

**Introduced by Senator Romero**

February 16, 2005

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An act to add Section 1129.5 to the Government Code, relating to public service.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as amended, Romero. Incompatible offices: elected and appointed positions.

Existing statutory law forbids a local agency officer or employee to engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed, except as specified. The common law forbids the simultaneous holding of 2 offices that exercise sovereign power that are incompatible, *as the test for which is satisfied in each of the following circumstances: (1) when one office is superior to and exercises some supervisory power over the other, or has the power to remove the incumbent of the other or to audit the accounts of the other, (2) when there are inconsistent functions or divided loyalties between the offices, or (3) when the nature and duties of the 2 offices render it improper, from consideration of public policy, for one incumbent to retain both.*

This bill would, except as specified, provide that service on a local appointed or elected governmental board, commission, committee, or other body shall be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of service on another local elected or appointed governmental board, commission, committee, or other body, ~~if either of the bodies may audit, overrule, remove~~

~~members of, dismiss employees of, or exercise supervisory powers over the other in any circumstance~~ *the service in the offices satisfies this common law test for incompatibility.* It would require an elected or appointed member of one of 2 local governmental bodies in the above-described relation to resign ~~prior to seeking election or appointment, or prior to accepting election or appointment;~~ to the 2nd, and would forbid the exercise of any of the powers of the first after acceding to the 2nd.

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

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

1 SECTION 1. Section 1129.5 is added to the Government  
2 Code, to read:  
3 1129.5. (a) Except as provided in ~~Section 1129, service on an~~  
4 *Sections 1128 and 1129, and except as provided by local*  
5 *ordinance, service on a* local appointed or elected governmental  
6 board, commission, committee, or other body shall be deemed to  
7 be inconsistent, incompatible, in conflict with, or inimical to the  
8 duties of service on another elected or appointed local  
9 governmental board, commission, committee, or other body; ~~if~~  
10 ~~either in any of the following circumstances:~~  
11 (1) *Either* of the bodies may audit, overrule, remove members  
12 of, dismiss employees of, or exercise supervisory powers over  
13 the other in any circumstance.  
14 (2) *There is any significant clash of duties or loyalties between*  
15 *the offices.*  
16 (3) *Public policy considerations make it improper for one*  
17 *person to hold both offices.*  
18 ~~(b) An elected or appointed member of one of two local~~  
19 ~~governmental bodies described in subdivision (a) shall not seek~~  
20 ~~election or appointment to the second local governmental body~~  
21 ~~prior to resigning from the first.~~  
22 ~~(e)–~~  
23 (b) An elected or appointed member of one of two local  
24 governmental bodies described in subdivision (a) shall not accept  
25 election or appointment to the second local governmental body  
26 without resigning from the first, and shall not exercise any of the  
27 powers of the first after acceding to the second.

- 1     ~~(d)~~—  
2     (c) This section shall not apply to a governmental body that  
3     has only advisory powers.

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