

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1025 (Dixon) – As Introduced February 15, 2023

**SUBJECT:** County government: contract legal counsel: elected treasurer-tax collector.

**SUMMARY:** Requires county boards of supervisors to obtain legal counsel to assist an elected treasurer-tax collector who requests such assistance, if a county counsel or district attorney would have a conflict of interest in representing the elected treasurer-tax collector. Specifically, **this bill:**

- 1) Specifies that, upon request of the elected treasurer-tax collector of the county, the board of supervisors shall contract with and employ legal counsel to assist the elected treasurer-tax collector in the performance of their duties in any case where the county counsel or the district attorney would have a conflict of interest in representing the elected treasurer-tax collector.
- 2) Specifies that, in the event the board of supervisors does not concur with the elected treasurer-tax collector that a conflict of interest exists, the elected treasurer-tax collector, after giving notice to the county counsel or the district attorney, may initiate an ex parte proceeding before the presiding judge of the superior court. The county counsel or districts attorney may file an affidavit in the proceeding in opposition to, or in support of, the elected treasurer-tax collector's position.
- 3) Requires a presiding superior court judge that determines in an ex parte proceeding that a conflict actually exists between the board of supervisors and the elected treasurer-tax collector to also rule on whether representation by the county counsel or district attorney through the creation of an "ethical wall" is appropriate, if requested by one of the parties. The factors to be considered in this determination of whether an "ethical wall" should be created are: equal representation; level of support; access to resources; zealous representation; or, any other consideration that relates to proper representation.
- 4) Provides that, if a court determines that the action brought by the elected treasurer-tax collector is frivolous and in bad faith, the elected treasurer-tax collector's office shall pay their own legal costs and all costs incurred in the action by the opposing party.
- 5) Specifies that, if the presiding judge determines that a conflict of interest does exist, and that representation by the county counsel or district attorney through the creation of an ethical wall is inappropriate, the board of supervisors shall immediately employ legal counsel selected by the presiding judge to assist the elected treasurer-tax collector. The elected treasurer-tax collector may, in addition to the board of supervisors, separately recommend specific legal counsel for selection by the presiding judge.
- 6) Provides that this bill shall also apply to any matter brought after an elected treasurer-tax collector leaves office if the matter giving rise to the need for independent legal counsel was within the scope of the duties of the elected treasurer-tax collector while in office, and the elected treasurer-tax collector would have been authorized to request the appointment of independent legal counsel.

- 7) Defined “conflict of interest” to mean a conflict of interest as defined in Rule 1.7 of the Rules of Professional Conduct of the State Bar of California, as construed for public attorneys.
- 8) Specifies that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made.
- 9) Makes other technical and conforming changes.

**EXISTING LAW:**

- 1) Requires a county board of supervisors, at the request of the county assessor, auditor-controller, or sheriff, to obtain legal counsel if the county counsel or the district attorney would have a conflict of interest in representing the county assessor, auditor-controller, or sheriff, among other related provisions. [Government Code (GC) § 31000.6]
- 2) Provides that, except as otherwise provided, the county officers to be elected by the people are the treasurer, county clerk, auditor, sheriff, tax collector, district attorney, recorder, assessor, public administrator, and coroner. (GC § 24009)
- 3) Specifies that, except the board of supervisors, sheriff, district attorney, and assessor, any county office that is required to be elective may become an appointive office. In order to change an office from elective to appointive, a proposal shall be presented to the voters of the county and approved by a majority of the votes cast on the proposition. Any county office changed from elective to appointive may be changed back from appointive to elective in the same manner. (GC § 24009)
- 4) Provides that, by ordinance, the board of supervisors may consolidate the duties of certain of the county offices in one or more combination, including treasurer and tax collector, treasurer and recorder, treasurer and assessor, and treasurer, and public administrator. (GC § 24300).
- 5) Specifies that, in addition to 4) above, the board of supervisors may consolidate the office of auditor, controller, treasurer, tax collector, and director of finance. (GC § 24300.5)

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state mandated local program.

**COMMENTS:**

- 1) **County Governance.** Existing law provides for county powers and governance, including an elected county board of supervisors, an elected county sheriff, an elected district attorney, and an elected assessor. The powers of a county can only be exercised by the board of supervisors or through officers acting under the authority of the board or authority conferred by law. The board supervises the official conduct of all county officers, particularly as their activities pertain to the management and disbursement of public funds. The board of supervisors is also vested with the constitutional authority to provide for the number, compensation, tenure, and appointment of employees.
- 2) **County Counsel.** State law creates additional county officers, including a treasurer and tax collector, and, if appointed by the board of supervisors, a county counsel. The county counsel is appointed by the board of supervisors and may only be removed by a grand jury or

the board of supervisors for cause, such as for misconduct, malfeasance, or failing to perform their duty.

Existing law defines “conflict of interest” as a conflict of interest specified in the Rules of Professional Conduct of the State Bar of California, as construed for public attorneys. Specifically, Rule 1.7 says the following:

- a) A lawyer shall not, without informed written consent from each client, represent a client if the representation is directly adverse to another client in the same or a separate matter, unless otherwise specified.
  - b) A lawyer shall not, without informed written consent from each affected client, represent a client if there is a significant risk the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client, a former client or a third person, or by the lawyer’s own interests, unless otherwise specified.
- 3) **County Treasurer/Tax Collector.** County treasurers typically receive and keep safely all money belonging to the county and all other money directed by law to be paid to them and pay it out, rendering the account as required. If delegated to the treasurer by the board of supervisors, the treasurer may invest or reinvest the funds of the county and the funds of other depositors in the county treasury. The treasurer must then assume full responsibility for those transactions until the board of supervisors either revokes its delegation of authority or decides not to renew the annual delegation. State law often dictates which types of investments can be made and requires the treasurer to meet certain educational, professional and training criteria.

California law assigns to county tax collectors the duty to collect all taxes, including real and personal property taxes, school and special district taxes, and taxes on business licenses. As part of these duties, tax collectors administer the billing and collections process for property taxes, determining delinquency and default, and administering the sale of tax-defaulted property, among other obligations.

Most treasurers and tax collectors are elected officials, although some are appointed by the board of supervisors. County supervisors have the authority to combine all of the following offices: treasurer and tax collector, treasurer and recorder, treasurer and assessor, and treasurer, and public administrator. According to the California Association of County Treasurers and Tax Collectors (CACTTC), “there are six consolidated, elected offices of Auditor-Controller-Treasurer-Tax Collector in California; there are thirteen appointed treasurer-tax collectors; there are thirty-nine elected treasurer-tax collectors in this State. Of note, twenty-one of those elected officeholders are women.”

- 4) **Bill Summary and Author’s Statement.** This bill requires county boards of supervisors to obtain independent legal counsel to assist an elected county treasurer-tax collector if a county counsel or district attorney would have a conflict of interest in representing the elected treasurer-tax collector. This bill also conforms related provisions. CACTTC is the sponsor of this bill.

According to the author, “Treasurer-Tax Collectors do not have authorization through Government Code to request outside legal counsel when a conflict of interest exists in representation. This exclusion leaves those elected officeholders in the position of facing enormous personal financial burden if they need to hire an attorney to represent them when County Counsel cannot provide representation due to a conflict. Historically, Treasurer-tax Collectors have either had to hire outside counsel or had to represent themselves (and were not attorneys) because they did not have outside counsel. Rare conflicts do arise. Should the Legislature wait until the next conflict before acting, it could be too late for the affected individual elected official. AB 1025 will authorize outside legal representation to be approved by the Board of Supervisors to assist the Treasurer-Tax Collector in the performance of their duties in any case where the County Counsel/County Attorney or District Attorney would have a conflict of interest in representing the Treasurer-Tax Collector.”

**Previous Legislation.** AB 1579 (Kehoe), Chapter 41, Statutes of 2001, required each county board of supervisors to provide the county sheriff with independent legal counsel when a conflict of interest arises with county counsel or the district attorney.

SB 292 (Bates) of 2017 would have required county boards of supervisors to obtain independent legal counsel to assist a county auditor-controller who requests such assistance, if a county counsel or district attorney would have a conflict of interest in representing the auditor-controller. SB 292 was held in the Assembly Appropriations Committee.

AB 3068 (Daly), Chapter 307, Statutes of 2018, required county boards of supervisors to obtain independent legal counsel to assist a county auditor-controller if a county counsel or district attorney would have a conflict of interest in representing the auditor-controller.

- 5) **Arguments in Support.** The California Associations of County Treasurers and Tax Collectors proclaim that, “In rare circumstances, such as with regard to County Pool participants which include schools and some special districts, the County Treasurer-Tax Collector must represent all pool participants, and not just the County’s own funds. If there were legal challenges associated with a pool management issue, a conflict will arise. Another example is when a Board of Supervisors differs from the Tax Collector on a tax sale matter in potential litigation; the County Counsel may not be able to represent both the Board and the Tax Collector in such situations. Ensuring the Treasurer-Tax Collectors can make prudent and fair decisions in their administration of the tax collection and treasury management duties, without fear of personal financial hardship due to the need to avail themselves of outside counsel at their own expense, legislation is needed to ensure a process is in place for the Board to concur there is a conflict and make administrative and budgeting arrangements in order to secure outside counsel for the Treasurer-Tax Collector. Of note, the protection being proposed in AB 1025 only covers the need for outside counsel in the case of a conflict when the Treasurer-Tax Collector has been acting to administer their statutory duties; in no event would this protection apply to cases where a Treasurer-Tax Collector has acted illegally or criminally in the course of the work.

“It is important to note that the vast majority of the time when counsel is needed, County Treasurer-Tax Collectors concur that County Counsel is more than capable of providing this critical legal service to their office. In fact, there is no current known circumstance where a Treasurer-Tax Collector is incurring personal expense to represent themselves in a legal

proceeding regarding their administration of duties. However, when a conflict of interest arises, it is a matter of fairness and equity that, when appropriate, a County Board can hire outside counsel to mitigate a conflict of interest under Rule 1.7 of the State Bar of California.

6) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Association of County Treasurers and Tax Collectors [SPONSOR]  
California State Association of County Auditors  
Sierra County Auditor-Controller/Treasurer Tax Collector

**Opposition**

None on file

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