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MEMORANDUM

VIA ELECTRONIC MAIL

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FROM: Christian M. Keiner
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DATE: July 10, 2015

RE: Application of AB 2040 to School Districts, County Superintendents of Schools,
and County Offices of Education

Background

On September 30, 2014, the Governor signed Assembly Bill 2040 ("AB 2040") into law. AB 2040, and the statutes that it amends, require each "local agency" to report the annual compensation information of its "elected officials, officers, and employees." The State Controller receives and publishes this information. AB 2040 became effective on January 1, 2015.

Issue

Does AB 2040 require county superintendents of schools and county offices of education (collectively, "COEs"), and school districts to provide compensation information to the State Controller?

Short Answer

No, based upon the technical language in the bill enacted by the legislature, the compensation reporting requirements of AB 2040 do not require COEs or school districts to provide compensation information to the State Controller. Instead, the State Superintendent of Public Instruction ("State Superintendent") continues to provide COE and school district financial information to the State Controller.

Discussion

Legal Background

AB 2040 amended separate, but interrelated, sections of the Government Code. For ease of reference, we will refer to these sections as "Section 12463" (Gov. Code § 12463) and "Article 9" (Gov. Code §§ 53890, et seq.).¹

Before AB 2040 was enacted, Section 12463 required the State Controller to compile and publish reports on the "financial transactions" of various types of local governments, including school districts. Subsections (a) and (b) of Section 12463 provided the rules on the reporting of "financial transactions" of "each county, city, and special district[.]" And subsection (c) of Section 12463 provided the rules on the reporting of "financial transactions of each school district within" California. Subsection (d)(1) of Section 12463 specifically defined "school district" to mean a "school district as defined in Section 80 of the Education Code." "County Superintendents" or "county offices of education" were not mentioned by Section 12463. Section 12463 further provided that the State Controller could publish information on "any other matter he or she deems of the public interest."

Article 9 specified how a "local agency" was to prepare and submit financial reports, which was to be used by the State Controller to publish its own report. Cities, counties, and districts (other than school districts) were required to provide financial reports directly to the State Controller. (Gov. Code § 53891.) School districts and COEs were required to provide financial reports to the State Superintendent, and "[n]o school district or county superintendent of schools [was] required to furnish separate reports to the [State] Controller by the provisions of this article (i.e., Article 9)." (Gov. Code § 53892.1.) Instead, the State Superintendent was required to provide to the State Controller the financial information for COEs and school districts.

Article 9 stated that the financial information provided by local agencies must include certain tax and expenditure information, but it did not require the disclosure of compensation information.

AB 2040

The main purpose behind AB 2040 was to require the State Controller to publish compensation information of cities, counties, and special districts.² The Legislature saw participation by school districts in this program as voluntary. (See attached Assembly Floor Analysis of AB 2040, at page 3, August 13, 2014.)

¹ On July 2, 2015, the Governor signed AB 341 into law. AB 341 amends Section 12463 and Article 9, but it does so in a manner that does not affect this memorandum's analysis.

² AB 2040 also provides that a local agency that is "required to report to the Controller" must publish compensation information on its website, if it has one. (Gov. Code § 53908.) For the reasons outlined in this memorandum, AB 2040 does not require school districts and COEs to report to the State Controller. Therefore, this website publication requirement does not apply to school districts and COEs.



To require cities, counties, and special districts to submit compensation information, AB 2040 amended Section 12463 and Article 9 in two important ways.

First, AB 2040, amended subsection (a) of Section 12463 to require the State Controller to publish information on the "annual compensation" of *"each county, city, and special district."* (emphasis added.) Subsection (d)(1) of Section 12463 continues to separately define "school district" as "a school district as defined by Section 80 of the Education Code." And AB 2040 did not add "county superintendents" or "county offices of education" to Section 12463. AB 2040 also did not amend subsection (c) of Section 12463 to require the State Controller to publish compensation information for school districts, although the State Controller retains its discretion to publish information on any "matter he or she deems of the public interest."

Second, AB 2040 amended Article 9 to require a local agency's financial reports to include information on the "annual compensation of a local agency's elected officials, officers, and employees." (Gov. Code § 53892(l).) However, AB 2040 did not change the method in which school district and COE financial information is reported. School districts and COEs continue to only be required to provide financial information to the State Superintendent.³ "No school district or county superintendent of schools shall be required to furnish separate reports to the [State] Controller by the provisions of this article (i.e., Article 9)." (Gov. Code § 53892.1.)

Conclusion

AB 2040 did not change how school districts and COEs are to report financial information. The State Controller continues to have no authority to require school districts and COEs to release financial information, including compensation information. Instead, the State Superintendent may request such information from school districts and COEs. The State Superintendent shall provide the financial information to the State Controller.

³ It is unclear if AB 2040 requires school districts and COEs to provide to the State Superintendent compensation information for each employee and officer. However, school districts are already required to provide certain compensation information to the State Superintendent pursuant to Education Code section 41409.3. Furthermore, the general public (but not state officials) may request compensation information of employees and officials pursuant to the Public Records Act. (Gov. Code § 6250, et seq.)



CONCURRENCE IN SENATE AMENDMENTS

AB 2040 (Garcia)

As Amended August 12, 2014

Majority vote

ASSEMBLY: 78-0 (May 28, 2014) SENATE: 36-0 (August 13, 2014)

Original Committee Reference: L. GOV.

SUMMARY: Requires local agency financial transaction reports to include information about the annual compensation of the local agency's elected officials, officers, and employees, requires local agencies to post this information on their Internet Web sites (websites), and requires the State Controller (Controller) to compile, publish, and make this information publicly available on the Controller's website.

The Senate amendments:

- 1) Specify that this bill's requirements apply to a local agency's elected officials, officers, and employees, and do not apply to a federal officer or employee serving in an official federal capacity in a local agency.
- 2) Require the Controller to compile, publish, and make publicly available on the Controller's website, in a format that may be printed and downloaded, information on annual compensation, consistent with this bill's requirement that the contents of local agency financial transaction reports include the annual compensation of a local agency's elected officials, officers, and employees, as specified.
- 3) Allow a local agency to comply with this bill's website posting requirements by posting, in a conspicuous location on its website, a link to the Controller's Government Compensation in California (GCC) website.
- 4) Make technical, clarifying and conforming changes.

EXISTING LAW:

- 1) Requires the Controller to compile and publish reports of the financial transactions of each county, city, and special district within this state, together with any other matter he or she deems of public interest.
- 2) Requires the officer of each local agency who has charge of the financial records to furnish to the Controller a report of all the financial transactions of the local agency during the next preceding fiscal year.
- 3) Defines local agency to mean "any city, county, any district, and any community redevelopment agency required to furnish financial reports" pursuant to specified sections of existing law.
- 4) Requires the report to be furnished within 90 days after the close of each fiscal year and to be in the form required by the Controller.

- 5) Requires the report to contain specified contents, including "other information that the Controller requires."
- 6) Allows the Controller to establish the GCC website, pursuant to his or her responsibility and authority to publish local agency financial transaction reports.

AS PASSED BY THE ASSEMBLY, this bill:

- 1) Required local agencies to include in the information they report annually to the Controller the annual compensation of a local agency's public officials in accordance with reporting instructions developed by the Controller pursuant to existing law, as specified, in consultation with affected local agencies.
- 2) Provided that, if a local agency that is required to report to the Controller pursuant to existing law, as specified, maintains a website, the agency shall post in a conspicuous location on its website the annual compensation of its public officials that is posted on the Controller's GCC website.
- 3) Provided that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) Unknown, likely minor reimbursable mandate costs. Local agencies could seek reimbursement for any costs incurred for compiling compensation data and including it in the annual financial report, and for posting that information on their respective websites. (General Fund)
- 2) No new costs to the Controller's Office to compile the information from annual financial reports and post it on its website because the bill codifies current practice. However, placing those requirements in statute could create cost pressures because it creates a legal compulsion to collect and publish information on public compensation; the Controller currently performs this function at his discretion.

COMMENTS:

- 1) *Purpose of this bill.* This bill requires local agency financial transaction reports to include information about the annual compensation of the local agency's elected officials, officers, and employees, requires local agencies to post this information on their websites, and requires the Controller to compile, publish, and make this information publicly available on the Controller's website. This bill is author-sponsored.
- 2) *Financial transaction reports and the GCC website.* Existing law, pursuant to Government Code Section 12463, requires the Controller to compile and publish reports of the financial transactions of each county, city, and special district within the state, "together with any other matter he or she deems of public interest."

Existing law also requires the officer of each local agency, who has charge of the financial records of the agency, to furnish to the Controller a report of all the financial transactions of the local agency during the next preceding fiscal year. Pursuant to Government Code Section 53892, the report must include specified information, including "*other information that the Controller requires.*"

The Controller launched his GCC website in response to the 2010 scandal in the City of Bell to promote government transparency and help prevent such problems from reoccurring. The website includes information about all employees with wages reportable on a Federal W-2 form. Data is self-reported by governments and is not verified by the Controller's Office.

The GCC report is a supplement to the Controller's annual financial transactions report. The authority to collect this information is granted under Government Code Sections 12463 and 53892. These reports are due to the Controller within 90 or 110 days after their fiscal year end.

Other entities participate voluntarily in the GCC program, including state agencies, k-12 school districts, courts, the University of California system, the California State University system, community colleges, First Five, and fairs and expos.

- 3) *Related legislation.* AB 2676 (Rendon) of the current legislative session, would have expanded the Controller's authority to perform audits or investigations of counties, cities, and special districts if the Controller makes specified findings that any of these local government entities is violating financial requirements in state law, state grant agreements, local charters, or local ordinances, and would have increased forfeiture amounts local agencies must pay for failing to file their financial reports with the Controller. AB 2676 was held in the Assembly Appropriations Committee.
- 4) *Previous legislation.* AB 941 (Rendon) of 2013, was substantially similar to AB 2676. AB 941 passed the Assembly Local Government Committee with a 9-0 vote on May 1, 2013. AB 941 was held in the Assembly Appropriations Committee.

AB 1035 (John A. Pérez) of 2013, changed the forfeiture amounts local agencies must pay for failing to file their financial reports with the Controller. AB 1035 passed the Assembly Local Government Committee with an 8-0 vote on April 10, 2013. This bill was substantially amended.

SB 186 (Kehoe) of 2012, was substantially similar to AB 2676. SB 186 passed the Assembly Local Government Committee with a 9-0 vote on June 27, 2012. SB 186 was held in the Assembly Appropriations Committee.

- 5) *State mandate.* This bill is keyed a state mandate, which means the state could be required to reimburse local agencies and school districts for implementing this bill's provisions if the Commission on State Mandates determines that this bill contains costs mandated by the state.
- 6) *Support arguments:* California Common Cause, in support, states, "We believe that having adequate transparency of public officials' salaries is an important tool for maintaining an honest, open, and accountable government. AB 2040 would improve transparency by

requiring local agencies themselves to make compensation information available publicly on their websites."

7) *Opposition arguments:* None on file.

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FN: 0004661