

AMENDED IN ASSEMBLY JULY 12, 2005

AMENDED IN ASSEMBLY JUNE 20, 2005

AMENDED IN SENATE APRIL 13, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 274

**Introduced by Senator Romero
(Coauthor: Senator Alquist)**

February 16, 2005

An act to add Section 1099 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 specified officers or employees from engaging in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, or in conflict with, or inimical to, his or her duties as an 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, 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. Existing law authorizes the Attorney General to bring an action against any person who unlawfully holds or exercises any public office.

This bill would, except as specified, provide that a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold 2 public offices that satisfy this common law test for incompatibility. It would provide when 2 offices are incompatible that a public officer shall be deemed to have forfeited the first office upon acceding to the 2nd. It would state that this provision is enforceable by the Attorney General. *It would further state that its provisions do not apply to a position of employment, as specified, or to a governmental body with only advisory powers.*

The bill would state that it ~~is~~ codifies the common law rule prohibiting an individual from holding incompatible public offices. It would further state that nothing in its provisions is intended to expand or contract the common law, and that it is intended that courts interpreting its provisions be guided by judicial and administrative precedent developed under the common law.

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 1099 is added to the Government Code,
- 2 to read:
- 3 1099. (a) A public officer, including, but not limited to, an
- 4 appointed or elected member of a governmental board,
- 5 commission, committee, or other body, shall not simultaneously
- 6 hold two public offices that are incompatible. Offices are
- 7 incompatible when any of the following circumstances are
- 8 present, unless simultaneous holding of the particular offices is
- 9 compelled or expressly authorized by law:
- 10 (1) Either of the offices may audit, overrule, remove members
- 11 of, dismiss employees of, or exercise supervisory powers over
- 12 the other office or body.
- 13 (2) Based on the powers and jurisdiction of the offices, there
- 14 is a possibility of a significant clash of duties or loyalties
- 15 between the offices.

1 (3) Public policy considerations make it improper for one
2 person to hold both offices.

3 (b) When two public offices are incompatible, a public officer
4 shall be deemed to have forfeited the first office upon acceding to
5 the second. This provision is enforceable pursuant to Section 803
6 of the Code of Civil Procedure.

7 (c) *This section does not apply to a position of employment,*
8 *including a civil service position.*

9 (d) This section shall not apply to a governmental body that
10 has only advisory powers.

11 ~~(d)~~

12 (e) For purposes of paragraph (1) of subdivision (a), a member
13 of a multimember body holds an office that may audit, overrule,
14 remove members of, dismiss employees of, or exercise
15 supervisory powers over another office when the body has any of
16 these powers over the other office or over a multimember body
17 that includes that other office.

18 ~~(e)~~

19 (f) This section codifies the common law rule prohibiting an
20 individual from holding incompatible public offices.

21 SEC. 2. Nothing in this act is intended to expand or contract
22 the common law rule prohibiting an individual from holding
23 incompatible public offices. It is intended that courts interpreting
24 this act shall be guided by judicial and administrative precedent
25 concerning incompatible public offices developed under the
26 common law.