

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2823 (Gatto) – As Amended March 31, 2016

SUBJECT: Political Reform Act of 1974: economic interest disclosure.

SUMMARY: Increases various conflict of interest thresholds in the Political Reform Act (PRA), and generally requires greater detail on public officials' Statements of Economic Interests (SEIs) about the values of those officials' investments, real property interests, and income.

Specifically, **this bill:**

- 1) Increases the threshold at which a public official's financial interest can potentially create a conflict of interest under the PRA, as follows:
 - a) Raises the conflict of interest threshold for interests in real property from \$2,000 to \$10,000;
 - b) Raises the conflict of interest threshold for investments in a business entity from \$2,000 to \$5,000; and,
 - c) Raises the conflict of interest threshold for sources of income, other than gifts or specified loans, from \$500 to \$1,000.
- 2) Revises the monetary ranges that specified public officials or candidates, when filing an SEI, use to describe the value of their investments, interests in real property, and income.
- 3) Makes technical and corresponding changes

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest, as specified. Provides that an official has a financial interest in a decision, for these purposes, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:
 - a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more;

- b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more;
 - c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, or received by, the public official within 12 months prior to the time when the decision is made;
 - d) Any business entity in which the public official is a director, officer, partner, trustee, or employee, or holds any position of management; or,
 - e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating an amount that equals or exceeds the gift limit (currently \$460 in a year) that is provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.
- 3) Requires candidates for, and current holders of, specified elected or appointed state and local offices and designated employees of state and local agencies to file SEIs disclosing their financial interests, including investments, real property interests, and income. Requires filers to file the SEIs annually and at other periods of time, such as when assuming or leaving office.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Transparency and disclosure are essential to protecting public resources, preventing corruption, and restoring public trust. This legislation will finally bring disclosure requirements into the 21st century. AB 2823 will ensure that California's public officials are more transparent in their business, investment, and income disclosures, which will further confirm that our trusted elected officials are using their positions to serve all citizens equally.

AB 2823 has two main components. 1) It will modernize the financial interest thresholds that necessitate a public official excusing him or herself from a governmental decision. These numbers have been updated only once since 1974. 2) It will include additional middle tiers and upper tiers in the financial disclosures on the FPPC's Form 700, ensuring that the public has a more accurate view of the financial holdings and potential conflicts of interest for their public officials.

- 2) **Previous Legislation:** AB 10 (Gatto) of 2015, was similar to this bill, but it contained additional provisions that would have required SEIs to contain more detailed information

about a public official's business partners and about the business activity of business entities disclosed on the SEI, and would have required the SEI of specified public officials to include a disclosure of governmental decisions on which the public official was required to recuse himself or herself from participating due to a conflict of interest. AB 10 was vetoed by Governor Brown. In his veto message, the Governor wrote "The Political Reform Act already requires public officials to disclose their income, investments and business activities with enough particularity so that conflicts of interest can be identified. This bill adds yet more complexity to existing reporting requirements without commensurate benefit, and I am not convinced that this bill will provide more useful information to the public."

AB 2162 (Portantino) of 2012, would have revised the dollar thresholds that are used to report the value of investments, real property interests, and income, when a public official files a SEI, thereby providing greater specificity about the value of those investments, property interests, and income. AB 2162 was vetoed by Governor Brown. In his veto message, the Governor argued that "The law already requires public officials to disclose their income and investments with enough particularity so that conflicts of interest can be identified," and indicated that he was "not convinced that this bill will provide more useful information to the public."

Given the fact that the Governor has vetoed legislation that is similar to this bill twice in the last four years, it is unclear whether there is reason to believe that this bill will receive more favorable consideration from the Governor. Although this bill does not include certain provisions that were in AB 10, as detailed above, this bill is fairly similar to AB 2162. In light of that fact, it is not clear that the differences between this bill and AB 10 are sufficient to address the Governor's stated reason for vetoing AB 10.

- 3) **Statements of Economic Interests:** As part of the PRA's comprehensive scheme to prevent conflicts of interest by state and local public officials, existing law identifies certain elected and other high-level state and local officials who must file SEIs. Similarly, candidates for those positions must file SEIs. Other state and local public officials and employees are required to file SEIs if the position they hold is designated in an agency's conflict of interest code. A position is designated in an agency's conflict of interest code when the position entails the making or participation in the making of governmental decisions that may foreseeably have a material financial effect on the decision maker's financial interests. The information that must be disclosed on an SEI, and the location at which an SEI is filed, varies depending on the position held by the individual who is required to file an SEI. Although there are some exceptions, individuals who are required to file an SEI typically must file that document with the agency of which they are an elected official or by which they are employed.
- 4) **Financial Interests:** Under existing law, when a public official or a candidate for public office is required to disclose a financial interest on his or her SEI, the filer is not required to disclose the exact value of the interest, but instead must select a monetary range that describes the value of the interest. As noted above, this bill revises the monetary ranges that public officials use to describe the values of their financial interests on SEIs. In general, the revised disclosure categories in this bill would provide greater specificity about the values of financial interests held by public officials. Additionally, this bill increases the thresholds at

which certain financial interests of a public official can give rise to a conflict of interest that requires the official to recuse himself or herself from participating in a governmental decision. The changes to the conflict of interest thresholds and disclosure categories that are proposed by this bill are detailed below:

Financial Interest	Existing Law	This Bill
<p>Interest in Real Property</p> <ul style="list-style-type: none"> Conflict of Interest Threshold: SEI Disclosure Ranges: 	<p>\$2,000</p> <p>\$2,000 - \$10,000 \$10,000.01 - \$100,000 \$100,000.01 - \$1 million Over \$1 million</p>	<p>\$10,000</p> <p>\$10,000 - \$100,000 \$100,000.01 - \$250,000 \$250,000.01 - \$500,000 \$500,000.01 - \$750,000 \$750,000.01 - \$1 million \$1,000,000.01 - \$2 million Over \$2 million</p>
<p>Investment</p> <ul style="list-style-type: none"> Conflict of Interest Threshold: SEI Disclosure Ranges: 	<p>\$2,000</p> <p>\$2,000 - \$10,000 \$10,000.01 - \$100,000 \$100,000.01 - \$1 million Over \$1 million</p>	<p>\$5,000</p> <p>\$5,000 - \$10,000 \$10,000.01 - \$50,000 \$50,000.01 - \$100,000 \$100,000.01 - \$250,000 \$250,000.01 - \$500,000 \$500,000.01 - \$1 million \$1,000,000.01 - \$2 million Over \$2 million</p>
<p>Income</p> <ul style="list-style-type: none"> Conflict of Interest Threshold: SEI Disclosure Ranges: 	<p>\$500</p> <p>\$500 - \$1,000 \$1,000.01 - \$10,000 \$10,000.01 - \$100,000 Over \$100,000</p>	<p>\$1,000</p> <p>\$1,000 - \$10,000 \$10,000.01 - \$50,000 \$50,000.01 - \$100,000 \$100,000.01 - \$250,000 \$250,000.01 - \$500,000 Over \$500,000</p>

5) **More Detailed Disclosures on SEIs:** One of the original purposes of the PRA was to ensure that public officials disclose income and assets that could be affected by official actions and disqualify themselves from participating in decisions when they have conflicts of interest. In background material provided by the author's office, the author argues that revising the

disclosure categories for public officials' financial interests is warranted in order to ensure that the public has more accurate information about the financial holdings and potential conflicts of interest for public officials. If a public official or a candidate reports that he or she receives income of over \$100,000 from one source, isn't that sufficient information to determine whether there could be a possible conflict of interest regarding related public policy issues? On the other hand, if a public official or candidate's net worth exceeds tens or hundreds of millions of dollars, disclosure of that information may seem reasonable. Determining appropriate financial disclosure rules is a subjective task, and the committee may wish to consider whether the benefit of the increased specificity proposed by this bill outweighs the additional burdens that such increased specificity imposes for those who are required to file financial disclosure reports.

- 6) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094