

Date of Hearing: April 15, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 10 (Gatto) – As Amended April 7, 2015

SUBJECT: Political Reform Act of 1974: behested payments and economic interest disclosures.

SUMMARY: Makes several significant changes to the Political Reform Act (PRA) of 1974. 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 a statement of economic interests (SEI), use to describe the value of their investments, interests in real property, and income.
- 3) Requires a public official or candidate who is required to disclose a business entity investment on his or her SEI because the official or candidate is a director, officer, partner, or trustee of the business entity, to provide a thorough and detailed description of the business entity's activities and disclose the names of all business partners who share a financial interest in the business entity on the SEI, based on criteria established by the Fair Political Practices Commission (FPPC).
- 4) Requires a public official or candidate who is required to disclose his or her pro rata share of income to a business entity on an SEI to include a thorough and detailed description of the business activity of the business entity, instead of a general description of the entity's business activity.
- 5) Requires a public official who holds an office listed in Section 87200 of the Government Code (a complete list of these offices are detailed under "existing law" below) to disclose on his or her SEI each governmental decision for which a financial interest resulted in the official's disqualification from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision. Requires the disclosure to identify the governmental decision, the date that the decision was made or considered, the financial interest that created the conflict of interest, and any other relevant information that

the FPPC determines appropriate.

- 6) Requires candidates who are not elected officials, and elected officials for a year after leaving office, to report any payment that is made at the behest of that person for a legislative, governmental, or charitable purpose within 30 days following the date on which such payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year in which they are made. Requires the statement to be filed with the following entity:
 - a) In the case of a candidate, with the officials and agencies with which the candidate is required to file campaign statements; and,
 - b) In the case of a former elected officer, with the agency with which the officer was required to file such statements when he or she was an elected officer.
- 7) Makes technical and corresponding changes.

EXISTING LAW:

- 1) Prohibits a public official from making, participating in making, or in any way attempting to use his 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, 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, 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.

- 2) 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.
- 3) Lists certain high-ranking public officials in Government Code Section 87200 (these officials are known, and are hereinafter referred to, as "87200 filers") who are subject to the most expansive disclosure requirements under the PRA. Provides that these 87200 filers include all of the following:
 - a) Elected state officers;
 - b) Judges and commissioners of courts of the judicial branch of government;
 - c) Members of the Public Utilities Commission;
 - d) Members of the State Energy Resources Conservation and Development Commission;
 - e) Members of the FPPC;
 - f) Members of the California Coastal Commission;
 - g) Members of the High-Speed Rail Authority;
 - h) Members of planning commissions;
 - i) Any of the following county offices: Members of the board of supervisors; district attorneys; county counsels; county treasurers; and county chief administrative officers;
 - j) Any of the following city offices: Mayors; members of the city council; city managers; city attorneys; city treasurers; city chief administrative officers;
 - k) Other public officials who manage public investments; and,
 - l) Candidates for any of the offices listed above.
- 4) Requires an 87200 filer who is disqualified from participating in a governmental action because of a financial conflict of interest, except for members of the Legislature, to do the following upon identifying the conflict of interest or potential conflict of interest and immediately prior to the consideration of the matter:
 - a) Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required;

- b) Recuse himself or herself from discussing and voting on the matter, or otherwise acting on the matter in violation of existing law; and,
 - c) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters. Provides that notwithstanding this restriction, a public official who has a conflict of interest may speak on the issue during the time that the general public speaks on the issue.
- 5) Requires a candidate who is an elected officer to report a payment made at the behest of that officer, made principally for legislative, governmental, or charitable purposes, within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year. Requires this report to be filed with the elected officer's agency and to contain all of the following:
- a) The name and address of the payor;
 - b) The amount of the payment;
 - c) The date or dates that the payment or payments were made;
 - d) The name and address of the payee;
 - e) A brief description of the goods or services provided or purchased, if any; and,
 - f) A description of the specific purpose or event for which the payment or payments were made.

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 10 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 10 has five 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. 3) It will require a more detailed disclosure of these holdings, specifically a more thorough description of any businesses and the names of any business partners. 4) It will add an additional disclosure to the Form 700 that requires public officials to specify any instances in the previous year where a financial interest has been cause for a recusal from being involved with or making a governmental decision. 5) It will extend the behested payment reporting requirements to include those candidates who are required to file a campaign statement and elected officials for one year after leaving elective office.

- 2) **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. While the exact number of people that are required to file SEIs is unknown, the FPPC has estimated that the number exceeds 200,000 officials and employees statewide.

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.

- 3) **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 most cases, the revised disclosure categories in this bill would provide greater specificity about the values of financial interests held by public officials, although in some cases, this bill could provide somewhat less specificity about the value of financial interests held by the public official.

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 - \$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 - \$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 - \$100,000 \$100,000.01 - \$250,000 \$250,000.01 - \$500,000 Over \$500,000</p>

- 4) **Is More Disclosure Always Better?** 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 the 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 officials' financial holdings.

Additionally, the author points to recent news articles questioning the Governor's business holdings in arguing for the need to require greater detail about the business holdings and business partners of 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? Similarly, does the public need to know the names of a public official's business partners in order to determine whether the official's business interests potentially create a conflict of interest? 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.

- 5) **Behested Payments and Previous Legislation:** In 1996, the FPPC amended its regulatory definition of the term "contribution" to include any payment made "at the behest" of a candidate, regardless of whether that payment was for a political purpose. As a result, payments made by a third party at the request or direction of an elected officer were required to be reported as campaign contributions, even if those payments were made for governmental or charitable purposes.

The change in regulations by the FPPC, along with a number of advice letters issued by the FPPC interpreting the new definition of "contribution," limited the ability of elected officers to co-sponsor governmental and charitable events. In one advice letter, the FPPC concluded that a member of the Legislature would be deemed to have accepted a campaign contribution if, at his behest, a third party paid for the airfare and lodging for witnesses to testify at a legislative hearing.

In response to the FPPC's modified definition of "contribution," the Legislature enacted SB 124 (Karnette), Chapter 450, Statutes of 1997, which provided that a payment made at the behest of a candidate for purposes unrelated to the candidate's candidacy for elective office is not a contribution. SB 124 specifically provided that a payment made at the behest of a candidate principally for a legislative, governmental, or charitable purpose is not considered a contribution or a gift. However, SB 124 also required that such payments made at the behest of a candidate who is also an elected officer, when aggregating \$5,000 or more in a calendar year from a single source, be reported to the elected officer's agency. The elected officer must report such a payment within 30 days.

Examples of payments made at the behest of an elected officer that have to be reported under this provision of law include charitable donations made in response to a solicitation sent out by an elected officer or donations of supplies and refreshments made by a third party for a health fair that was sponsored by an elected officer.

This bill makes candidates for elective office, and former elected officials for one year after leaving office, subject to the requirement to disclose behested payments. The reason for such

an expansion is unclear. Because candidates and former public officials are not in a position to make governmental decisions, unlike officeholders, the existing rationale for requiring behested payment reporting does not necessarily extend to candidates and former public officials. Furthermore, committee staff is unaware of any instances in which candidates who are not public officials, or former public officials, have solicited behested payments in any significant amount.

- 6) **Arguments in Support:** The California Newspaper Publishers Association submitted a letter of support to this bill prior to the most recent amendments. The primary effect of those amendments was adding the provisions of this bill that expand behested payment reporting. In support of the prior version of the bill, which primarily dealt with conflict of interest thresholds and information that is required to be disclosed on SEIs, the California Newspaper Publishers Association wrote:

This bill would increase the reporting requirements in the Form 700, which elected officials and government workers must file annually to reveal whether they have any financial interests that create a conflict of interest in their professional work. The Form 700s submitted by several public officials have been analyzed by journalists who found that there is a paucity of information current law actually requires an official to report. Creating greater obligations of disclosure will provide the public with more detailed information regarding a public official's financial holdings and potential conflicts of interest.

AB 10 creates greater transparency by giving the public a broader look at an official's financial holdings. It also creates a more robust database for the public to analyze election and political data. CNPA supports this legislation as it increases public access to data regarding the financial interests that impact public officials' decisions.

- 7) **Previous Legislation:** 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 "[t]he 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."
- 8) **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

Association of California Water Agencies
California Newspaper Publishers Association (prior version)

Opposition

None on file.

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