

Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 1582 (Travis Allen & Harper) – As Amended February 18, 2016

**SUBJECT:** Political Reform Act of 1974: Conflict of Interest Codes: public postsecondary educational institutions.

**SUMMARY:** Requires employees of public postsecondary educational institutions to disclose items of value that they receive as a result of adopting specific course materials. Specifically, **this bill** requires the Conflict of Interest Code (COI Code) of each public postsecondary educational institution to require an employee of that institution to disclose all of the following that the employee receives as a result of making or influencing a decision to adopt specific course materials required for coursework or instruction:

- 1) Any item of value, including the donation of equipment or goods and any payment, loan, advance, or deposit of money, actual or promised; and,
- 2) Any royalties or other compensation received from the sale of the course materials.

**EXISTING LAW:**

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Requires every state and local governmental agency to adopt and promulgate a COI Code. Requires each COI Code to include a specific enumeration of the positions within the agency, with the exception of certain high-ranking public officials who are identified in statute, that involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. Requires each person who holds such an enumerated position to file periodic statements of economic interests (SEIs) disclosing his or her financial interests in accordance with the provisions of the COI Code.
- 3) Prohibits a public official at any level of state or local government from making, participating in the 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 that he or she has a financial interest, as defined. Provides, pursuant to a regulation adopted by the FPPC, that making, participating in, or influencing a governmental decision for these purposes does not include teaching decisions, including an instructor's selection of books or other educational materials at his or her own school or institution.
- 4) Requires every employee of the California State University (CSU) system who is designated in the system's COI Code to complete an ethics training course every two years.
- 5) Prohibits, pursuant to the College Textbook Transparency Act, a faculty member or other entity that chooses course materials to be used at a public postsecondary educational institution from demanding or receiving anything of value for adopting specific course materials, except as

specified. Provides that this restriction does not prohibit an employee from receiving royalties or other compensation from the sales of course materials that include the instructor's writing or other work or from receiving honoraria for academic peer review of course materials. Provides that any royalties, honoraria, or other compensation received is subject to the employer's policies relating to employee conflicts of interest.

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

**COMMENTS:**

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

California is the only state in the nation that has a blanket exemption from the state conflict of interest laws for textbook adoption decisions at public colleges. A custom textbook can be something as simple as changing the name on the cover, or affixing the university seal. AB 1582 would simply amend the Conflict of Interest code section of the [PRA] to require an employee of a post-secondary educational institution to disclose if they receive royalties or compensation for required coursework to increase transparency for our future generation.

2) **Teaching Decisions and the PRA:** In order to ensure that public officials perform their duties in an impartial manner, the PRA includes a comprehensive set of rules to prevent conflicts of interest by public officials. As part of that comprehensive scheme, public officials and employees are required to file SEIs if the position they hold is designated in an agency's COI Code. State law requires a position to be designated in an agency's COI 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.

Furthermore, existing law generally prohibits a public official from making, participating in, or influencing a governmental decision in which the official has a financial interest. This restriction is broadly applicable to all public officials—not just to those who are required to file SEIs. Regulations adopted by the FPPC identify certain actions that a public official may take that are not considered to be making, participating in, or influencing governmental decisions for the purposes of the state's conflict of interest laws. One such exception provides that teaching decisions, including an instructor's selection of books or other educational materials at his or her own school or institution, or other similar decisions incidental to teaching, are not considered to be making, participating in, or influencing governmental decisions for the purposes of the state's conflict of interest laws. According to FPPC staff, this exception has existed since 1978.

Because these types of teaching decisions are not considered governmental decisions for the purposes of the PRA, professors and teachers at public postsecondary educational institutions generally are not required to file SEIs unless they are also administrators with broader responsibilities. Relatedly, professor and teacher positions typically are not designated in the COI Codes that are adopted by the postsecondary institutions. In fact, a review of the COI Codes for the University of California (UC) and CSU systems found that neither system

designates professor and teacher positions in their COI Codes. Similarly, a review of the COI Codes for each of the ten largest community college districts in the state (by enrollment) found that none of those community college districts designates professor or teacher positions in their COI Codes.

- 3) **Implementation Issues:** This bill seeks to require the COI Codes of public postsecondary educational institutions to require employees to disclose compensation or items of value that they receive as a result of making or influencing a decision to adopt specific course materials. The manner in which this disclosure would occur is unclear. While this bill does not explicitly require professors, teachers, and instructors at postsecondary educational institutions to file SEIs, the author's staff has indicated that it is his intent for this disclosure to occur on SEIs. To the extent that this bill is interpreted and implemented in a manner that requires professors, teachers, and instructors to file SEIs, however, this bill would significantly increase the number of employees at postsecondary educational institutions who are required to file SEIs. Currently, the CSU system estimates that approximately 4,000 employees are required to file SEIs system-wide; if this bill requires CSU to designate all faculty members under its COI Code, the system estimates that an additional 25,000 employees—for a total of 29,000 employees—would be required to file SEIs. All such employees additionally would be required to take ethics training classes every two years. The UC system estimates that a minimum of 12,000 employees would be required to comply with this bill, while information maintained by the Community College Chancellor's Office suggests that more than 55,000 community college employees would be subject to the provisions of this bill.
- 4) **Are SEIs the Right Mechanism for the Disclosure Sought?** As noted above, SEIs are required to be filed by certain public officials and employees as part of the state's comprehensive set of rules designed to prevent conflicts of interest. The primary purpose of having public officials and employees publicly identify their economic interests on SEIs is to identify those situations where employees or officials may have conflicts of interests while discharging their official duties.

According to the author, the intent of this bill is to require disclosure of royalties and other compensation that employees of post-secondary educational institutions receive as a result of a decision to adopt course materials; it is not intended to prohibit employees from adopting course materials for which they will receive royalties, nor is it intended to override the FPPC's regulation that provides that teaching decisions do not create a conflict of interest. This bill requires the disclosure to occur, however, through a mechanism that exists primarily to prevent conflicts of interest. Requiring public employees to disclose financial interests that cannot create a conflict of interest through that mechanism could cause confusion, and could create inconsistencies within the state's conflict of interest laws that could complicate compliance with those laws. Given that this bill does not seek to make the selection of course materials subject to the state's conflict of interest laws generally, it is unclear whether using the COI Codes of public agencies is the most appropriate mechanism for obtaining the author's desired disclosure. As noted below (see "Related Legislation"), at least one other bill that is currently pending in this legislative session would provide for disclosure of royalties received by postsecondary educational employees without modifying the state's conflict of interest laws.

5) **Related Legislation:** AB 2214 (Harper), which is pending in the Assembly Higher Education Committee, requires CSU Trustees and the governing board of each community college district, and requests the UC Regents, to require faculty members to annually disclose income they received from a publisher, periodical, or provider of online content for royalties, advances, consulting services, or for any other purpose.

6) **Arguments in Support:** In support of this bill, the California State Student Association writes:

In compliance with state conflict of interest laws, designated employees of public postsecondary institutions are required to fill out FPPC Form 700. This form requires some employees to provide information about personal financial interests in order to ensure that the decisions being made are in the best interest of the public. Currently, California is one of the few states that has a blanket exemption in the conflict of interest laws for textbook adoption decisions at public postsecondary institutions. This exemption could lead to a faculty member making a decision that is not in the best interest of students.

AB 1582 will add a conflict of interest clause to the FPPC report for the individuals who make, or have decision making authority, to adopt course materials. By making these small changes, faculty members would be required to be more transparent about the royalties they receive from course materials they had decision making authority to adopt.

7) **Arguments in Opposition:** In opposition to this bill, the Fair Political Practices Commission writes:

[We] question whether an instructor's choice of what book to use in their classroom is considered a "governmental decision" for purposes of regulation and enforcement under the [PRA]. The bill undoubtedly would require a significant increase in the number of professors and faculty members who would have to file [an SEI] for the sole purpose of reporting their selection of text books or other educational materials.

[Under] this bill, although an employee would be required to file [an SEI] and disclose the financial interest, the disclosure would not result in disqualification. This proposed carve-out from the [PRA] – where these filers would be allowed to participate in decisions despite having an identified conflict on their [SEI] – is inconsistent with the express exception for royalties in the Education Code, and potentially confusing to both the reporting officials and the public. The [FPPC] has significant concerns with requiring such disclosure, but nonetheless stating it is not a conflict of interest under the [PRA].

8) **Previous Legislation:** AB 1548 (Solorio), Chapter 574, Statutes of 2007, the College Textbook Transparency Act, requires faculty and other textbook adopters to follow specified practices in the adoption and purchase of textbooks.

SB 386 (Runner) of 2009, would have required faculty members at community colleges and

at CSU to prepare a justification for any adoption of a new edition of a textbook within three years after the adoption of a previous edition of that textbook. The justification would have been required to include a disclosure of any financial interest of the faculty member related to requiring students to purchase the new edition of the textbook. The UC system was requested to comply with the bill. SB 386 was held on the Senate Appropriations Committee's suspense file.

- 9) **Double-Referral:** This bill has been double-referred to the Assembly Higher Education Committee.
- 10) **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**

California State Student Association

##### **Opposition**

Fair Political Practices Commission

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