



## State Ethics Training Requirements For Local Officials: Frequently Asked Questions (FAQs)

9/04/12 Edition

### Overview of Requirement

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

The basic thrust of AB 1234 is to require covered officials (see next question) to take two hours of training in ethics principles and laws every two years.<sup>1</sup>

### Who's Covered

#### 2. Who must receive mandatory ethics training?

Basically the requirement applies to those elected or appointed officials who are compensated for their service or reimbursed for their expenses.<sup>2</sup> The specific trigger for this requirement is whether the agency either compensates or reimburses expenses for members of any of its Brown Act covered bodies; if it does, then all elected and appointed “local agency officials” (as defined) must receive this training.<sup>3</sup> “Local agency official” means any member of a legislative body or any elected local agency official who receives compensation or expense reimbursement.<sup>4</sup>

“Local agency” means “a city, county, city and county, charter city, charter county, charter city and county, or special district.”<sup>5</sup> Thus the training requirement does *not* include agencies on which local officials serve (for example, redevelopment agency governing boards or joint powers agencies), although many such officials will likely be covered by virtue of their status with cities, counties and special districts. Note that it also does not include school districts.

Note that local agencies also have the option of requiring certain employees to receive this training.<sup>6</sup>

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

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

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

Another approach is for an agency to identify all commissioners and board members that have been reimbursed and/or compensated in the past year and notify them of their need to receive training. For others who haven't been reimbursed and/or compensated, the expense reimbursement forms required by AB 1234<sup>7</sup> could include an advisory which alerts board members and commissioners of the need to get training if they are seeking reimbursement for expenses.

**4. What about those who serve on multiple local agency bodies?**

The official only has to satisfy the requirement once (within one year of taking office and every two years after that).<sup>8</sup>

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

Many city attorneys are not convinced that AB 1234 contains the necessary findings to make it applicable to charter cities, although the bill purports to apply to charter cities by including charter cities within the definition of local agency.<sup>9</sup> However, a number of charter cities already have such training programs and/or think they would be helpful and hence, are voluntarily complying with the spirit of AB 1234. Such an approach may reflect well on a city and city officials should the local media inquire about city officials' compliance with AB 1234.

## Timing and Deadline Issues

### 6. By when must an official receive such training and how often again after that?

- **Officials in Service as of January 1, 2006.** Except for officials whose term of office ends before January 1, 2007, those in office on January 1, 2006 must receive the training before January 1, 2007.<sup>10</sup> After that, they must receive the training at least once every two years.<sup>11</sup> Officials whose term of office ends before January 9, 2007 were excused.<sup>12</sup>
- **Those Beginning Service After January 1, 2006.** Those who enter office after January 1, 2006 must receive the training within a year of starting their service. They must then receive the training every two years after that.<sup>13</sup>

Reasonable attorneys disagree how the "every two years" requirement should be interpreted. One interpretation would be that, if an official received the required training on May 15, 2011, the official would need to receive training again on or before May 14, 2013. Another would be that this same official satisfied the requirement in 2011 and needs to again satisfy the requirement in 2013.

## Compliance and Enforcement

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

When local agency officials receive the training, they will be given proof of participation.<sup>14</sup> Copies of these certificates must be provided to the agency's custodian of records and maintained as public records subject to disclosure to the media, the public and others for at least five years.<sup>15</sup>

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

The new law is directory; there is no specific penalty for failing to complete the required training.<sup>16</sup> Presumably there will be a periodic public records requests by the media, candidates and others to verify which officials have and have not met the requirements.<sup>17</sup>

Local agencies are using a variety of techniques to encourage compliance. Options include:

- 1. Circulate a List of Complying and Non-complying Officials within the Agency.** Putting who has (and who has not) complied in writing along with a reminder that the agency is expecting media and other inquiries may be one way to encourage compliance. This list can be circulated to officials with a thank you to those who have satisfied the requirement and a list of options for compliance for those who have not.
- 2. Create a Financial Penalty.** Another option for encouraging compliance is to adopt a policy that officials who have not complied with their AB 1234 training requirements will not be eligible to have their expenses reimbursed.
- 3. Make Compliance a Condition of Agency Service for Appointees.** In situations where the non-compliant official is an appointee, a local policy could provide the appointment be either rescinded or that the non-complying individual is ineligible for re-appointment.
- 4. Post Certificates on Agency's Website.** The agency can post scans of those within the agency who have complied with the requirement, which also lets the media and the public know how the official satisfied the training.

## **Content Issues, Options for Satisfying the Requirement and Trainer Qualifications**

### **9. Where can local officials get this training?**

Local agencies must provide covered officials with a list of options for satisfying this requirement at least once a year.<sup>18</sup> The training can occur in-person, online or on a self-study basis (read materials and take a test).<sup>19</sup> Agencies are not required to provide the training themselves, although a number may choose to do so.

A variety of organizations offer such training (including law firms and nonprofit organizations). In addition, there are self-study materials available from the Institute for Local Government's website ([www.ca-ilg.org/AB1234compliance](http://www.ca-ilg.org/AB1234compliance)) as well as a free online course at <http://localethics.fppc.ca.gov> or <http://www.localethics.fppc.ca.gov> that the Institute developed in collaboration with the FPPC.

The Institute also has materials for in-house counsel and others who are interested in offering such training.

### **10. How do people or organizations become certified as AB 1234 ethics trainers?**

Strictly speaking, they don't. The Attorney General and FPPC have adopted guidelines for course curriculum accuracy and sufficiency, but there is no trainer-certification requirement.<sup>20</sup>

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

### **11. What issues must AB 1234 ethics training programs address?**

The training must cover general ethics principles relating to public service and ethics laws.<sup>21</sup> "Ethics laws" are defined as including:<sup>22</sup>

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources and prohibitions against gifts of public funds;

- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act);
- Law relating to fair processes, including fair contracting requirements, common law bias requirements and due process.

The Institute has materials to address these issues. The ILG resources can be found at [www.ca-ilg.org/AB1234compliance](http://www.ca-ilg.org/AB1234compliance).

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

Note that the Attorney General's Guidelines allow those who have taken the initial overview course to go deeper into certain aspects of ethics law in subsequent compliance efforts.<sup>23</sup>

## **12. Can I get State Bar minimum continuing legal education (MCLE) credit for attending AB 1234 training?**

Yes. AB 1234 training is eligible for MCLE participatory credit,<sup>24</sup> provided the training complies with MCLE requirements. It is not, however, eligible for MCLE *legal ethics* credit.<sup>25</sup>

## **Brown Act Compliance**

### **13. Must an AB 1234 training session that will be attended by a quorum of a legislative body comply with the Brown Act?**

The consensus appears to be that the Brown Act applies and therefore, the meeting must be open to the public and properly noticed.

The Brown Act requires regular "meetings" of "legislative bodies" of local public agencies be open and public.<sup>26</sup> A "meeting" is "any congregation of a majority of the members of a legislative body at the same time and place to *hear, discuss*, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."<sup>27</sup> Theoretically, it is possible for a majority of the members of a legislative body to attend an AB 1234 training session without triggering the Brown Act provided that they neither hear

nor discuss any topic that arguably comes within the legislative body's subject matter jurisdiction.

The goal of AB 1234 training, however, is to acquaint local officials with the laws that govern their behavior and motivate them to comply with such laws. In light of this goal, it is highly likely that training attendees will ask questions related to matters within the legislative body's subject matter jurisdiction. Accordingly, the Institute believes that the best course of action is to comply with the Brown Act.

Note that AB 1234 training that occurs at conference sessions are subject to the conference session exception to the Brown Act.<sup>28</sup>

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<sup>1</sup> Cal. Gov't Code § 53235(a), (b).

<sup>2</sup> The language is potentially confusing on this point. The new law says that if a local agency provides any type of compensation or reimbursement for members of its legislative bodies, then all "local agency officials" must receive training. *See* Cal. Gov't Code § 53235(a). But the definition of "local agency official" means "any member of a local agency legislative body or any elected official who receives any type of compensation . . . or reimbursement for actual and necessary expenses incurred in the performance of official duties." *See* Cal. Gov't Code § 53234(c)(1).

<sup>3</sup> Cal. Gov't Code § 53235(a) ("If a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then all local agency officials shall receive training in ethics pursuant to this article"); § 53234(a) (defining legislative body by reference to the Brown Act, Government Code section 54952).

<sup>4</sup> Cal. Gov't Code § 53234(c)(1).

<sup>5</sup> Cal. Gov't Code § 53234(b).

<sup>6</sup> Cal. Gov't Code § 53234(c)(2).

<sup>7</sup> Cal. Gov't Code § 53232.3(a).

<sup>8</sup> *See* Cal. Gov't Code § 53235.1(c).

<sup>9</sup> Cal. Gov't Code § 53234(b).

<sup>10</sup> *See* Cal. Gov't Code § 53235.1(a).

<sup>11</sup> *See* Cal. Gov't Code § 53235.1(a).

<sup>12</sup> Cal. Gov't Code § 53235.1(a).

<sup>13</sup> *See* Cal. Gov't Code § 53235.1(b). The law requires that subsequent training occur "at least once every two years." Some agencies interpret this to mean that training may occur in successive two year periods, not necessarily before the two year anniversary of the last training. This is an area where substantial compliance based on the spirit of the law should be sufficient.

<sup>14</sup> Cal. Gov't Code § 53235.1(e).

<sup>15</sup> Cal. Gov't Code § 53235.2.

<sup>16</sup> Cal. Gov't Code § 53235.2.

<sup>17</sup> Note: in addition to maintaining records on compliance with the minimum standards imposed by AB 1234, local agencies may also want to maintain records of any additional training local agency officials received. This will enable those inquiring to ascertain the agency's and individual's full scope of commitment to understanding the ethical and legal obligations associated with public service.

<sup>18</sup> Cal. Gov't Code § 53235(f).

<sup>19</sup> Cal. Gov't Code § 53235(d).

<sup>20</sup> *See* Cal. Gov't Code § 53235(c). The FPPC adopted its guidelines as a [regulation](#)<sup>20</sup> and the Attorney General issued [General Guidelines on Course Accuracy and Sufficiency](#), which are available on the Department of Justice website: [http://caag.state.ca.us/ethics/eth\\_loc\\_guide\\_final.pdf](http://caag.state.ca.us/ethics/eth_loc_guide_final.pdf). A summary of the state's guidelines for training is also available at [www.ca-ilg.org/AB1234compliance](http://www.ca-ilg.org/AB1234compliance).

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<sup>21</sup> Cal. Gov't Code § 53235(b).

<sup>22</sup> Cal. Gov't Code § 53234(d).

<sup>23</sup> See Attorney General Guidelines, bottom of page 3, available at [http://oag.ca.gov/sites/all/files/pdfs/ethics/eth\\_loc\\_guide\\_final.pdf?](http://oag.ca.gov/sites/all/files/pdfs/ethics/eth_loc_guide_final.pdf?)

<sup>24</sup> State Bar's response to an inquiry by the Institute, November 6, 2006.

<sup>25</sup> *Id.*

<sup>26</sup> Cal. Gov't Code § 54953.

<sup>27</sup> Cal. Gov't Code § 54952.2 (emphasis added).

<sup>28</sup> Cal. Gov't Code § 54952.2(c)(2) (Conference must be open to the public and attendees must be mindful of restrictions on discussing items with colleagues).