

Transparency & Accountability: Pursuing the Public's Right to Know

A Legislative Oversight Hearing

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Rancho Santiago Community College District
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Table of Contents

	<u>Page</u>
Introduction	1
What State Law Requires	3
Should State Law Require More Compensation Disclosure?	6
What Compensation Should Public Officials Disclose?	7
Which Public Officials Should Disclose Their Compensation?	8
How Should Public Officials Disclose Their Compensation?	11
Appendix: Existing Law	13
Sources & Credits	16

Sunlight is said to be the best of disinfectants.

Louis Brandeis, "Other people's money."
Harper's Weekly, December 20, 1913

The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

California Constitution, Article I, §3 (b)
Added by Proposition 59 (2004)

Openness in government is essential to the functioning of a democracy.

International Federation of Professional & Technical Engineers, Local 21 v. Superior Court
California Supreme Court, 42 Cal.4th 319 (2007)

**Transparency & Accountability:
Pursuing the Public's Right to Know
A Legislative Oversight Hearing**

This briefing paper prepares the members of the Senate Local Government Committee for their October 20, 2010 oversight hearing on the requirements for public officials to disclose their compensation.

At the request of Senator Lou Correa, the Committee agreed to hold a hearing in Santa Ana to explore legislative reforms in light of recent disclosures about unusual compensation practices in the City of Bell and elsewhere. The October 20 hearing gives legislators a chance to explore four broad policy questions:

- Should state law require more compensation disclosure?
- What compensation should public officials disclose?
- Which public officials should disclose their compensation?
- How should public officials disclose their compensation?

Introduction

Beginning in July, newspaper articles reported that the City of Bell's city council members received salaries that total \$1,800 annually for their council service.

However, most of Bell's city council members also received annually:

\$18,895 for serving on the Public Financing Authority.

\$18,895 for serving on the Surplus Property Authority.

\$18,895 for serving on the City Housing Authority.

\$18,895 for serving on the Planning Commission.

\$720 for serving on the Community Redevelopment Agency.

Bell's contract with its former city manager paid him \$23,000 for each biweekly pay period. The contract provided automatic 12% raises if the City had a "positive cash position" in the previous fiscal year. Among other benefits, the contract required the City to pay for the employee's costs of PERS membership for retirement benefits. The City agreed to fully reimburse any expenses of the employee and his dependents that were not covered by the City's medical, dental, and vision insurance policies. The contract also allowed the former city manager to borrow up to \$80,000 from the City, repaid with his vacation leave time.

Reacting to the Bell stories, legislators proposed these reforms:

SB 501 (Correa) would have required local officials and key staff to file annual compensation forms. Status: Died on the Senate Floor.

AB 192 (Gatto) would have limited PERS liability for an employee's excessive compensation. Status: Died in the Senate Rules Committee.

AB 194 (Torrico) would have limited the amount of compensation used to calculate a public employee's pension. Status: Vetoed.

AB 827 (De La Torre) would have required performance reviews before raises to executive staff and would have prohibited automatic raises and contract renewals. Status: Vetoed.

AB 900 (de León) requires the City of Bell to pay for reimbursing excess property tax bills for retirement benefits. Status: Signed; Chapter 223, Statutes of 2010.

AB 1955 (De La Torre) would have required local governments to adopt staff contracts in public and would have stopped redevelopment activities in cities with excess compensation. Status: Failed on the Senate Floor.

AB 2064 (Huber) would have required the state government and local agencies to post their officers and employees' annual salaries on their websites. Status: Died in the Senate Government Organization Committee.

On August 3, State Controller John Chiang required cities and counties (but not special districts and school districts) to identify elected officials and public employees' compensation as part of their required fiscal reports to the state. The Controller plans to post this information on his website, starting in November.

On August 13, State Controller John Chiang reported that the initial phase of his audit of Bell's finances discovered that the City overcharged property taxpayers for retirement benefits.

On September 15, Attorney General Edmund G. Brown Jr., filed civil suits against four Bell council members and four city officials, charging fraud, civil conspiracy, waste of public funds, and breach of fiduciary duty.

On September 21, Los Angeles County District Attorney Steve Cooley arrested eight former and current Bell officials and officers on felony charges connected with their compensation practices.

On September 22, State Controller John Chiang released an audit of Bell's finances that found a lack of accounting controls resulted in fiscal mismanagement in compensation practices, bond funding, contracts, local taxes, and real estate deals.

On September 22, the Joint Legislative Audit Committee, the Assembly Accountability and Administrative Review Committee, and the Assembly Local Government Committee jointly held an oversight hearing in Sacramento. Called "Local Government Transparency & Compensation," the hearing was an opportunity for the Assembly Members to hear from the State Auditor, the State Controller's Office, and the Attorney General's Office. Local officials and members of the public also talked to the Assembly Members.

On October 18, the Assembly Accountability and Administrative Review Committee will hold a hearing in the City of Bell to listen to residents' concerns and consider legislative responses.

What State Law Requires

The laws that govern public officials' compensation appear in several constitutional provisions and statutory locations. Although not exhaustive, this summary explains some of those limits and procedures. The Appendix, prepared by the Assembly Local Government Committee, provides citations.

Compensation Amounts

The California Constitution requires all *county boards of supervisors* to set their own compensation by ordinance. Some counties link their supervisors' pay to the compensation received by superior court judges or to the counties' own management employees. The California Constitution also allows *charter counties* to set county employees' compensation.

The California Constitution allows *charter cities* to determine the process for setting the compensation of their municipal officers and employees.

General law cities may pay salaries to their council members, using a statutory schedule based on population:

Up to and including 35,000 residents	\$300 a month
Over 35,000 and up to and including 50,000	\$400 a month
Over 50,000 and up to and including 75,000	\$500 a month
Over 75,000 and up to and including 150,000	\$600 a month
Over 150,000 and up to and including 250,000	\$800 a month
Over 250,000 residents	\$1,000 a month

By ordinance, a city council can increase its salaries beyond these statutory amounts, but a raise can't exceed 5% a year since the last increase. State law prohibits automatic salary increases. With majority-voter approval, city council members can receive salaries that are higher or lower than the statute prescribes.

Unless specifically authorized by state law, **general law cities** can't provide higher compensation for their council members' service on other commissions, committees, boards, or authorities. Some state laws limit the compensation that city council members can receive when they serve on other bodies. However, if another statute allows compensation, but does not set an amount, state law limits the maximum amount to \$150 a month. These statutory limits on general law cities do not apply to what a city can provide its council members for retirement, health and welfare, and federal social security benefits, if the city pays the same benefits for its employees. These statutory limits do not apply to the reimbursement of council members' actual and necessary expenses (AB 11, De La Torre, 2005).

Most **special districts** pay stipends to the members of their governing boards; usually a statutorily set amount for each meeting or each day of service. A few special districts have statutory authority to pay monthly salaries to their governing boards.

State law allows the governing boards of **school districts** and **community college districts** to receive monthly salaries, based on the districts' average daily attendance and the counties' populations. The **county boards of education** may receive monthly salaries based on their counties' populations.

Procedural Requirements

While the California Constitution appears to give counties and charter cities control over their compensation practices, a series of court decisions explains "that there is a clear distinction between the *substance* of a public employee labor issue

and the *procedure* by which it is resolved. The District Court of Appeal's decision in *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322 repeated the rule that "procedural statutes do not conflict with the constitutional powers of local governments."

Counties, cities, and special districts (but not school districts) must adopt written policies that control their reimbursements for expenses. In addition, if a local agency compensates its governing body or key staff, those local officials must receive ethics training every two years (AB 1234, Salinas, 2005).

The ***Meyers-Milias-Brown Act*** governs local governments' relations with their employees and portions of the Education Code govern school districts and community college districts' employee relations. These collective bargaining and representation procedures generally do not apply to executive employees --- county administrators, city managers, special district managers, school superintendents, community college presidents --- who are employed by, and report directly to, local elected governing boards.

The governing bodies of all local agencies (including school districts) must ratify their executive employees' contracts of employment in open session and reflect those decisions in their minutes. This requirement applies to superintendents, deputy superintendents, assistant superintendents, associate superintendents, community college presidents, community college vice presidents, community college deputy vice presidents, general managers, city managers, county administrators, or similar chief administrative or executive officers. These employment contracts and settlement agreements must be publicly available (SB 1996, Hart, 1992).

The ***California Public Records Act*** requires public records to be open to inspection during office hours and gives every person a right to inspect public records, with specific exceptions. The Act also provides the procedures for requesting copies of public records. Among the specific exemptions are employment contracts between public agencies and public officials or employees.


The ***Ralph M. Brown Act*** requires local agencies' meetings to be "open and public," with specific exceptions. For example, a local agency's legislative body may meet in closed session to consider the appointment, employment, evaluation, discipline, or dismissal of an employee unless the employee requests a public session. However, the Brown Act prohibits local officials from taking final action in a closed session on an unrepresented employee's compensation.


The California Supreme Court explored the tension between personal privacy and public information in *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319. The Supreme Court said “that disclosure of government salary information serves a significant public interest.” The Court also explained that a “public employee’s salary relates to a particular person, but ... it is a matter of public interest and not primarily a matter of the individual’s private business.”


The *Political Reform Act* requires public officers and key employees to file annual statements of economic interest that disclose their investments, property interests, and sources of income. Local officials and key employees file their annual statements with their agencies’ clerks. Statements of economic interest (“Form 700”) are open for public inspection; copies must be available within two business days of receipt.


Should State Law Require More Compensation Disclosure?

The first of the four policy questions facing state legislators is whether state law should require more compensation disclosure. Some observers believe that if Bell’s residents had known how much money their council members were making, they would have resisted sooner. Similarly, if Bell’s council members knew more about their key staff’s compensation, they might not have approved increases.

 *Does state law give Californians enough information about the compensation paid to their public officers and officials?*

 *Should state law require public agencies to disclose the compensation they pay to their officers and officials?*

 *Do constitutional and statutory guarantees of personal privacy prevent public agencies from disclosing the amounts or types of compensation they pay their public officers and officials?*

 *Should the Legislature codify the California Supreme Court’s conclusions from its 2007 “Engineers” decision? Should there be exemptions for peace officers and other public safety employees?*

What Compensation Should Public Officials Disclose?

Even among those who advocate for more compensation disclosure, not everyone agrees about what constitutes compensation. Some believe that listing public officers and key staffs' salaries is enough information. Others point out that the public cost of employees' benefits offsets what may appear to be lower salaries.

Consider the hypothetical example of two chief executive officers who are employed by two different agencies to perform identical duties. Agency A pays its chief executive officer \$110,000 a year, while the chief executive officer of Agency B makes \$130,000. Comparing only their annual salaries is misleading if Agency A fully pays its CEO's PERS premiums, while CEO B pays half of her PERS cost. Although her annual salary is higher, CEO B's net income may be lower. From the taxpayer's point-of-view, the public cost to Agency A of its CEO's total compensation may be more than what Agency B spends to compensate its CEO.


Responding to public concerns after the Bell disclosures, about 90% of the city managers responded to a survey by the League of California Cities. The League asked city managers to report the amount of money in "Box 5" of their 2009 federal W-2 forms. The League explained that the Box 5 amount includes salaries and many fringe benefits that are subject to federal income taxation. Box 5 does not include the cities' payments for defined benefit retirement programs or the cities' costs of health insurance. Some city managers included additional information about their compensation. The League of California Cities posted these results online: www.cacities.org/index.jsp?zone=locc&previewStory=28201#.


Some cities have started posting their officials' compensation online. For example, the website for the City of Laguna Hills (Orange County) now includes a "Public Officials' Compensation Report" which describes the salaries and stipends paid to its city council members. It also includes salary information for seven key staff positions plus the combined total of each staff member's annual compensation. However, the report does not identify the cost of each compensation category: www.ci.laguna-hills.ca.us/civica/inc/displayblobpdf2.asp?BlobID=3307.


The County Administrative Officers Association of California conducted a survey similar to the League of California Cities' survey, asking county administrators to report their "Box 5" compensation and to comment on the other types of compensation they received in 2009. That survey is not available online.


This summer the California State Senate began posting its employees' salaries online: www.senate.ca.gov/~newsen/senate_payroll_081510.pdf. Also, the California State Assembly posts online the salaries of Assembly Members and their staff: www.assembly.ca.gov/defaulttext.asp.

 Salaries. *Should public officials disclose their annual salaries?*

 Benefits. *Should public officials disclose the employers' costs of their benefits? Which benefits? Defined benefit retirement programs? Deferred compensation programs? Employer costs of health benefits, including medical, dental, eyewear, and counseling programs? Life insurance premiums? The costs of providing benefits to dependents and family members?*

 Reimbursements. *Should public officials disclose the employer's payments to reimburse officials for travel and out-of-pocket costs?*

 Perquisites. *Should public officials disclose the other monetary and nonmonetary perquisites of office that their employers provide? Which perks? Vehicle allowances? Telecommunication allowances? Housing and clothing allowances? Professional dues?*

 Ethics training. *Should public officials disclose if state law requires them to receive ethics training? If so, should public officials report the date of their most recent ethics class?*

Which Public Officials Should Disclose Their Compensation?

One hallmark of the American federal system is the deliberate fragmentation of government institutions --- no public agency has enough political power to operate alone. In addition to the separation of state government's powers into legislative, executive, and judicial branches, governance in California relies on many directly elected constitutional officers. One result of this deliberate institutional fragmentation is how hard it is to keep track of who is responsible for what.

State law also sets up regional agencies and local governments. In all of these state, regional, and local governments there are *public officers* (both elected and

appointed) who make public policy and *public officials* (employees) who carry out those policies.

☞ Constitutional officers. *Should state law require constitutional officers and their key employees to disclose their compensation?*

☞ State agencies and departments. *Should state law require state agency secretaries and state department directors and their key employees to disclose their compensation?*

☞ The Legislature. *Should state law require legislators and their key employees to disclose their compensation?*

☞ The courts. *Should state law require justices and judges and their key employees to disclose their compensation?*

☞ University of California. *Should state law require the UC Regents and key UC employees to disclose their compensation?*

There are literally thousands of regional and local entities: 58 counties, 481 cities, about 3,300 special districts (of which about 1,800 have directly elected or appointed governing boards), perhaps 1,200 joint powers agencies (JPAs), about 1,100 school districts, 72 community college districts, 58 local agency formation commissions (LAFCOs), and 31 air pollution control districts and air quality management districts (APCDs and AQMDs).


In other words, there may be about 18,000 local elected officers who employ tens of thousands of local executives and senior managers.


In determining who should disclose compensation, SB 501 (Correa, 2010) proposed to use the standard set by the Political Reform Act. If the Political Reform Act requires a local officer or official to file an annual statement of economic interests (“Form 700”), then SB 501 would have required that person to also file an annual compensation disclosure form.


SB 501 specifically referred to Government Code §87200:

87200. This [disclosure] article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

The Fair Political Practices Commission says that more than 100,000 public officials must file Form 700 annual statements of economic interests. The Commission annually receives about 23,000 Form 700 filings from state officials and multi-county agencies, while local officials file their annual statements with their own agencies.

 *Local governments. Should state law require local government officers and officials to disclose their compensation? Which? Counties? Cities? Special districts? Joint powers agencies?*


 *Schools. Should state law require school entities' officers and officials to disclose their compensation? Which? School districts? Community college districts? County offices of education, county boards of education, and county superintendents?*


 *Regional agencies. Should state law require regional agencies' officers and officials to disclose their compensation? Which? LAFCOs? APCDs and AQMDs? Regional land use commissions like San Francisco Bay Conservation and Development Commission, the Tahoe Regional Planning Agency, the Coastal Commission, the Delta Planning Commission, and the Delta Stewardship Council?*


How Should Public Officials Disclose Their Compensation?

Advocates differ over how public agencies and public officials should disclose their compensation. Some believe that there should be a statewide database that annually collects information about public officials' compensation and posts the results online.


Others worry that the state government's experience with building online databases suggests that technological approaches result in expensive cost overruns and missed deadlines. They suggest following the approach in the Political Reform Act, with public officials filing public documents with their own agencies' clerks. SB 501 (Correa) would have used that method.

 *Should a statewide electronic database collect and manage compensation disclosure information?*

 *If so, who should be responsible for designing and operating the database? The Fair Political Practices Commission? The Attorney General? The Secretary of State? The State Auditor?*

 *What is a realistic cost to construct and operate a statewide database?*

 *Should public officials annually report their compensation to their own agencies' clerks?*

 *If so, who should be responsible for designing and disseminating a standard reporting form and instructions? The Fair Political Practices Commission? The Attorney General? The Secretary of State? The State Auditor?*


 *What is a realistic cost to develop and disseminate a reporting form?*


The California Constitution requires the state government to pay for the costs of new state mandated local programs. State law contains complex and sometimes cumbersome procedures for local governments to file reimbursement claims with

the Commission on State Mandates which then adjudicates the local claims and recommends reimbursement amounts to the Legislature.

Some requirements which seemed inexpensive when enacted have become the subject of significant claims for state reimbursement. For example, the Legislature amended the Brown Act to require local officials to prepare and then post their meeting agendas 72-hours before public meetings (AB 2674, Connelly, 1986; SB 26, Kopp, 1993; SB 1426, Burton, 1993). Legislators thought that the compliance costs would be minor. Nevertheless, the Legislative Analyst's Office reports that local officials claim over \$20 million annually to prepare agendas, post agendas, disclose the results of closed sessions, and train local officials.

SB 501 (Correa) attempted to avoid significant reimbursement claims by imposing its disclosure requirements on the public officers and officials and not on the local agencies. However, if the local government had a website, SB 501 would have required the agency to post the compensation disclosure information.

 *Who should disclose compensation information? The public agency that pays compensation? The individual who receives compensation?*

 *Should legislators expect local governments to file reimbursement claims for the costs of computing and then disclosing their public officials' compensation?*

 *Are there ways to reduce the compliance costs?*

Appendix: Existing Law

- 1) Authorizes a city council to enact an ordinance providing that each member of the city council shall receive a salary. *[Government Code §36516 (a) (1)]*
- 2) Prescribes population-based limits on salaries that general law cities are authorized to pay city council members. These limits range from a maximum of \$300 per month for cities with a population of 35,000 or less to a maximum of \$1,000 per month for cities with over 250,000 residents. *[Government Code §36516 (a) (2)]*
- 3) Authorizes the salary of council members to be increased, beyond the statutorily provided amount, by an ordinance or by an amendment to an ordinance, but the amount of the increase shall not exceed an amount equal to 5% for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted. *[Government Code §36516 (a)(4)]*
- 4) Prohibits an ordinance from being enacted or amended to provide automatic future increases in council member salaries. *[Government Code §36516 (a)(4)]*
- 5) Provides that at any municipal election, the question of whether city council members shall receive a salary for services, and the amount of that salary, may be submitted to the electors. *[Government Code §36516 (b)]*
- 6) States that if a majority of the electors voting at the election favor it, all of the council members shall receive the salary specified in the election call. *[Government Code §36516 (b)]*
- 7) Allows city council members to be reimbursed for actual and necessary expenses incurred in the performance of official duties. *[Government Code §36514.5]*
- 8) Specifies that a city council may not authorize compensation to any of its members for any purpose in an amount exceeding the salary city council members currently receive unless that additional compensation is authorized by statute. *[Government Code §36516 (c)]*
- 9) States that unless otherwise specified by statute, an elected member of a city council who serves on a commission, committee, board, authority, or similar body that is created by, or is under the jurisdiction of, a city council shall not receive compensation for that service in excess of \$150 per month for each commission, committee, board, authority, or similar body upon which the member serves. *[Government Code §36516 (c)]*
- 10) States that any amounts paid by a city for retirement, health and welfare, and federal social security benefits shall not be included for purposes of determining salary, provided that the same benefits are available and paid by the city for its employees. *[Government Code §36516 (d)]*
- 11) Requires, under Article XI of the Constitution of California, that properly adopted city charters supersede any existing charter, and with respect to municipal affairs shall supersede all

laws inconsistent therewith.

- 12) States, in Article XI of the Constitution of California, that it shall be competent in all city charters to provide, in addition to those provisions allowable by the Constitution, and by the laws of the state for:
 - a) The constitution, regulation, and government of the city police force;
 - b) Subgovernment in all or part of a city;
 - c) Conduct of city elections; and,
 - d) Plenary authority is hereby granted, subject only to the restrictions of Article XI, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation.

- 13) Requires, under Article XI of the Constitution of California, a county charter to provide for:
 - a) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance; and;
 - b) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

- 14) Provides that any ordinance which changes supervisorial salaries shall become effective 60 days after its adoption. *[Government Code §25123.5]*

- 15) Requires the board of supervisors to prescribe the compensation of all county officers and provide for the number, compensation, tenure, appointment and conditions of employment of county employees. Except as otherwise required by Section 1 or 4 of Article XI of the California Constitution, such action may be taken by resolution of the board of supervisors as well as by ordinance. *[Government Code §25300]*

- 16) Requires, under the Brown Act, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. *[Government Code §54953]*

- 17) Requires, at least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, to post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed

session. *[Government Code §54954]*

- 18) Authorizes a legislative body of a local agency to hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation. *[Government Code §54957.6]*
- 19) Prohibits closed sessions from including final action on the proposed compensation of one or more unrepresented employees. *[Government Code §54957.6]*
- 20) Governs, under the Meyers-Milias-Brown Act, labor-management relations and collective bargaining in California local government. *[Government Code §3500-3511]*
- 21) Provides that all contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes. *[Government Code §53262]*
- 22) Requires all contracts of employment between an employee and a local agency employer to include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18. *[Government Code §53260]*
- 23) Provides that in enacting the Public Records Act, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. *[Government Code §6250]*
- 24) Provides that every employment contract between a state or local agency and any public official or public employee is a public record. *[Government Code §6254.8]*

Prepared by Katie Kolitsos, Chief Consultant, Assembly Local Government Committee (September 2010).

Sources & Credits

The following publications and reports helped the Senate Local Government Committee's staff prepare this briefing paper:

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