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DEPARTMENT OF  
FINANCE

BUDGET AND POLICY REVIEW

CITY OF SACRAMENTO  
CALIFORNIA

September 4, 2002

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Law and Legislation Committee  
Sacramento, California

Honorable Members in Session:

**SUBJECT: Senate Bill 905 (Perata) – Public Employees - Proposed Conference Report No. 1  
and Assembly Bill 1243 As Amended August 29, 2002 (Wiggins) – Public  
Employment: Payroll Deductions. - OPPOSE**

**LOCATION:** Citywide

**RECOMMENDATION:**

Staff recommends that the Law and Legislation Committee oppose both bills.

**CONTACT PERSON:** Aaron Chong, Senior Management Analyst, 264-6762

**FOR MEETING OF:** September 17, 2002

**SUMMARY:**

Senate Bill 905 would amend existing state law to prohibit local jurisdictions from establishing payroll deduction programs, except as allowed by certain provisions listed below. The bill also changes existing law to expand the prohibition of the use of public resources for the activities specified in the bill, including any elected state officer, appointee, employee or consultant using state resources for a campaigning activity, or personal or other purposes not authorized by law. The bill would expand the prohibition to any elected local officer and any local appointee, employee or consultant.

The League of California Cities and the California State Association of Counties (CSAC) raised a number of problems with SB 905 in its original form and pointed out that the bill was overly broad and eliminated a number of voluntary payroll deductions that are both common in local government

employment and desired by local government employees. Examples included voluntary payroll deductions for ex-spousal payments, parental and child care.

Assembly Bill 1243, a subsequent companion bill, addresses some of the concerns raised regarding Senate Bill 905. The language in AB 1243 was designed to address these concerns.

However, it appears that all other voluntary payroll deductions are likely prohibited unless previously authorized by law.

These two bills would negatively impact local government employee payroll deduction options including City Computer Loan Program, Deferred Compensation, Flex Spending, Prepaid Legal and perhaps several others currently available.

There could be costs to the City of Sacramento payroll system to develop and implement an alternative method of collection.

Both bills are currently before the Governor for his signature.

#### **BACKGROUND:**

On Thursday, August 29, 2002, the League of California Cities sent an urgent fax to its members, including the City of Sacramento, about Senate Bill 905. The League urged its members to review and oppose the bill.

Assembly Bill 1243 is a companion bill to SB 905. AB 1243 adds language that addresses concerns raised regarding SB 905.

Both bills are currently at the Governor's office awaiting his approval.

#### **DISCUSSION:**

Senate Bill 905 and Assembly Bill 1243 would eliminate a number of voluntary payroll deductions that cities, counties and other local jurisdictions currently authorize.

Senate Bill 905 codifies a California Attorney General's opinion that employee organizations may collect payroll deductions for political purposes so long as those deductions are not collected for a specifically named candidate, clarifies that local agencies may only payroll deduct for those purposes authorized by the Legislature contained in the Government Code, and corrects a technical error in legislation previously approved this session.

Specifically, the conference committee amendments deleted all provisions of the bill, and instead:

1) Clarify that no local jurisdiction may establish payroll deduction programs unless they abide by the provisions contained in the Government Code as authorized by the Legislature. These payroll deductions previously authorized by law include:

- ❑ Insurance, medical and legal services
- ❑ Charitable Contributions
- ❑ Union Dues, including dues for retired persons and their surviving spouses
- ❑ Savings Bonds
- ❑ Banks, Savings and Loans, Credit Unions deposits and/or purchase of investment or thrift certificates by state licensed industrial loan companies
- ❑ Series of additional authorizations for counties

2) Prohibits the establishment of a payroll deduction program for the purpose of collecting donations, dues, or contributions for expenditure by a political action committee except as authorized by a collective bargaining agreement or pursuant to other specified statutory procedures.

3) Provides that an employee organization may use dues or assessments to make political contributions to candidates and ballot measures if those funds, when raised, are not specifically earmarked for any clearly identifiable local officeholder.

4) Corrects a drafting error in AB 1714 (Canciamilla), Chapter 154, Statutes of 2002.

The League of California Cities and the California State Association of Counties (CSAC) raised a number of problems with SB 905 in its original form and pointed out that the bill was overly broad and eliminated a number of voluntary payroll deductions that are both common in local government employment and desired by local government employees. Examples included voluntary payroll deductions for ex-spousal payments, parental and child care.

The companion bill, Assembly Bill 1243, addresses some of the concerns raised regarding Senate Bill 905. AB 1243 would provide that a public agency, which is defined to include counties, cities, municipal corporations, political subdivisions, public districts, and other public agencies of the state, may establish wage deduction programs for the purpose of payment for the support, maintenance, or care of an employee's child, children, family, or former spouse for whom the employee has a duty of support, payment of an employee's legal judgment, garnishment or deduction of an employee's wages pursuant to a court order, and payment of an employee's loan or obligation to a commercial lending institution.

However, it appears that all other voluntary payroll deductions are likely prohibited unless previously authorized by law.

These two bills would negatively impact local government employee payroll deduction options including the City's Computer Loan Program, Deferred Compensation, Flex Spending, Prepaid Legal Plan and possibly several others currently available.

In addition, tax laws occasionally change and these changes may involve payroll deductions that would be could also impacted by these two bills.

There could be costs to the City of Sacramento payroll system to develop and implement an alternative method of collection.

A copy of both bills are attached to this report. SB 905 is labeled "**Attachment I**" and AB 1243 is labeled "**Attachment II**".

**POLICY CONSIDERATIONS:**

Opposing SB 905 and AB 1243 is consistent with City policy of opposing state legislation that reduce the options, methods, alternatives and flexibility available to the City in dealing with problems, issues and policies of local government.

**FINANCIAL CONSIDERATIONS:**

There could be significant costs to the City of Sacramento to implement proposed changes in the bill. Passage of this bill could result in the City of Sacramento having to revamp its payroll program to reflect the changes required.

**ENVIRONMENTAL CONSIDERATIONS:**

The subject of this report does not constitute a project under the California Environmental Quality Act guidelines.

**ESBD CONSIDERATIONS:**

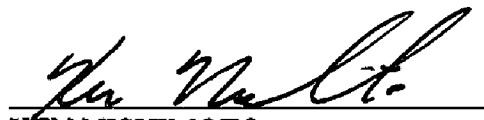
There are no ESBD considerations associated with this bill.

Respectfully submitted,



Aaron B. Chong,  
Senior Management Analyst

**RECOMMENDATION APPROVED:**



KEN NISHIMOTO  
Deputy City Manager

August 29, 2002

The Honorable Gray Davis  
Governor  
State Capitol Building,  
Sacramento, CA 95814

**RE: SB 905 (Perata) and AB 1243 (Wiggins) – OPPOSE**

Dear Governor Davis:

On behalf of the City of Sacramento's Law and Legislation Committee, I regret to inform you that we oppose SB 905 (Perata) and the companion bill Assembly Bill 1243 (Wiggins), which would amend existing state law to prohibit local jurisdictions from establishing payroll deduction programs, except as allowed by certain provisions.

These two bills are overly broad in scope and will severely restrict impact local government employee payroll deduction options currently available to City of Sacramento employees, including our deferred compensation programs, the computer loan program, the Prepaid Legal Program and several others programs.

Your opposition of this legislation would be most appreciated.

Sincerely,

STEVE COHN  
Chairperson, Law and Legislative Committee

PROPOSED CONFERENCE REPORT NO. 1  
AUGUST 27, 2002

AMENDED IN ASSEMBLY JUNE 30, 2002

AMENDED IN ASSEMBLY JUNE 12, 2002

AMENDED IN ASSEMBLY MAY 23, 2002

SENATE BILL

No. 905

Introduced by Senator Perata

February 23, 2001

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~~An act relating to elections.~~ *An act to amend Sections 1158, 3205, and 8314 of, and to add Section 3205.1 to, the Government Code, relating to public employees.*

LEGISLATIVE COUNSEL'S DIGEST

SB 905, as amended, Perata. ~~Elections~~ *Public employees.*

(1) *Under existing law, no provision of law prohibiting, restricting, or limiting the assignment or order for wages or salaries in any way prohibits, restricts, or limits the powers conferred in specified provisions of law relating to state employee salary or wage deductions.*

*This bill would specify that those provisions are of statewide interest and are intended to occupy the field of salary and wage deductions for public employees, and would prohibit local jurisdictions from establishing payroll deduction programs, except as allowed by those provisions.*

(2) *Existing law prohibits an officer or employee of a local agency from soliciting a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an*

officer or employee of that agency, and prohibits a candidate for elective office of a local agency from soliciting a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency, except as specified. Violation is a misdemeanor.

This bill would define "soliciting a political contribution" to include establishing a payroll deduction program, as specified, thereby creating a state-mandated local program by changing the definition of a crime. The bill would provide that an employee organization may use dues or assessments to make political contributions to candidates and ballot measures if these funds, when raised, are not specifically earmarked for a clearly identifiable local officeholder.

(3) Existing law makes it unlawful for any elected state officer, appointee, employee, or consultant to use or permit others to use state resources for a campaign activity, or personal or other purposes that are not authorized by law. Existing law also provides that the incidental and minimal use of state resources is not unlawful.

This bill instead would prohibit the use of public resources for the activities specified above and would also apply this prohibition to any elected local officer and any local appointee, employee, or consultant.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law specifies procedures to be used at polling places on election day, and regulates the use of poll workers at polling places.~~

~~This bill would declare the intent of the Legislature to simplify procedures at polling places in order to help attract and retain poll workers.~~

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

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

- 1    ~~SECTION 1. It is the intent of the Legislature to simplify~~
- 2    ~~procedures at polling places in order to help attract and retain poll~~
- 3    ~~workers.~~

1     SECTION 1. (a) *The Legislature finds and declares all of the*  
2     *following:*

3     (1) *The Legislature created the civil service system to break up*  
4     *the system of spoils and patronage that dominated state*  
5     *government in its early years.*

6     (2) *Employees in that civil service system and others like it*  
7     *deserve to be free from political pressure in the workplace from*  
8     *their employers.*

9     (3) *Employees in those systems ought not to be asked to pay*  
10    *tribute in exchange for favorable actions from their superiors.*

11    (b) *This act is intended to create a workplace that promotes the*  
12    *ideal that hard work will be rewarded on the basis of merit, not on*  
13    *the willingness to participate in management schemes to finance*  
14    *political activities which may or may not promote the interests of*  
15    *those employees.*

16    (c) *It is the intent of the Legislature that this act prevent*  
17    *politicians from institutionalizing payroll deductions meant for*  
18    *political purposes.*

19    SEC. 2. *Section 1158 of the Government Code is amended to*  
20    *read:*

21    1158. (a) *No provision of law prohibiting, restricting or*  
22    *limiting the assignment or order for wages or salaries in any way*  
23    *prohibits, restricts or limits the powers conferred in this article.*

24    (b) *The provisions of this article are of statewide interest and*  
25    *concern and are intended to occupy the field of salary and wage*  
26    *deductions for public employees. No local jurisdiction shall*  
27    *establish payroll deduction programs, except as permitted by this*  
28    *article.*

29    SEC. 3. *Section 3205 of the Government Code is amended to*  
30    *read:*

31    3205. (a) *An officer or employee of a local agency shall not,*  
32    *directly or indirectly, solicit a political contribution from an officer*  
33    *or employee of that agency, or from a person on an employment*  
34    *list of that agency, with knowledge that the person from whom the*  
35    *contribution is solicited is an officer or employee of that agency.*

36    (b) *A candidate for elective office of a local agency shall not,*  
37    *directly or indirectly, solicit a political contribution from an officer*  
38    *or employee of that agency, or from a person on an employment*  
39    *list of that agency, with knowledge that the person from whom the*  
40    *contribution is solicited is an officer or employee of that agency.*

1 (c) This section shall not prohibit an officer or employee of a  
2 local agency, or a candidate for elective office in a local agency,  
3 from requesting political contributions from officers or employees  
4 of that agency if the solicitation is part of a solicitation made to a  
5 significant segment of the public which may include officers or  
6 employees of that local agency.

7 (d) Violation of this section is punishable as a misdemeanor.  
8 The district attorney shall have all authority to prosecute under this  
9 section.

10 (e) For purposes of this section, the term "contribution" shall  
11 have the same meaning as defined in Section 82015.

12 (f) *For the purposes of this section, "solicit a political*  
13 *contribution" includes establishing a payroll deduction program*  
14 *for the purpose of collecting donations, dues, or contributions for*  
15 *expenditure by a political action committee, as defined by Section*  
16 *82103, except as authorized under a collective bargaining*  
17 *agreement. Nothing in this section shall affect the collection of*  
18 *dues by a local agency under Article 6 (commencing with Section*  
19 *1150) of Chapter 1 of Division 4 of Title 1, where a portion of the*  
20 *dues is used for political purposes.*

21 SEC. 4. Section 3205.1 is added to the Government Code, to  
22 read:

23 3205.1. *An employee organization may use dues or*  
24 *assessments to make political contributions to candidates and*  
25 *ballot measures if those funds, when raised, are not specifically*  
26 *earmarked for any clearly identifiable local officeholder.*

27 SEC. 5. Section 8314 of the Government Code is amended to  
28 read:

29 8314. (a) It shall be unlawful for any elected state or local  
30 officer, including any state or local appointee, employee, or  
31 consultant, to use or permit others to use ~~state-public~~ resources for  
32 a campaign activity, or personal or other purposes which are not  
33 authorized by law.

34 (b) For purposes of this section:

35 (1) "Personal purpose" means those activities the purpose of  
36 which is for personal enjoyment, private gain or advantage, or an  
37 outside endeavor not related to state business. "Personal purpose"  
38 does not include ~~an occasional telephone call, or an~~ the incidental  
39 and minimal use of ~~state public~~ resources, such as equipment or

1 office space, for personal purposes, *including an occasional*  
2 *telephone call.*

3 (2) "Campaign activity" means an activity constituting a  
4 contribution as defined in Section 82015 or an expenditure as  
5 defined in Section 82025. "Campaign activity" does not include  
6 the incidental and minimal use of ~~state~~ *public* resources, such as  
7 equipment or office space, for campaign purposes, including the  
8 referral of unsolicited political mail, telephone calls, and visitors  
9 to private political entities.

10 (3) ~~"State-~~ "Public resources" means any ~~state~~ property or  
11 asset *owned by the state or any local agency*, including, but not  
12 limited to, ~~state~~ land, buildings, facilities, funds, equipment,  
13 supplies, telephones, computers, vehicles; travel, and state  
14 compensated time.

15 (4) "Use" means a use of ~~state~~ *public* resources which is  
16 substantial enough to result in a gain or advantage to the user or a  
17 loss to the state *or any local agency* for which a monetary value  
18 may be estimated.

19 (c) (1) Any person who intentionally or negligently violates  
20 this section shall be liable for a civil penalty not to exceed one  
21 thousand dollars (\$1,000) for each day on which a violation  
22 occurs, plus three times the value of the unlawful use of ~~state~~  
23 *public* resources. The penalty shall be assessed and recovered in  
24 a civil action brought in the name of the people of the State of  
25 California by the Attorney General or by any district attorney or  
26 any city attorney of a city having a population in excess of  
27 750,000. If two or more persons are responsible for any violation,  
28 they shall be jointly and severally liable for the penalty.

29 (2) If the action is brought by the Attorney General, the moneys  
30 recovered shall be paid into the General Fund. If the action is  
31 brought by a district attorney, the moneys recovered shall be paid  
32 to the treasurer of the county in which the judgment was entered.  
33 If the action is brought by a city attorney, the moneys recovered  
34 shall be paid to the treasurer of that city.

35 (3) No civil action alleging a violation of this section shall be  
36 commenced more than four years after the date the alleged  
37 violation occurred.

38 (d) Nothing in this section shall prohibit the use of state  
39 resources for providing information to the public about the  
40 possible effects of any bond issue or other ballot measure on state

1 activities, operations, or policies, provided that (1) the  
2 informational activities are otherwise authorized by the  
3 constitution or laws of this state, and (2) the information provided  
4 constitutes a fair and impartial presentation of relevant facts to aid  
5 the electorate in reaching an informed judgment regarding the  
6 bond issue or ballot measure.

7 *(e) The incidental and minimal use of public resources by an*  
8 *elected state or local officer, including any state or local*  
9 *appointee, employee, or consultant, pursuant to this section shall*  
10 *not be subject to prosecution under Section 424 of the Penal Code.*

11 *SEC. 6. No reimbursement is required by this act pursuant to*  
12 *Section 6 of Article XIII B of the California Constitution because*  
13 *the only costs that may be incurred by a local agency or school*  
14 *district will be incurred because this act creates a new crime or*  
15 *infraction, eliminates a crime or infraction, or changes the penalty*  
16 *for a crime or infraction, within the meaning of Section 17556 of*  
17 *the Government Code, or changes the definition of a crime within*  
18 *the meaning of Section 6 of Article XIII B of the California*  
19 *Constitution.*

AMENDED IN SENATE AUGUST 29, 2002

AMENDED IN SENATE JUNE 17, 2002

AMENDED IN SENATE SEPTEMBER 14, 2001

AMENDED IN ASSEMBLY APRIL 26, 2001

AMENDED IN ASSEMBLY APRIL 2, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1243**

**Introduced by Assembly Member Wiggins**

February 23, 2001

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~~An act to add Sections 20422.5 and 20441.5 to the Government Code, relating to public employees' retirement, and making an appropriation therefor. An act to amend Section 1151.5 of the Government Code, relating to public employment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1243, as amended, Wiggins. ~~Public employees' retirement; welfare fraud investigators employment; payroll deductions.~~

*Existing law provides that a state employee may authorize deductions to be made from his or her salary or wages for payment for support of an employee's child, family, or former spouse, and for other purposes as specified.*

*This bill would provide that a public agency, which is defined to include counties, cities, municipal corporations, political subdivisions, public districts, and other public agencies of the state, may establish wage deduction programs for the purpose of payment for the support,*

*maintenance, or care of an employee's child, children, family, or former spouse for whom the employee has a duty of support, payment of an employee's legal judgment, garnishment or deduction of an employee's wages pursuant to a court order, and payment of an employee's loan or obligation to a commercial lending institution.*

~~Under the Public Employees' Retirement Law, employees of contracting agencies classified as local safety members are entitled to generally higher benefits, and subject to higher contribution rates, than those employees classified as local miscellaneous members. County peace officers, as defined, are included within the local safety member classification. Member contributions are deposited in the Public Employees' Retirement Fund, a continuously appropriated fund.~~

~~This bill would authorize contracting agencies to include specified welfare fraud investigators within the local safety member classification or to designate those investigators as county peace officers. The bill would make an appropriation by increasing the amount of employee contributions to the Public Employees' Retirement Fund.~~

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

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

- 1    ~~SECTION 1. Section 20422.5 is added to the Government~~
- 2    *SECTION 1. Section 1151.5 of the Government Code is*
- 3    *amended to read:*
- 4    *1151.5. (a) In addition to deductions authorized pursuant to*
- 5    *Section 1151, a state employee may authorize deductions to be*
- 6    *made from salaries or wages for payment for the support,*
- 7    *maintenance, or care of the employee's child, children, family, or*
- 8    *former spouse for whom the employee has a duty of support. A*
- 9    *service charge may be assessed for this deduction.*
- 10    *(b) A public agency may establish payroll deduction programs*
- 11    *for any of the following purposes:*
- 12    *(1) Payment for the support, maintenance, or care of an*
- 13    *employee's child, children, family, or former spouse for whom the*
- 14    *employee has a duty of support.*
- 15    *(2) Payment of an employee's legal judgment.*
- 16    *(3) Garnishment or deduction of an employee's wages pursuant*
- 17    *to a court order.*

1 (4) *Payment of an employee's loan or obligation to a*  
2 *commercial lending institution.*

3 ~~Code, to read:~~

4 ~~20422.5. (a) "Local safety member" also includes any~~  
5 ~~welfare fraud investigator employed by a contracting agency who~~  
6 ~~is a peace officer, as defined in subdivision (a) of Section 830.35~~  
7 ~~of the Penal Code, whose primary responsibility is maintaining the~~  
8 ~~peace, and whose principal duties include active law enforcement;~~  
9 ~~but excluding clerical personnel or those whose principal duties~~  
10 ~~are that of communications officer, identification officer,~~  
11 ~~machinist, mechanic, security officer, or are otherwise clearly~~  
12 ~~within the scope of active law enforcement, even though the~~  
13 ~~person is subject to occasional call, or is occasionally called upon,~~  
14 ~~to perform duties within the scope of active law enforcement.~~

15 ~~(b) This section does not apply to any contracting agency nor~~  
16 ~~to the employees of a contracting agency until the agency elects to~~  
17 ~~be subject to this section by amendment to its contract with the~~  
18 ~~board pursuant to Section 20474, or by express provision in its~~  
19 ~~contract with the board.~~

20 ~~SEC. 2. Section 20441.5 is added to the Government Code, to~~  
21 ~~read:~~

22 ~~20441.5. (a) "County peace officer" shall also include any~~  
23 ~~welfare fraud investigator employed by a county department of~~  
24 ~~social services who is a peace officer, as defined in subdivision (a)~~  
25 ~~of Section 830.35 of the Penal Code, whose primary responsibility~~  
26 ~~is maintaining the peace, whose duties include active law~~  
27 ~~enforcement; but excluding clerical personnel or those whose~~  
28 ~~principal duties are that of communications officer, identification~~  
29 ~~officer, machinist, mechanic, security officer, or are otherwise~~  
30 ~~clearly within the scope of active law enforcement, even though~~  
31 ~~the person is subject to occasional call, or is occasionally called~~  
32 ~~upon to perform duties within the scope of active law enforcement.~~

33 ~~(b) This section does not apply to any contracting agency nor~~  
34 ~~to the employees of a contracting agency until the agency elects to~~  
35 ~~be subject to this section by amendment to its contract with the~~  
36 ~~board pursuant to Section 20474, or by express provision in its~~  
37 ~~contract with the board.~~