

Date of Hearing: April 6, 2022

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 2158 (Mike Fong) – As Amended March 17, 2022

**SUBJECT:** Local educational agencies: ethics training

**SUMMARY:** Requires each member of a governing board of a school district, a county board of education, or the governing body of a charter school, in service as of January 1, 2025, to receive ethics training before January 1, 2026, and at least once every two years thereafter. Specifically, **this bill:**

- 1) Adds the following to the definition of a local agency official for purposes of the ethics training requirement: a member of the governing board of a school district, a county board of education, or the governing body of a charter school, whether or not that member receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties.
- 2) Requires all local agency officials who are members of the governing board of a school district, a county board of education, or the governing body of a charter school to receive training in ethics, whether or not any member receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties.
- 3) Requires each local agency official who, as of January 1, 2025, is a member of the governing board of a school district, a county board of education, or the governing body of a charter school, except for officials whose term of office ends before January 1, 2026, to receive training in ethics before January 1, 2026. Thereafter, requires each local agency official who is a member of the governing board of a school district, a county board of education, or the governing body of a charter school to receive the training in ethics at least once every two years.

**EXISTING LAW:**

- 1) Requires each local agency official who commences service with a local agency on or after January 1, 2006, to receive ethics training no later than one year from the first day of service with the local agency. Thereafter, each local agency official is required to receive the training at least once every two years.
- 2) Permits a local agency official who serves more than one local agency to satisfy the ethics training requirements once every two years without regard to the number of local agencies with which he or she serves. (GC 53235.1)
- 3) Requires a local agency that requires its local agency officials to complete ethics training to maintain records indicating the dates that local officials satisfied the ethics training, and the entity that provided the training.

- 4) Requires a local agency to maintain these records for at least five years after local officials receive the training. Requires that these records are public records subject to disclosure under the California Public Records Act. (GC 53235.2)
- 5) Defines the following terms:
  - a) “Legislative body” includes, in part, the governing body of a local agency or any other local body created by state or federal statute, a commission, committee, board, or other body of a local agency, a board, commission, committee, or other multimember body that governs a private corporation, or limited liability company, as specified.
  - b) “Local agency” means a city, county, city and county, charter city, charter county, charter city and county, or special district.
  - c) “Local agency official” means the following:
    - i) Any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties.
    - ii) Any employee designated by a local agency governing body to receive the training specified under this article.
  - d) “Ethics laws” include, but are not limited to, the following:
    - i) Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws;
    - ii) Laws relating to claiming perquisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies;
    - iii) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws; and
    - iv) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members. (Government Code (GC) 53234)
- 6) Requires all local agency officials to receive training in ethics if a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.
- 7) Requires each local agency official to receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years.

- 8) Requires that the Fair Political Practices Commission (FPPC) and the Attorney General (AG) be consulted regarding the sufficiency and accuracy of any proposed course content and curricula developed to satisfy the training requirements. Prohibits the FPPC and the AG, when reviewing any proposed course content, from precluding an entity from also including local ethics policies in the curricula.
- 9) Authorizes a local agency or an association of local agencies to offer one or more training courses, or sets of self-study materials with tests, to meet the specified. Authorizes the courses to be taken at home, in-person, or online.
- 10) Requires all providers of training courses, as specified, to provide participants with proof of participation to meet the ethics training requirement.
- 11) Requires local agencies to provide information on training available to meet these requirements to its local officials at least once annually. (GC 53245)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Need for the bill.*** According to the author, “AB 2158 is a modest, yet important, measure that will require governing board and body members of school districts, county offices of education, and charter schools to receive training in ethics. Current law requires local agency officials to receive a 2-hour training in ethics every two years. However, the definition for local agency officials does not expressly include the governing board and body members of school districts, county offices of education, and charter schools. Since these governing board and body members make a plethora of important decisions that may carry ethical implications, they should be trained in ethics to the same extent as other local agency officials. AB 2158 requires them, starting January 1, 2025, to do exactly that.”

***Conduct of public officials.*** State law prohibits unethical conduct by public officials. For example, public officials cannot have financial interests in contracts made in their official capacities, and violations related to this requirement are crimes and can result in permanent disqualification from public office. Further, local officials cannot engage in paid activities that conflict with their public duties, they cannot solicit political contributions from other officials or their employees, and public officials with prohibited financial interests must disclose the conflict, recuse themselves, and leave the discussion until matters conclude. The Political Reform Act of 1974 also governs local officials' behavior, including disclosure of their economic interests and campaign regulations.

***Public agency officials are required to receive ethics training.*** In 2005, AB 1234 (Salinas), Chapter 700, Statutes of 2005, established new provisions for ethics training for local government officials and designated employees. The bill requires all local agency officials (primarily county supervisors and city councilmembers) to receive ethics training if a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties. Each local agency official is required to receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years.

AB 1234 required persons wishing to create a local ethics training course to consult with the AG and the FPPC concerning the sufficiency and accuracy of course content. In response to this requirement for consultation, the AG's office created the following outline regarding appropriate course content in order to provide uniform guidance.

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

- Laws prohibiting bribery (Pen. Code, § 68).
- Conflicts of Interest under the Political Reform Act (Gov. Code, §§ 87100, 87103).
- Contractual Conflicts of Interest (Gov. Code, § 1090 et seq.).
- Conflicts of Interest and Campaign Contributions (Gov. Code, § 84308).
- Conflicts of Interest When Leaving Office (Gov. Code, §§ 87406.3, 87407).

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

- Limitations on the Receipt of Gifts (Gov. Code, §§ 86203, 89503, 89506).
- Honoraria Ban (Gov. Code, § 89502).
- Misuse of Public Funds (Pen. Code, § 424; Gov. Code, § 8314; Fair Political Practices Commission v. Suitt (1979) 90 Cal.App.3d 125; Stanson v. Mott (1976) 17 Cal.3d 206).
- Prohibitions against gifts of public funds (Cal. Const., art. XVI, § 6).
- Mass mailing restrictions (Gov. Code, § 89001).
- Prohibitions against acceptance of free or discounted transportation by transportation companies (Cal. Const., art. XII, § 7).

Government transparency laws, including, but not limited to:

- Economic interest disclosure under the Political Reform Act (Gov. Code, §§ 87200 et seq.).
- Brown Act (Gov. Code, §§ 54950 et seq.).
- Public Records Act (Gov. Code, §§ 6250 et seq.).

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

- Common law bias prohibitions.
- Due process requirements.
- Doctrine of Incompatible Offices (Gov. Code, §§ 1099).
- Competitive bidding requirements for public contracts.
- Disqualification from participating in decisions affecting family members (anti-nepotism laws).

***Local educational agency governing board members.*** The ethics training requirements of AB 1234 do not apply to the governing board members of school districts, county offices of education (COEs), or the governing body members of charter schools. Upon review of the legislative history related to this bill, it appears that governing board members of local educational agencies were not contemplated for inclusion in the training requirement, although nothing in the law prohibits school and county board members from voluntarily receiving ethics training.

Governing board members of school districts, COEs, and charter schools are stewards of public funds, and therefore have tremendous responsibilities related to the governance of their local educational agency. All governing boards or bodies must contemplate and vote upon actions

related to student well-being, personnel, the use of public funds, and supporting the community at large.

As was well stated in the Senate Local Government Committee analysis of AB 1234 when it was before their committee in June 2006, “Good government requires the support of the governed. Government leaders earn their constituents’ trust by acting in the public interest and behaving with integrity. But the public’s trust in representative democracy is fragile; even small ethical lapses can swiftly undermine confidence in public institutions. Like Caesar’s wife Calpurnia, public officials must be seen to be above reproach. Responding to legislators’ concerns about local governance, AB 1234 boosts public confidence by instituting ethics training, documenting reimbursement, and clarifying when compensation is appropriate.”

Given the role and responsibilities of a governing board member of a school district or COE, and a governing body member of a charter school undertake when serving as a local agency official, completing a training in ethics laws related to their office is reasonable in order to ensure appropriate conduct and build the trust of the public they serve.

**Government Code 1090.** Government Code 1090 states that members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. In a 1983 opinion the Attorney General stated, “Section 1090 of the Government Code codifies the common law prohibition and the general policy of this state against public officials having a personal interest in contracts they make in their official capacities. Mindful of the ancient adage that ‘no man can serve two masters,’ the section was enacted to ensure that public officials ‘making’ official contracts not be distracted by personal financial gain from exercising absolute loyalty and undivided allegiance to the best interest of the entity which they serve.”

**Political Reform Act.** The FPPC was created by the Political Reform Act of 1974, a ballot initiative passed by California voters as Proposition 9. The FPPC provides written and oral advice to public agencies and officials; conducts seminars and training sessions; develops forms, manuals and instructions; and receives and files statements of economic interests from many state and local officials. The FPPC investigates alleged violations of the Political Reform Act, imposes penalties when appropriate, and assists state and local agencies in developing and enforcing conflict-of-interest codes. The FPPC regulates campaign financing and spending; financial conflicts of interest; lobbyist registration and reporting; post-governmental employment; mass mailings at public expense; and gifts and honoraria given to public officials and candidates. Governing board members of school districts and COEs are required to comply with the PRA, and in so doing, must file a statement of economic interest annually. Charter schools were added to this requirement by SB 126 (Leyva), Chapter 3, Statutes of 2019.

**California State Auditor Report of the Alum Rock Union Elementary School District.** In 2018, the California State Auditor issued a report on the Alum Rock Union Elementary School District in response to a request from the Joint Legislative Audit Committee after numerous complaints regarding the board’s actions related to awarding construction contracts, contract monitoring, and conflicts of interest. The report concluded that the district and its board of trustees must improve their governance and operations to effectively serve the community, and it would be prudent for board members to receive biennial ethics training despite the fact the board is not subject to the state requirement for other elected public offices.

***Code of ethics for school board members.*** The National School Boards Association Board of Directors endorses the following voluntary code for local school board members:

As a member of my local board of education, I will strive to improve public education, and to that end I will:

- Attend all regularly scheduled board meetings insofar as possible, and become informed concerning the issues to be considered at those meetings;
- Recognize that I should endeavor to make policy decisions only after full discussion at publicly held board meetings;
- Render all decisions based on the available facts and my independent judgment, and refuse to surrender that judgment to individuals or special interest groups;
- Encourage the free expression of opinion by all board members, and seek systematic communications between the board and students, staff, and all elements of the community;
- Work with other board members to establish effective board policies and to delegate authority for the administration of the schools to the superintendent;
- Communicate to other board members and the superintendent expression of public reaction to board policies and school programs;
- Inform myself about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by my state and national school boards association;
- Support the employment of those persons best qualified to serve as school staff, and insist on a regular and impartial evaluation of all staff;
- Avoid being placed in a position of conflict of interest;
- Take no private action that will compromise the board or administration, and respect the confidentiality of information that is privileged under applicable law; and
- Remember always that my first and greatest concern must be the educational welfare of the students attending the public schools.

***Ethics laws for school leaders in New Jersey.*** In 1992, the New Jersey State Legislature established The School Ethics Act to ensure that the conduct of school officials holds the respect and confidence of the people. The Legislature declared that school officials must avoid conduct which is in violation of their public trust or which creates a justifiable impression that the public trust is being violated. The School Ethics Act applies only to school officials, as defined, which includes school board members and administrators. The Act sets forth standards for conflicts of interest, code of ethics for school board members, annual disclosure of employment and financial interests; and school board member training requirements.

Ethics training requirements and standards differ from state-to-state. While most states offer ethics trainings for school board members and other public officials, not all require the training.

***Related legislation.*** AB 2396 (O'Donnell) of the 2019-20 Session would have required local agency officials who serve a school district, COE, or charter school as of January 1, 2022, to receive the ethics training required by specified law before January 1, 2023, and at least every two years thereafter. This bill would have also required training in K-12 public education governance laws, as defined, at least once every 4 years. The Assembly Education Committee

did not hear this bill due to the onset of the COVID-19 pandemic. This bill was held in this Committee.

SB 126 (Leyva), Chapter 3, Statutes of 2019, requires a charter school and an entity managing a charter school to comply with the same conflict of interest requirements as school districts.

AB 1234 (Salinas) of the 2005-06 Session established provisions for ethics training for local government officials and designated employees.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file

**Opposition**

None on file

**Analysis Prepared by:** Marguerite Ries / ED. / (916) 319-2087