400	\$7,500	
Contra Costa CCD	Chancellor	\$250,548	\$250,548	16	24	\$252,748	16	\$252,748	16	4	\$17,265	all	X	X	X	X	X	Employee Accidents Payor	\$6,610	\$3,600	\$400	\$2,500	Community Relations - \$400	\$7,500	
Foothill-Las Araoz CCD	Chancellor	\$245,000	\$245,000	17	24	\$245,000	17	\$245,000	17	3	\$11,370	all	X	X	X	X	X	Employee Accidents Payor	\$10,800	\$2,400	\$400	\$2,500	Community Relations - \$400	\$7,500	
Government Community College	Chancellor	\$238,000	\$238,000	14	24	\$238,000	14	\$238,000	14	4	\$12,366	all	X	X	X	X	X	Employee Accidents Payor	\$13,200	\$7,000	\$400	\$2,500	Community Relations - \$400	\$7,500	
Kern CCD	Chancellor	\$300,000	\$300,000	16	24	\$300,000	16	\$300,000	16	4	\$7,532	1	X	X	X	X	X	Employee Accidents Payor	\$13,800	\$24,000	\$400	\$2,500	Community Relations - \$400	\$7,500	
Los Angeles CCD	Chancellor	\$259,812	\$259,812	17	30	\$259,812	17	\$259,812	17	4	\$10,865	all	X	X	X	X	X	Employee Accidents Payor	\$11,400	\$11,400	\$400	\$2,500	Community Relations - \$400	\$7,500	
Los Rios CCD	Chancellor	\$240,000	\$240,000	20	14	\$240,000	20	\$240,000	20	4	\$11,812	2	X	X	X	X	X	Employee Accidents Payor	\$4,800	\$1,200	\$400	\$2,500	Community Relations - \$400	\$7,500	
North Orange County CCD	Chancellor	\$248,000	\$248,000	18	27	\$248,000	18	\$248,000	18	4	\$61,260	3	X	X	X	X	X	Employee Accidents Payor	\$24,750	\$1,200	\$400	\$2,500	Community Relations - \$400	\$7,500	
Petaluma CCD	Chancellor	\$315,000	\$315,000	23	1	\$315,000	23	\$315,000	23	1	\$6,900	all	X	X	X	X	X	Employee Accidents Payor	\$24,750	\$1,200	\$400	\$2,500	Community Relations - \$400	\$7,500	
Rancho Santiago	Chancellor	\$225,000	\$225,000	15	25	\$225,000	15	\$225,000	15	4	\$10,167	all	X	X	X	X	X	Employee Accidents Payor	\$8,400	\$1,500	\$400	\$2,500	Community Relations - \$400	\$7,500	
San Bernardino CCD	Chancellor	\$245,760	\$245,760	17	24	\$245,760	17	\$245,760	17	4	\$21,036	all	X	X	X	X	X	Employee Accidents Payor	\$14,412	\$15,912	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
San Diego CCD	Chancellor	\$278,575	\$278,575	15	24	\$278,575	15	\$278,575	15	4	\$44,741	3	X	X	X	X	X	Employee Accidents Payor	\$8,400	\$6,000	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
San Jose/Citrusgreen CCD	Chancellor	\$240,000	\$240,000	16	30	\$240,000	16	\$240,000	16	4	\$17,545	all	X	X	X	X	X	Employee Accidents Payor	\$8,400	\$15,912	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
San Mateo County CCD	Chancellor	\$240,000	\$240,000	15	24	\$240,000	15	\$240,000	15	4	\$44,741	3	X	X	X	X	X	Employee Accidents Payor	\$8,400	\$6,000	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
South Orange County CCD	Chancellor	\$235,249	\$235,249	15	24	\$235,249	15	\$235,249	15	4	\$14,061	all	X	X	X	X	X	Employee Accidents Payor	\$8,400	\$6,000	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
State Center CCD	Chancellor	\$228,478	\$228,478	15	20	\$228,478	15	\$228,478	15	4	\$12,639	all	X	X	X	X	X	Employee Accidents Payor	\$8,400	\$16,000	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
Western Contra Costa CCD	Chancellor	\$231,000	\$231,000	13	25	\$231,000	13	\$231,000	13	4	\$14,000	all	X	X	X	X	X	Employee Accidents Payor	\$8,400	\$16,000	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
West Hills CCD	Chancellor	\$225,000	\$225,000	14	21	\$225,000	14	\$225,000	14	4	\$12,719	1	X	X	X	X	X	Employee Accidents Payor	\$6,400	\$16,000	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
West Valley Mission CCD	Chancellor	\$270,857	\$270,857	13	22	\$270,857	13	\$270,857	13	2	\$15,129	all	X	X	X	X	X	Employee Accidents Payor	\$6,400	\$16,000	\$1,500	\$1,400	Community Relations - \$400	\$7,500	
Yosemite CCD	Chancellor	\$244,804	\$244,804	16	24	\$244,804	16	\$244,804	16	4	\$16,149	all	X	X	X	X	X	Employee Accidents Payor	\$9,400	\$13,827	\$1,300	\$1,300	Community Relations - \$400	\$7,500	
Yuba CCD	Chancellor	\$240,000	\$240,000	13	24	\$240,000	13	\$240,000	13	4	\$14,566	all	X	X	X	X	X	Employee Accidents Payor	\$5,400	\$11,400	\$1,200	\$1,200	Community Relations - \$400	\$7,500	
Average		\$246,706	\$246,706	16	24	\$246,706	16	\$246,706	16	4	\$14,566	all	X	X	X	X	X	Employee Accidents Payor	\$5,400	\$11,400	\$1,200	\$1,200	Community Relations - \$400	\$7,500	\$10,000
Median		\$240,000	\$240,000	13	24	\$240,000	13	\$240,000	13	4	\$14,566	all	X	X	X	X	X	Employee Accidents Payor	\$5,400	\$11,400	\$1,200	\$1,200	Community Relations - \$400	\$7,500	\$10,000

**OFFICERS 2010-2012**

CATHY DARLING  
VICE PRESIDENT  
Shasta County

NEAL KELLEY  
TREASURER  
Orange County

DEAN LOGAN  
SECRETARY  
Los Angeles County

**BOARD OF DIRECTORS**

**APPOINTED:**

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Santa Clara County

JANICE ATKINSON  
Sonoma County

TESS FITZGERALD  
Santa Cruz County

SACHI HAMAI  
Los Angeles County

JOSEPH HOLLAND  
Santa Barbara County

JIM MC CAULEY  
Placer County

KATHIE MORAN  
Colusa County

SUSAN M. RANOCHAK  
Mendocino County

JULIE RODEWALD  
San Luis Obispo County

DEBORAH SEILER  
San Diego County

TO BE APPOINTED  
City Clerk  
\* non-voting member

**ADVISORY COUNCIL:**

STEVE WEIR  
Contra Costa County

REBECCA MARTINEZ  
Madera County

**ELECTED AREA CHAIRS:**

JULIE BUSTAMANTE  
Northern Area  
Lassen County

KARI VERJIL  
Southern Area  
San Bernardino County

JILL LA VINE  
Mother Lode Area  
Sacramento County

AUSTIN G. ERDMAN  
Central Area  
San Joaquin County

LINDSEY MC WILLIAMS  
Bay Area  
Solano County

**LEGISLATIVE COMMITTEES**

**CLERK OF THE BOARD:**

SACHI A. HAMAI  
Los Angeles County

JOHN MCKIBBEN  
Los Angeles County

**COUNTY CLERK:**

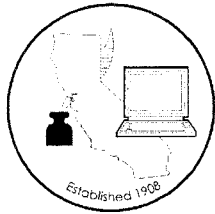
KATHIE MORAN  
Colusa County

VICKI PETERSEN  
Sonoma County

**ELECTIONS:**

JILL LA VINE  
Sacramento County

DEBORAH SEILER  
San Diego County



# CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

**GAIL L. PELLERIN, PRESIDENT**

Santa Cruz County Clerk

701 Ocean St., Room 210, CA 95060

831-454-2419 \* Fax 831-454-2445 \* Cell 408-316-9745

E-Mail: [gail.pellerin@co.santa-cruz.ca.us](mailto:gail.pellerin@co.santa-cruz.ca.us)

Website: [www.caceo58.org](http://www.caceo58.org)

October 28, 2010

Senator Christine Kehoe  
Vice Chair, Senate Committee on Local Government  
State Capitol, Room 5046  
Sacramento CA 95814

Dear Senator Kehoe:

## Hearing on Transparency and Accountability, October 20, 2010

On behalf of the members of the California Association of Clerks and Election Officials (CACEO) I would like to thank you for the opportunity to testify at your Committee's hearing last week in Santa Ana regarding disclosure of public officials' compensation. You, Senator Correa, Assembly Members De La Torre and Norby and the members of your Committee are to be congratulated for working on this important issue. We trust that your efforts will result in thoughtful legislation that will forestall future abuses of the public trust such as those committed in the City of Bell and elsewhere.

As I indicated in my testimony, CACEO members are supportive of compensation disclosure. Our members' primary interest, and the focus of our input, has to do with how compensation information is gathered and made available to the public.

Our Association was glad to work with Senator Correa and his staff in resolving some concerns we had with respect to this year's SB 501 (Correa), and we deeply appreciate the Senator's willingness to try to address our concerns in amending his bill. However, our members do have some lingering concerns with respect to the process of gathering compensation information and making it available to the public.

At the hearing, Senator Correa indicated that he wished to use the "Form 700 model" in gathering the desired compensation information, presumably in the manner set forth in SB 501. However, based on many years' experience, our members -- who are county filing officers for Form 700 -- strongly believe that this would be the most costly and inefficient method gathering the information.

We make the following suggestions to your Committee and to Senator Correa with respect to compensation data gathering and the means of accessing that information:

1. **Require only those public officials who are the true decision makers at all levels of government -- state and local -- to make disclosure.** SB 501 contained a comprehensive list of officials whose compensation should be closely scrutinized. We believe that this element of the bill should be retained.

- 2. Gather the data centrally at the agency level, that is to say, at the level of a city, a county, a school district, a special district, etc., rather than use the reporting structure set forth in the Political Reform Act.** Most of the discussion thus far has focused on having the affected officials complete a form and submit it to the local Form 700 filing officer who would then be responsible for making the data available to requestors and posting the data on a website. However, few, if any, of the officials who will be required to report are aware of the amounts of all of the various elements that make up their compensation. Whereas they are certainly aware of their total taxable compensation for the most recent calendar year, as reported on their W-2, few officials know, for example, the amount(s) received for travel and various types of expense reimbursement. The official must obtain such information from his/her own agency.

To address this problem and to significantly reduce costs, we suggest that next session's legislation provide that the official's agency (i.e., employer) centrally develop the information for all affected officials in that agency. This will ensure that the information is gathered efficiently and is done in the most cost-effective way possible. If gathered centrally by each state and local agency, the information will be accurate, complete and timely which will directly benefit the public and the members of the media seeking the reported data. We anticipate that a Form 700-style procedure will result in inaccurate and incomplete information and will be accomplished in the slowest, most burdensome and costly manner possible, benefiting no one.

To address this problem, SB 501 was amended to permit agencies, in lieu of establishing a Form 700-style process, to develop the data centrally and upload the data to the Web. However, as provided in SB 501, this centralized procedure would only be feasible in the case of cities. The existing Form 700 process, as set forth in the Political Reform Act of 1974, designates the clerk of the county as the filing officer for officials of all local agencies wholly located within the county, other than cities. Thus affected officials of school districts, special districts, JPAs and non-profit public benefit corporations would file their compensation reports with the clerk of the county. Since the county does not possess compensation information for these officials on its central payroll database, the compensation data for all agencies other than cities would have to be gathered and compiled manually at great expense, despite the amendment to SB 501.

We do understand the Legislature's concern that requiring local agencies to centrally develop the data might create a reimbursable mandate. However, we believe that such centralized data gathering would tend to minimize costs and, as indicated above, would ensure that the data was complete, accurate and timely.

As an alternative, SB 501's language could be altered to require officials to file the data in the manner of the existing Form 700 process, except that the compensation form should be filed with the official's own agency. Or, as already provided in SB 501, allow the agency to centrally develop the data and upload it to the Web. As an additional alternative, the legislation could require a state agency on whose website the information would be hosted to obtain the necessary compensation information from all state and local agencies and post the information on the Web.

It was mentioned by one of the participants at the hearing that the current electronic procedures for filing Form 700 could or would be relied upon as a solution for streamlined filing of compensation information. We must point out – as I did at the hearing – that this will not be practical, except perhaps in the very long-term. Currently there are only two entities – Los Angeles County and Orange County – that even have the authority under the law to do such electronic filing. These

counties are currently testing the process as a pilot program under fairly recent legislation. The pilot experience will not be evaluated by the Legislature until the middle of next year at which point the Legislature *may* enact legislation to open the process up statewide. It will be many years before even a significant number of public agencies begin developing and using software and systems designed to handle such data. Given the expense involved in utilizing the existing systems, many small local agencies will never use this methodology.

3. **Make statewide compensation information available from a single source.** We strongly support those at the hearing who recommended that compensation data for all affected officials be made available on a single website managed by a state agency. The Form 700-style process set forth in SB 501 would make accessing the data unnecessarily difficult for the public.

Again, under existing Form 700 procedures, the county clerk or clerk of the board of supervisors is the Form 700 filing officer for, not only key county officials, but for all other local agencies wholly located within the county, other than cities. Furthermore, multi-county agency officials file their Form 700s with the Fair Political Practices Commission (FPPC). A member of the public or a representative of the media would have a difficult time finding compensation information of many local school districts and special districts. Most members of the public would not know that, in order to get compensation information of, say, officials of the Los Angeles Unified School District, they would have to go to the Clerk of the Board of Supervisors of the County of Los Angeles to get the information. If he or she were looking for compensation information of, say, the Roseville Joint Union High School District or the North Marin Water District (both multi-county agencies), he/she would have to go to the FPPC. Conveniently making cross-agency comparisons of the compensation of, say, city managers would be a laborious process involving hundreds of agency websites.

We believe the public is better served by making all of the information available from a single state website, in the manner of the State Controller's website which currently contains compensation information for many local officials.

Once again, our members thank you for the opportunity to provide our input to your Committee. We want very much to continue to work with your Committee and other members of the Legislature in developing effective and efficient legislation to address this vital problem. We would be happy to provide you with draft legislative language that addresses the issues raised in our testimony.

Please call me at (213) 200-9610 if you would like any additional information.

Very truly yours,

John McKibben, Co-Chair  
CACEO Clerk of the Board of Supervisors  
Legislative Committee

c: Members and Consultant, Senate Local Government Committee  
Senator Lou Correa  
Assembly Member Hector De La Torre  
Assembly Member Chris Norby  
Sachi Hamai, Co-Chair, CACEO Clerk of the Board of Supervisors Legislative Committee  
Gail Pellerin, President, CACEO

S:\Legislation\2011\transparency hearing



Orange County Taxpayers Association

25 Orchard, Lake Forest, CA 92630  
phone (949) 768-8131 • fax (949) 768-1601 • www.octax.org

*Testimony to the Senate Committee on Local Government  
at the hearing on "Transparency and Accountability"*

*Santa Ana, California; October 20, 2010.*

Good afternoon, Madame Chair and Honorable Members:

In your opening remarks, you said you were "shocked, shocked" by the actions of the scoundrels in the City of Bell.

Your reaction would have been more convincing if the Legislature's own behavior were completely "transparent and accountable." The Orange County Taxpayers Association (OCTax) is concerned that this hearing's narrow focus on local Bell-type venality may cause us to lose sight of larger ethical lapses at all levels of government. Some of these lapses probably dwarf the costs of greedy manipulation of salaries.

For example, it is fairly common practice in the Senate, Assembly, county boards of supervisors, and city councils to mislabel proposed taxes as "fees" in order to secure their approval by a simple majority, rather than the 2/3 vote generally required for tax increases. The statewide cost to taxpayers of that underhanded behavior surely cumulates to tens of billions of dollars over time.

I didn't come to this hearing to talk about Proposition 26 [which would require that phony "fees" be labeled truthfully as taxes]. It simply popped to mind during this hearing as an example your own violations of the "transparency and accountability" that you claim to champion in government. Proposition 26 wouldn't have been necessary if the Legislature had been governing ethically. The folks in Bell had a good exemplar.

In the hearing, you heard many fine suggestions to heighten transparency and accountability in local government. I urge your Committee to expand the scope of your investigation of dishonorable practices to all levels of government, including your own. The problem is not confined to local administration of salaries, pensions and other post-employment benefits.

Reed L. Royalty, President  
Orange County Taxpayers Association

**CHERYL BROTHERS**  
**MAYOR PRO TEM, CITY OF FOUNTAIN VALLEY**  
**Wednesday, October 20, 2010**  
**Transparency & Accountability:**  
**Pursuing the Public's Right to Know**

Thank you for the opportunity to comment on this topic.

I concur with the need for consistency. If requirements are too complex, or require changes in programs or software – **THEY ARE ANOTHER UNFUNDED MANDATE.**

A dollar amount threshold for reporting depends on the definition of 'salary' and 'benefits'. Cheaters are and will be creative when it comes to what they will report and how they will report it. This could be an **added schedule to the 700 filing**. Please, don't make a new reporting format, or an added reporting timeline.

ANY REQUIRED REPORTING **MUST APPLY TO ALL ELECTED OFFICIALS** IN CALIFORNIA, INCLUDING THE STATE.

Real world reality is that **cities and counties DO compete with the private sector for qualified people**. Any idea that they should be paid less, or given less in benefits is not valid. Local agencies deserve the flexibility in pay and benefits to offer what they can afford, it rests on the elected officials and the public that elects them to control what is 'affordable' for them at the time. The fact that the economy went south happened to all of us and most agencies will learn from that and create scenarios that reflect their community. PLEASE, DON'T HAMSTRING LOCAL GOVERNMENT BY DEVELOPING ANY KIND OF CEILING. THIS WILL LIMIT THE CREATION OF GOOD PLANS WHILE TRYING TO PROTECT EVERYONE WITH A ONE SIZE FITS ALL SOLUTION.

Posting of individual **medical benefits** may cross the line for '**right to privacy**'. Instead, agencies could disclose a range of premiums available to officials and staff. HOW MUCH IS TOO MUCH IS A LOCAL DECISION.

**Web site** front pages are just like a newspaper, there is a lot of competition for space. A member of your panel objected to having to make 'two clicks' to get to the information sought. That should be acceptable if there is a **UNIFORM SYMBOL OR TITLE ON THE FRONT PAGE LEADING TO THE 'SALARY / BENEFITS' PAGE.**

*Televised meetings and webcasting could dramatically help 'the public's right to know.'* Since the State holds all cable TV franchises now, our legislators could help local agencies regarding the use of Public Education Government (PEG) funding. Under the State Cable Television Franchise, all agencies now receive 1% PEG funding. Spending of these funds is currently limited to capital expenditures, not operation. We can purchase all the equipment in the world, but that does not put programs on air without operators. **IF THIS RESTRICTION WAS LIFTED, AGENCIES WOULD HAVE THE ABILITY TO AIR COUNCIL MEETINGS AND PROVIDE UPDATED INFORMATION ON THEIR WEB SITES.** I would be happy to speak to you further about this important issue.

Thank you.

Thank you Chair Correa and Committee Members. I am a resident of Santa Ana - welcome to Santa Ana; here is where my experience with local government lies.

Regarding transparency and accountability by local elected officials, I believe that accessibility of residents to their elected representatives is an important factor.

The City of Santa Ana has been described as a "Baby Bell" - I do not necessarily agree with that, but I do believe that there may be some similarities between how the Bell Council operated as compared to how the City of Santa Ana operates in the structure and conduct of council meetings.

I have furnished each of you with copies of recent on-line news articles. The titles of these articles are, "Santa Ana Government - About as Transparent as a Brick Wall" ([theliberoloc.com](http://theliberoloc.com)) and "The Secretive Start to Santa Ana City Council Meetings" ([voiceofoc.org](http://voiceofoc.org)).

Both of these articles go into detail to explain how the Santa Ana City Council goes out of their way to limit, constrict and discourage participation of residents of Santa Ana in City Council meetings.

As an example, there is no set time for the public session of the Council meeting to begin. Residents do not know if their council meeting will begin at 5:15 or 6:30.

Another example is that council meetings are not consistently held in Council Chambers - every other council meeting is held at a location other than Council Chambers.

Council meetings should be held in Council Chambers at a regular time and a regular place in order to encourage Santa Ana residents to participate in their city government.

To sum up, I believe that if you were to take some action - like putting some real teeth into the Brown Act - that you would strengthen the public's ability to act as watchdogs over their local government officials.

This would serve to help prevent future "Cities of Bell."

The on-line articles I furnish to the Committee are:

<http://www.theliberoloc.com/2010/10/20/santa-ana-city-government-about-as-transparent-as-a-brick-wall/>

[http://voiceofoc.org/countywide/who\\_says\\_you\\_cant\\_fight\\_city\\_hall/article\\_5545a242-d22c-11df-8299-001cc4c03286.html](http://voiceofoc.org/countywide/who_says_you_cant_fight_city_hall/article_5545a242-d22c-11df-8299-001cc4c03286.html)

Following is my testimony to the California Senate Committee on Local Government - hearing date Oct. 20, 2010 in the district office of Senator Lou Correa.

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[http://voiceofoc.org/countywide/who\\_says\\_you\\_can\\_t\\_fight\\_city\\_hall/article\\_5545a242-d22c-11df-8299-001cc4c03286.html](http://voiceofoc.org/countywide/who_says_you_can_t_fight_city_hall/article_5545a242-d22c-11df-8299-001cc4c03286.html)

Senator Correa asked a couple of follow-up questions concerning the practice of other local cities in the structure of their council meetings and more detail concerning SA council meetings. He thanked me and indicated that my testimony was "enlightening" to the committee.

Regards to all - Mike Tardif



# Santa Ana City Government – About as transparent as a brick wall

October 20, 2010 By [Chris Pava](http://www.theliberoloc.com) - <http://www.theliberoloc.com>



As most of you know, we have been hammering the city council and executive staff of the City of [Santa Ana](#) pretty hard on the issue of transparency over the past few months. We have found conflicts of interest that have required the return of thousands of dollars in [unpaid bills](#) and violations of sunshine and open meetings laws. The results of our investigations have lead to a simple conclusion. **The [City of Santa Ana](#) operates with about as much transparency as a brick wall.**

## Closed Session

For example, we have the issue of the Closed Session part of each meeting. The Council is required by law to convene their closed session meetings in public, accept public comment if any, and report any conflicts in public, before they adjourn to closed session. As a matter of practice that is not what happens even though the agenda for the closed session meetings indicates that public comment will be accepted on matters related to the closed session agenda. In all cases, the council convenes its closed session meetings in rooms that are not publicly accessible. Not only does this practice discourage public participation, it in practice excludes it. At a special closed session meeting of the Council on September 27, 2010, the Council convened out of public view at 5:18 pm, conducted business including excusing members with conflicts of interest, then adjourned to achieve a quorum. Then at 5:31 pm after achieving a quorum the council elected an acting chairman prior to the public being granted access to the meeting room at 5:37 pm. The Voice of OC [reports](#) that on October 7th, the public and media were blocked from accessing the closed session of that meeting, which was conducted entirely in private.

The October 18, 2010, closed session council meeting was held in the Police Chief's Conference Room at the [Santa Ana Police Station](#) building. This room is not publicly accessible. The meeting was convened without the opportunity for the public to address the Council during public comment on the closed session agenda. I know this because our writer Claudio Gallegos showed up for the meeting at about 5:10 pm and asked to be permitted access to the 4th floor conference room.

The officer at the desk informed him that she needed to ring someone in the conference room so they could come down and escort him to the room. She called the room and spoke with someone in the meeting who told her to tell him that anyone who is attending the meeting is to be sent to the Community Room and wait for the closed session to finish.

This all took place between 5:10 and 5:18 pm. The reason I know exactly what time this happened is because Gallegos called me at ended a call with me at 5:10 when he entered the building and called me back at 5:18 as he left the building to tell me what had happened. Our cell phone logs confirm these time. Before calling me, Gallegos had gone to the Community Room to have his parking validated, so several minutes had passed before he called me. I learned Tuesday afternoon from the City Clerk that the closed session meeting was convened at 5:21 pm. **Mr. Gallegos had requested access prior to the start of the meeting and was denied access as required by law.**

We now have found **three consecutive closed session meetings where public access was restricted**, or outright denied. This specifically violates G.C. §54953 which states; *(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.*

The meetings held in the 8th floor conference room at City Hall require the public to check in with the clerk and await escort to the conference room. Access to the meetings held in the Police Chief's 4th floor conference room is even more restrictive. Members of the public are required to check in with the police officer at the front desk to gain access (via escort) to the meeting. This practice provides significant barrier to public participation and is clearly in violation of the requirements of G.C. §54953.3, The Brown Act, which states; *"A member of the public shall not be required, as a condition to attendance at a meeting of the legislative body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise fulfill any condition precedent to his or her attendance."*

### **Open Meetings**

When it comes to following the requirements of the Brown Act, California's law regarding open meetings, the City has failed on a number of levels. First, the Brown Act (G.C. §54954) requires that the City *"determine by ordinance, the time and place for all regular meetings of the City Council.* The intent of the law is simple; people should not have to guess when and where the meetings of their local government officials are going to take place. The public is supposed to be able to rely on knowing that the City Council meets in a specific location on a specific date, and time.

That's not the way it works in Santa Ana. The City has set things up to say that their meetings are convened for closed session in the City Hall 8th floor conference room on the first and third Monday of every month (excluding holidays) at 5 pm for closed session, which is to be immediately followed by open session in the Council chambers. They have however added the caveat that the meeting may be moved by action of the council provided notice is given. While this process would be fine for special occasions, it should not be the norm. The Council however, moves the second meeting to a different location every month.

The public does not know, other than a mention in the agenda of the meeting held the first Monday, where the third Monday meeting will be held until the agenda is posted. This practice leaves the public wondering where the meeting of the City Council is being held. Simply put, the City Council is playing a shell game when it comes to meeting locations. If this isn't outright illegal, it is highly deceptive and serves only to stifle public participation.

In addition, by setting up the regular meeting to start immediately following a closed session meeting which has no specific end time, the city is not providing the public with a way to reasonably know when the regular meeting will begin, and/or what time the public may address the council. Since council rules for public comment state that additional requests to provide public comment made after that process has begun may not be granted, the public must guess what time the regular meeting will begin in order to be present for public comment. To add to this already discouraging process the time of public comment and order on the meeting agenda, can be moved at any time by act of the chair, to any point on the meeting agenda.

### **Public Record Disclosure**

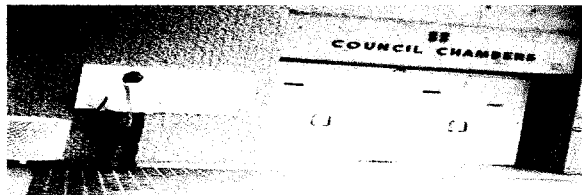
In the process of investigating questionable votes due to contributions received by Council Members Tinajero and Martinez from the United Latino Soccer League, I asked the City Attorney for copies of all email correspondence received and sent by him related to this matter during a specific narrow time period (about a day and a half). The City Attorney responded through the City Clerk that all such communications were confidential as a matter of "privilege" and would not be disclosed. The problem is, the City Attorney cannot declare all communication he receives or sends as privileged. Only communications where the City Attorney is providing specific advice to the Council or city staff in his capacity as their attorney, can be concealed based upon privilege.

As a matter of practice, I don't usually ask a question unless I have a pretty good idea what I am looking for. In this case, I was looking to verify the claim that the City Attorney had made that he first learned of the issue of the conflicted campaign contributions related to the United Latino Soccer League, from members Tinajero, Martinez, and Mayor Pulido. At the time I asked, I had in my possession an email from a Santa Ana resident, asking the City Attorney to investigate the matter. That email specifically described the issue and the conflicts involved. In no way could that communication have been confidential or privileged, as it was a communication to a public official from a member of the public requesting an official action be taken and had been copied to multiple people other than the City Attorney. None the less, he refused to release the email, or any others that may have been responsive to my request.

*I've all but given up hope that the officials responsible to enforce these rule will actually do so.* But I'm still left with a couple questions.

Given all of the claims by members of the City Council and staff that they are operating with transparency, why the disconnect between those claims and reality? **What are they trying to hide, and why?**

# The Secretive Starts to Santa Ana City Council Meetings



The closed doors of Santa Ana's City Council Chambers. (Photo by: Violeta Vaqueiro)

Santa Ana resident Mike Tardif has a couple of simple requests for the members of his City Council. He would like them to start their regular meetings in public, and allow public comment before they adjourn to closed session. It is a request that just about every City Council in Orange County would have no problem granting. But it's a problem in Santa Ana, where members always start their meetings in secret.

On Monday, Tardif sat outside the eighth floor offices of the city manager, where the City Council was preparing to begin its closed session portion of the regular meeting, hoping to be able to plead his case before the closed session started.

He never got the chance. So later in the evening he addressed the council from the podium during the public part of the meeting. "This is very inconvenient for Santa Ana residents," Tardif said, adding that Santa Ana residents -- unlike those across the rest of Orange County -- aren't even given the courtesy of knowing what time their regular council meeting starts.

"We don't know if the council will start at 5:15, or 6:15 or 6:30 p.m.," he said. "Not having a regular time for public speakers discourages those from addressing their elected officials."

Even cities that hold a closed session before the public session usually convene in open session and then retire to closed session after hearing public comments about the closed session. Santa Ana's curious approach means that a resident can never really be sure when the council meeting starts. Many residents say they feel as if that's exactly what council members want. "It's very frustrating, and often it's done to thin out the audience," said Peter Katz, 62, who has lived in Santa Ana for 30 years.

The practice is a major concern to open government advocates. "I don't think there's any way you can achieve the Brown Act's requirement to allow public comment on items in closed session without first convening in open session," said Terry Francke, Voice of OC's open government consultant and general counsel of the First Amendment advocacy organization CalAware.

According to Francke, the Brown Act says in general that there must be an opportunity on the agenda to address the body on anything that is on the agenda before or during the item being considered by elected leaders.

The only way to reconcile that with a closed session is to provide an opportunity before, Francke said. "The closed session is part of the regular meeting," he said. "And the regular meeting has to open in public session."

He also said that Tardif has a point when he says that council members should have a set hour for the public meeting and says state law backs him up. "They have to state and stick to a fixed hour at which meetings will commence," Francke said.

Francke said the violations were serious, adding that "these things are worthwhile bringing to the district attorney's attention."

**NORBERTO SANTANA, JR.** -- <http://voiceofoc.org/>

October 26, 2010

Senate Local Government Committee  
State Capitol, Room 5046  
Sacramento, Ca. 95814-4900

Via e-mail to [Peter.Detwiler@SEN.CA.GOV](mailto:Peter.Detwiler@SEN.CA.GOV) , fax to (916) 322-0298

Subject: Transparency and Accountability

Dear Senators,

Thank you for the opportunity to comment to the California Senate Local Government Committee about Transparency and Accountability. These comments largely summarize my testimony before the Committee on October 20, 2010, in Anaheim California. By way of background, I am a professional land planner who was employed by a public agency for over ten years, was Mayor and Council Member for the City of Costa Mesa and am currently a planning consultant working primarily with public agencies and with citizens groups, sometimes in a watchdog role with public agencies.

Regarding disclosure of public compensation and the broader issue of public transparency, I have the following comments:

**All compensation must be made public**

In addition to salaries and stipends, elected officials and even appointed officials often receive other compensation including health insurance, life insurance, a car allowance, cell phone, internet service, pension contributions, educational fees, or other benefits. In the City of Orange, one council member also receiving a health benefit from another agency has taken a cash payout for the health benefit. In some cities, an "expense" stipend is provided which is subject to little oversight. Mesa Consolidated Water District recently paid over eleven thousand dollars *plus* travel expenses *plus* a daily stipend for a single board member to attend an out-of-state seminar. This must all be disclosed.

**Compensation information for related offices must be linked and revealed in full**

Many city councils also serve as members of a redevelopment agency, a public finance authority, a street lighting district or other legally separate board. In addition, public officials may represent their community on other boards ranging including the Local Agency Formation Commission, county sanitation districts, transportation agencies such as Orange county Transportation Agency, metropolitan planning organizations such as the Southern California Association of Governments, vector control agencies and other agencies. Reporting of public compensation must reveal any compensation received from any of these other agencies, so that the public may truly see the full compensation received for public "service".

**The public must be told what they are paying for**

Many agencies pay a given stipend per meeting. For example Mesa Consolidated Water District pays \$207 per meeting, not to exceed one per day or ten per month, plus health and life insurance. Costa Mesa Sanitary District pays \$227 per meeting, not to exceed six per month. When I served on the SCAG Regional Council in the 1990s we received a little over \$100 per meeting, though I believe this has increased.

Some meetings last hours, such as a planning commission meeting on a controversial project. In other cases, as in the City of Bell, “meetings” may last only a few minutes. In some local agencies, there are no minutes even specifying when a “meeting” or a subcommittee was called to order or adjourned. The public is not informed as to whether the meeting lasted five minutes or five hours. Are they earning \$200 for a half hour or for all day? Although it is not practical to keep strict time sheets, all meetings of boards, committees, and subcommittees must publish minutes which specify the time the meetings started and ended along with a general description of the business covered.

Some agencies restrict payment of stipends to official meetings of a board or committee, but in others a “meeting” is loosely defined. “Meetings” may also include social and political functions. Board Members of both Mesa Consolidated Water District and Irvine Ranch Water District have charged the residents and ratepayers for time spent attending restaurant openings. A Mesa Consolidated Water District board member charged \$207 for sitting down with a local resident for less than an hour over coffee. The public is entitled to know when this is happening.

**Once reported, information must be readily available to the public.**

Public agencies often complain about the difficulty and cost of providing information to the public, even as they charge us for gracing the newest restaurant with their presence. It is unlikely that there is any public agency in California not using a computer for accounting purposes, and most information from payroll or accounting can be extracted and reconfigured without too much trouble.

Once the information is compiled, it must be made easily accessed by the public. While Orange County made much of their electronic reporting system at the October 20, 2010 hearing, the information reported is not made available on-line, but can be viewed only on a computer at County offices and only if files are opened by a County employee with the correct password.

**Lack of information regarding public compensation is symptomatic of a larger problem with public disclosure.**

Unfortunately, contrary to the Brown Act, local public officials continue to wish to dictate what is good for the people to know and what is not good for them to know. Public officials often seem to expend more effort trying to avoid disclosure than providing it. As an elected official I sat in on part of a League of Cities presentation on the Brown Act which seemed geared more toward how to maximize exceptions to the Act. Three weeks ago, the City of Costa Mesa held their mandatory ethics training session in the afternoon; just hours later, when a citizen asked for

information on a matter under discussion by the City Council, a Council Member declared “we don’t have to give you that. We covered that just this afternoon.” It is not clear whether additional training or improved training standards would improve this situation.

**Charges for copies of public information must be reasonable**

In accordance with the Public Records Act, a public agency may not charge a member of the public for the cost of retrieving a document from a file cabinet. In accordance with the Public Records Act, the charge for any copies must be only those reasonable costs of duplicating the document, normally about ten to fifteen cents per page. However, I was recently charged \$1.00 per page by Orange County for a six page document which required absolutely no personnel costs by any public employee, since by public law it was posted in a location readily available to the public. Clearly this would be prohibitive for a larger document or for those with already strained budgets.

Under the Public Records Act, agencies may not charge for retrieving a physical file, but may charge for if the information request would require data compilation, extraction, or programming to produce the record. This has been interpreted by public agencies, including the Thirty Second Agricultural District, to mean that any time spent at a computer retrieving a record must be paid by the member of the public requesting the record, even if less than the time it would take to pull a physical file. I was recently charged at a county office for such time even though I had a physical copy of the file and identified the pages needed with a post it. Instead of taking the file to the copy machine, the clerk instead retrieved the document from her computer, thereby enabling the higher charge. Rules as to the definition of “compilation, extraction, or programming” must be clarified.

**State law requiring public disclosure is more honored in the breach than the observance.**

The sad fact of the matter is that those who seek to exercise their rights to public information and public participation often must have the fund to retain an attorney to secure one’s public rights. I have filed Public Records Act requests in numerous cities and have found that standard procedure is for the city to take ten days and then send a letter telling why they are not providing the information. After another ten days, or even ten weeks, one might receive a few documents, but only a portion of what has been requested. One must be extremely persistent. In my experience, the City of Los Angeles has been one of the more responsive agencies with which I have dealt, responding in a relatively timely and complete manner.

In addition, one cannot be easily intimidated. Very commonly, I am asked “what do you want this for?,” even though agencies are not supposed to ask. Typically, one is handed a file which one may review at the counter or a nearby table, where one can be casually observed. In the City of Anaheim, I was assigned a room with someone who supervised me the entire time I reviewed a box of documents. No one else was in the room, and my supervisor had no other duty but to watch me the entire time I was there. If she needed to use the lady’s room or go to lunch, I had to leave the room and the documents behind. I was not allowed to peruse the files alone, or even in another part of the office with others around, at any time. I was not special, either. Apparently, this lady does this a significant part of the time.



In the City of Newport Beach I was informed that two copies would be made of any documents I requested, so that the individual who was then department head could keep a file on what I had copied. I declined to pay for the extra copies.

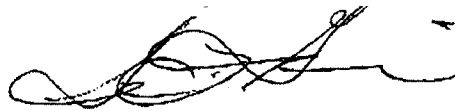
**The sale of the Orange County Fairgrounds provides an example of the failure of existing mechanisms for public disclosure.**

Recently I have been involved in efforts to stop the sale of the Orange County Fairgrounds. Throughout the process, the public has been excluded, first by the Thirty Second Agricultural District, which attempted to form a group to buy the fairgrounds themselves; then by a last minute trailer bill (AB X4 22) which provided for the sale; next by City of Costa Mesa which held meetings in secret to appoint a committee to review fairgrounds issues in secret—so secret that most members of the City Council were handed a voluminous memorandum of understanding for a fifty-five year commitment just hours before being asked to vote with little or no prior knowledge of the deal points. Unfortunately, this secrecy extended to the Governor’s office. I firmly believe that had the public been included and heard from day one on this issue, our fairgrounds would not have been sold down the river.

This is just one example of what can occur when the public is excluded. I implore the committee to continue to work to see that we have true transparency and accountability at all levels of government.

Thank you for the opportunity to comment.

Yours truly,

A handwritten signature in black ink, appearing to read 'Sandra L. Genis', with a stylized flourish at the end.

Sandra L. Genis

California Legislature Senate Committee on  
Local Government

Transparency & Accountability: Pursuing the Public's Right to Know

**Comments submitted for the record by Theresa Sears**  
**Please enter my comments into the public record**

Anytime public officials fail to remember whom they serve there is a temptation to get sloppy, develop bad habits and lose sight of their principled path. When elected officials are insulated from the public and don't understand the importance of good governance and transparency it can create an adversarial environment detrimental to the public's interest.

I appreciate the opportunity to offer the following thoughts:

**Public records**

The legislature should set standardized rules with regard to public records. Copy charges are all over the map. Some jurisdictions charge nothing, others charge much more than the cost of printing. The courts have already said that agencies cannot charge for the time it takes to collect the data. If agencies were in the habit of putting things online, then they wouldn't have to spend time putting information together and the public wouldn't be out the time and money it takes waiting for records.

There needs to be penalties for agencies that withhold, stall, destroy or sanitize the record. Unless one has been on the asking side there is not a clear understanding of what goes on and the games that are played by those that do not want the public to know. Not only should there be penalties but there should be a middle ground for enforcement that does not require the citizen activist to be forced to seek expensive legal remedies in order to get compliance to the law. Perhaps the Attorney General should have a division that deal specifically with enforcement and oversight.

**Transparency and Ethical Business**

Special districts, such as Water Districts, Vector Control, and Sanitation Districts, etc., should be monitored and audited annually by the State Controller or Attorney General.

There is no oversight of ethics or lack thereof relating to the Bylaws of Governance of these special districts. For example amending bylaws so that a public vote is not needed to increase meeting fees. Thus, there is no agenda item or record of vote every time there is an increase. Fees just go up automatically without public input or knowledge.

Often Special District accounting does not itemize the individual director expenses for travel, meals, gas, etc. This allows for these fees to be hidden under one budget line item. There should be separate line items for each director and all expenses should be monitored. The Special Districts should incur program-monitoring costs.

An annual status report should be posted on both the State Controller and Special District websites. Private companies have annual audits, and a valued audit is a full disclosure audit with letters of recommendation by the audit firm. The same should apply to public entities.

Special Districts are authorized to change the amount of meetings directors can receive stipends for (ex. from 6 to 10 meetings per month) which directly benefits those casting that vote. I believe the public does not want politicians to subsidize their incomes off these elected positions. Public service is designed to 'give back' to communities not a way to enrich ones pocketbook. Many elected officials are being paid well over \$200 per meeting, with the possibility of making nearly \$2000 a month if they attend 10 meetings.

Often there are no attendance stipulations in order to be paid a stipend. Some Directors have been known to arrive late, staff acknowledges their attendance, and then they leave. There is no specific requirement for attendance or preparedness for the meeting. This may benefit staff's goal if they simply want a certain vote.

Another abuse involves meetings that are opened and closed - the 3 to 5 minute meeting - where a full stipend is paid.

Many of these Special Districts do not have term limits and that can be a problem. In order to ensure that knowledgeable people are not eliminated from serving on boards just to satisfy term limits some consideration needs to be given, possibly a reduced stipend would keep only interested individuals on these boards.

### **Appointments to Special Districts**

Water Districts and Sanitation Districts should be elected positions. No one should be allowed to serve in two elected capacities.

### **Enterprise funds**

Another issue related to "enterprise" funds (trash, sewer, water). There are cities that dump expenses into these fee-based enterprises that are above what can be justified. For example, one city puts half of their City Manager's salary and half of their city attorney's salary in the water budget. There is no way that either one of them spends half their time on water issues. This probably is happening in other places. It's difficult for citizens to track down this type of practice.

### **Uniform pay scale – City Councils and Special Districts**

Generally city council members are paid a very small amount per month no matter how many meetings they attend while some special districts pay their board members a large amount per meeting. This means that they can have a 5-minute meeting and get paid the same as an 8-hour marathon council meeting. It also means that councilmember's fight over these plum positions, not because they have better qualifications but just because of the stipends. Perhaps all stipends should be put into a pool and then divided up among the council members. At least that way only those who care about a particular issue would sit on these boards. We should value the time of those elected officials that are working on important issues.

It's important that unintended consequences do not impact elected officials that shy away from attending meetings or conferences that would be beneficial because someone is going to claim they spent taxpayer money. Term limits has limited the knowledge of our elected officials and now it seems we are pushing for them to remain uninformed as possible leaving special interests or staff to drive the issues.

Page 3

Senate Committee: Transparency & Accountability

Theresa Sears

### **Taping of meetings**

The legislature should require that all public meetings be taped and available to be watched online. Each agency should make it very clear, on their websites, how to obtain records in order to prevent delays.

### **Campaign filings/disclosures**

All campaign filings/disclosures should be available on line with personal information redacted.

### **Lobbyists**

What goes on in the back room generally is a reflection of those that have influence and access that often is not publicly understood. The general public instinctually knows something is wrong they just have not been able to connect the dots. That is why there is tremendous mistrust of government but no one knows exactly who to blame. Lobbyists thrive on the ignorant, the chaos and for the most part are able to maneuver in order to achieve their self-serving interest. Full public disclosure and oversight is needed of those unelected individuals that have influence and are driving issues.

Thank you again for allowing me to comment on this most important subject. Please feel free to contact me for further details. Also I would appreciate being notified of future meetings and/or comment opportunities.

Sincerely,



Theresa Sears  
Orange, CA 92869

714.287.9160  
theresasears@hotmail.com

Date: October 14, 2010  
To: Senate Local Government Committee Members  
From: Pamela Lee, Member of the Public  
Subject: State Regulation of Local Officials' Compensation

I am unable to attend the hearing scheduled for October 20, 2010. However, I would like to submit my comments for consideration by the Committee.

First, I was previously a City Clerk for some 17 years, in four different cities, in two different counties. In one of those cities, I worked under a city manager named Robert Rizzo. In another city four of their current Council is under indictment, and that is the City of San Jacinto. I do not believe my experiences were isolated, unique, or that I just had bad luck of the draw. There are problems with local agencies public disclosure and "compliance with laws." I would like to share some of the realities of what actually occurs often in local governments.

No matter how many laws are enacted, there will continue to be those in government who do not believe the laws pertain to them. The initial problem begins when the agency's legal counsel knows how to count to three, the majority, and in order to retain their lucrative contract, will give legal advice to carry out the will of that majority, legal or not. Some agencies also have staff that just seems to forget and think they are in charge. Either way, the laws on the books mean nothing and for years the legislature just keeps adding to them to no avail. Enforcement is the only solution.

I am going to relate to you a few actual examples and dialogues I have personally experienced:

1. City Manager gives a city planner a deed granting land to the city. Tells him to go to the county recorder and have it recorded. County recorder tells planner he cannot record it without the city clerk's certification. Document returned to city manager. City manager brings document to me and asks for certification. I advise the document must be submitted to city council for acceptance. City manager states they do not want this matter to be on a public agenda. City manager tells me, "You work for me; you do as I tell you." How many city clerks are going to give up their job to do the right thing? Very few, if any.

2. City council member, following loss of son in a tragic accident, receives a payroll check from the city. This check is the culmination of employees donated leave time, which should have been directed to a trust fund set up at a local bank, but was not. Council member is responsible for reporting "gifts" including time donated by a Chief of Police on a contract. City's legal counsel repeatedly advises him he does not need to report said gifts. There is a lot of outcry and finally an order from the FPPC to report. The information is compiled and given to the council member for reporting. Shortly thereafter he does not run for re-election and leaves office. Council member's name then appears on a warrant register for the payment of unemployment. This because he has been laid off his regular job and due to the payroll check, now receives unemployment from the city. There are more outcries. Note, the outcries came from a few honest council members only, the public would have known nothing about it otherwise. I had the entire file on these issues. City's legal counsel calls me and orders me to "make the file disappear." When I asked "what do you mean make the file disappear," attorney says, "I don't care if you put it in the trunk of your car and take it home, but make it disappear." Again, how many city clerks are going to give up their job to do the right thing? Few, if any.

3. Police Chief leaves city on a severance agreement. Local press and chief's wife (currently going through divorce), make a public records request for the severance agreement, a public record. Just moments before the agreements are to be handed over, city's legal counsel calls me, tells me "Do not provide the agreement to the press and wife." I said, "But it is a public document." Legal counsel says, "Yes, but if they want it they can sue to get it."

4. Compensation contracts for employment and/or severance in local agencies are all done in closed session. The actual document is rarely already written and not available to the public until weeks after it is a done deal. There may be some verbal partial public disclosure and then the matter is forgotten by the time the actual contract is written and signed by both parties. Some times monetary amounts are not disclosed, and parties are restricted by confidentiality clauses.

5. Abuses are rampant in government. One of the pension boosters is taking payment on leave time in the final year. With regard to all that leave time accumulated, the reality is, frequently management takes time off, but does not take it off the books.

Local agencies constantly refer to the two portions of PERS retirement as the employee and employer portions. However, most of the agencies pay the employee portions but hide that under the terminology "employee" portion in order to deceive the public.

Agencies have also gone to providing "supplemental" retirement plans, which most of the public lacks knowledge. The bottom line is, if the public does not know exactly and precisely what to ask for, the agency will not disclose.

6. A local school district, refused to allow myself and other parents to "look" at the budget. After a great deal of battle we accessed the records and found the following:

Superintendent not only received a district provided SUV for all his business and personal use, but the district provided the insurance, gasoline and all maintenance. In addition, the Superintendent received \$600 a month auto allowance. All of this was hidden from the public.

School board member, while attending a school board conference, was reimbursed his bar tab and telephone bills. The hotel telephone calls (personal in nature to his family, friends, business associates, mistress, dentist, etc.), showed that instead of attending the conference he was in his first class expensive room all day making phone calls and did not attend conference sessions.

I could continue on with actual incidents, probably even write a book about it, but suffice it to say, there are problems that the laws, and more laws, just do not fix unless there is a mechanism for enforcement.

It is no surprise these things are happening, many times it comes to light and we read it in the newspapers. More often than not, it is still happening, not only in cities, but school districts, counties, special districts and other public agencies.

Look at the Government Code regarding general law cities:

36501. The government of a general law city is vested in:
- (a) A city council of at least five members.
  - (b) A city clerk.
  - (c) A city treasurer.
  - (d) A chief of police.
  - (e) A fire chief.
  - (f) Any subordinate officers or employees provided by law.

You do not see the City Attorney or City Manager listed, they would be "subordinate officers or employees." In reality, the structure has morphed into the vested positions being "subordinate" to the City Attorney and City Manager. Further, the elected city councils could not do much in the corruption area without the support of the City Attorney and City Manager, who are actually now controlling the city governments with their councils as merely figure heads.

You can enact laws until the cows come home, and nothing will change. Legal counsel for agencies will continue to circumvent each and every clause you add. If you really want to do something meaningful, then implement an enforcement resource for the public. The average citizen cannot afford to obtain an attorney every time they want to access public records/information and an agency blocks them. Local agency employees cannot afford to lose jobs because the unethical higher ups want to break laws.

The enforcement resource needed, that anyone should be allowed to access to assist them, needs to be funded, NOT BY THE TAXPAYERS, but by the very source that developed the need, the legal counsels and top executives of these agencies. The State Bar Association protects them, and takes years to pursue any complaints. Since the legal counsels receive a great deal of the tax dollars paid, then they should fund the avenue to resolve the issues they created and failed to monitor or control. City Managers and top executive officers should also help fund this enforcement resource. Funding should not be allowed to be paid by the agency. The enforcement resource should be an independent body, separate and apart from the State Bar Association, and not affiliated with the League of California Cities. The funding could be done based on a percentage of the compensation of those subject to enforcement, so the more highly they are compensated, the more cost they cover to keep themselves and their peers honest. When they are caught violating the law, very HEFTY fines should be assessed, and not paid by the agency, which also goes towards funding this enforcement resource. Perhaps if they have to fund this enforcement, especially with fines, and perhaps in some cases, jail time, they may think twice about circumventing the laws and enriching themselves and others who assist them.

This also puts the ability to scrutinize back in the hands of the voting public, where they can be their own watchdog on their elected officials.

I respectfully submit these comments and would gladly discuss the matter further, or assist to implement some meaningful changes.

Pamela Lee  
12277 Apple Valley Road, #311  
Apple Valley, CA 92308  
(760) 413-4427

## California Law and University Policy Governing Transparency of University of California Executive Compensation

There are a number of comprehensive obligations in state law and University policy that require transparency regarding compensation, particularly for members of the University's Senior Management Group.

The key components of the University's transparency regarding compensation include:

- Annual report submitted to the legislature and posted on the University's website providing detailed compensation information for members of the University's senior managers.  
[http://www.universityofcalifornia.edu/news/compensation/compensation\\_report\\_cy2009-0910.pdf](http://www.universityofcalifornia.edu/news/compensation/compensation_report_cy2009-0910.pdf)
- Annual database providing compensation information for all University employees is provided to the San Francisco Chronicle, the Sacramento Bee, any other requestors from the media or the general public. The database information is also publicly available in the UC campus libraries.
- Executive compensation actions at Regents meetings are required to be taken in open session, both at the Committee and the full Board level. The public is given an opportunity to comment before the item is acted upon.
- As part of the annual budget process, the University submits compensation data for budgeted positions offered at the UC Office of the President and 10 UC campuses in the Salary and Wages Supplement to the Governor's Budget.

Details regarding specific key University policies and applicable law are included below.



Regents Principles for Review of Executive Compensation

<http://www.universityofcalifornia.edu/regents/policies/7201.html>

- Defines “executive compensation” very broadly to include all forms of compensation, per Regents Policy on the Definition of Total Compensation: <http://www.universityofcalifornia.edu/regents/policies/7200.html>
- **Requires that action on executive compensation awards must occur in open session, for both Regents Committees and the full Board of Regents.**
- Requires that discussion and action on executive compensation *programs* must occur in open session, and must span a two-meeting cycle.
- Requires that all actions affecting executive compensation must be released to the public in a timely manner.
- Requires that notice of any meeting at which executive compensation is to be considered has been given to each regent, and that information and materials regarding the proposal, including a full disclosure of the fiscal impact, have been made available to each regent in advance of the meeting.
- **Requires an annual report on the level of compensation for Officers of the University and Principal Officers of The Regents to be submitted to the California Postsecondary Education Commission, the Joint Legislative Budget Committee, and the relevant policy and fiscal committees of the Legislature and the Governor.**

University of California Open Meetings law (California Education Code Section 92020 et seq.)

- **Requires that action on compensation for listed positions must occur in open session, for both Regents Committees and the full Board of Regents. (Ed. Code 92032(b)(7)). (Note that the University’s policy goes beyond the scope of the law to apply to all Senior Management Group members, not just listed officers).**

- **Requires that members of the public must be allowed to address the committee and full board on the proposal during or before consideration of the executive compensation action item. (Ed. Code 92032(b)(7)).**
- Requires that discussion and action on executive compensation *programs* must occur in open session. (Ed. Code 92032(b)(7)).
- Broadly defines “compensation” to include salary, benefits, perquisites, severance payments (except those made in connection with a dismissal or a litigation settlement), retirement benefits, or any other form of compensation. (Ed. Code 92032(b)(7)).
- Requires that notice of any meeting at which executive compensation is to be considered has been given to each regent, and that information and materials regarding the proposal, including a full disclosure of the fiscal impact, have been made available to each regent in advance of the meeting. (Ed. Code. 92032.5)
- Requires that the executive compensation action must be properly noticed pursuant to the Bagley Keene Act and the University of California Open Meetings law. (Ed. Code. 92032.5)
- Requires that the specific proposal has been made available to the general public prior to the commencement of the open session. (Ed. Code. 92032.5)

University of California Policy on Public Disclosure of Compensation Information  
<http://www.universityofcalifornia.edu/regents/regmeet/sept06/1cattach1.pdf>

- **Affirms that “The University is committed to making information about employee compensation available to the public. This information is routinely made available upon action by the Board of Regents and through annual reports to the Regents, the legislature and the public. In addition, it is made available upon request by individuals and the media.”**

- Provides a lengthy and detailed list of the elements of compensation that are considered publicly disclosable.
- Provides a (short) list of employment or compensation-related data that is not publicly disclosable (e.g. social security number, performance evaluation, home address).
- Requires that the policy will be prominently posted on the University's web site and employees will be clearly informed of the policy at the outset of their employment.

California Public Records Act (California Government Code Section 6250 et seq.)

- Generally requires disclosure of all records related to the University's business unless specific statutory exemptions apply. (Gov. Code 6253).
- "Personnel" exception only permits withholding of information that constitutes an "unwarranted invasion of personal privacy." (Gov. Code 6254(c)). (Note that the Supreme Court of California has opined that **disclosure of public employee salary information is required under the law, and does not constitute an "unwarranted invasion of personal privacy."** (*International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319 (Cal. 2007))).



October 26, 2010

The Honorable Christine Kehoe  
Vice-Chair, Senate Local Government Committee  
State Capitol, Room 5046  
Sacramento, CA 95814

The Honorable Lou Correa  
Senator, District 34  
State Capitol, Room 5052  
Sacramento, CA 95814

**Re: Transparency & Accountability: Pursuing the Public's Right to Know**

Dear Senator Kehoe and Senator Correa:

The California Special Districts Association (CSDA), representing over 1,000 special districts and affiliate organizations throughout the state, would like to thank you and your staff for the time and effort put into organizing the legislative oversight hearing held on October 20, 2010 in Santa Ana, California. We would also like to thank the Senate Local Government Committee for inviting our organization to testify on this critical issue on behalf of special districts.

As you know, The Honorable Bette Boatman, Contra Costa Water District, represented CSDA at your hearing. For your convenience, and per the request of the committee, I have attached a copy of Ms. Boatman's testimony. Please feel welcome to include that testimony as well as this correspondence in any committee record or hearing summary.

CSDA is committed to public transparency and accountability. We are proud of the many special districts that are leading the way in proactive efforts toward best transparency practices. This year's Special Districts Legislative Days and our next *California Special District* magazine will both focus on transparency. Through educational, written, and online resources, CSDA and our members are striving to strengthen this crucial area of governance.

Central to the discussion on transparency is the issue of compensation disclosure, which Senator Correa has demonstrated strong leadership and commitment toward. As presented in our hearing testimony, CSDA supports compensation disclosure that is useful, accurate, efficient, and uniform. We would like to work with your offices on a comprehensive policy that will, as Senator Correa stated, "apply the lesson [from the City of Bell] for real, practical solutions."

CSDA is prepared to collaborate on a process that would implement compensation disclosure equally for all levels of government and that utilizes the current State Controller format for cities and counties as a starting point. For the reasons stated in the attached testimony, we believe that this approach makes the most sense. However, we are open to alternatives that may be

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more effective, so long as they uniformly apply to all local and state agencies. As Senator Kehoe commented near the close of the hearing, "it's all taxpayer dollars." CSDA agrees, and believes that transparency is a government-wide public responsibility.

Once again, thank you for your continued efforts on transparency and accountability. Should you or your staff have any questions, or need any further information, please do not hesitate to contact me or our Legislative Director, Kyle Packham. CSDA looks forward to working with you on this key issue.

Cordially,



Neil McCormick  
Executive Director

CC: Senator Sam Aanestad  
Senator Mark DeSaulnier  
Senator Curren Price  
Assembly Member Hector DeLaTorre  
Assembly Member Chris Norby  
Assembly Member Jose Solorio  
Mr. Peter Detwiler, Staff Director, Senate Local Government Committee  
Mr. Ryan Eisberg, Policy Consultant, Senate Republican Caucus

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