

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 1828 (Dodd) – As Amended April 5, 2016

**SUBJECT:** State Board of Equalization: members: conflicts of interest.

**SUMMARY:** Eliminates the current \$250 campaign contribution threshold that triggers conflict of interest requirements for members of the Board of Equalization (BOE) under the Quentin L. Kopp Conflict of Interest Act of 1990 (Kopp Act). Expands the conflict of interest provisions of the Kopp Act to apply to contributions made in the 12 months after a proceeding before the BOE, and to apply to behested payments aggregating \$5,000 or more. Specifically, **this bill:**

- 1) Provides, for the purposes of the Kopp Act and this bill, that the term "contribution" includes payments totaling \$5,000 or more in the aggregate that are made at the behest of a member of the BOE principally for legislative, governmental, or charitable purposes, thereby expanding the conflict of interest provisions of the Kopp Act to include behested payments. Provides that "at the behest of a member of the BOE," for these purposes, means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express prior consent of a member of the BOE.
- 2) Lowers the campaign contribution threshold that triggers the conflict of interest requirements under the Kopp Act from \$250 to \$0.
- 3) Prohibits a member of the BOE from requesting, suggesting, or accepting a contribution of any amount from a party, participant, or agent of a party or participant in the 12 months *following* an adjudicatory proceeding before the BOE in which the party or participant is involved. By virtue of the definition of the term "contribution" in this bill, this prohibition also applies to behested payments aggregating \$5,000 or more.
  - a) Provides, for the purposes of this restriction, that "suggesting" a contribution means mentioning or implying as a possibility, or putting forward as a consideration.
  - b) Provides that if a member of the BOE receives a contribution that is prohibited under this provision, the member's acceptance of that contribution shall be deemed lawful if it is returned within 30 days from the time the member knows or has reason to know about the contribution and the decision in the adjudicatory proceeding.
- 4) Requires a party or participant in an adjudicatory proceeding before the BOE that makes a contribution to a member of the BOE in the 12 months following the decision in that proceeding to disclose that contribution to the BOE within 30 days of making the contribution. By virtue of the definition of the term "contribution" in this bill, this requirement also applies when a party or participant makes behested payments aggregating \$5,000 or more.

- 5) Requires the BOE to make any disclosure of a contribution or behested payment, which is made by a party or participant in an adjudicatory proceeding, publicly available on the BOE's Internet Web site.
- 6) Makes various findings and declarations about the BOE, its authority, and potential conflicts of interest, including the following:
  - a) As a quasi-judicial body, the BOE is subject to strict contribution limits under the Kopp Act. The Kopp Act recognizes the unique positions of BOE members as both elected officials and judges presiding over tax appeals.
  - b) The strict contribution limits of the Kopp Act do not apply to payments made at the behest of a BOE candidate or committee when the payment is made for purposes unrelated to his or her candidacy for elected office.
  - c) Despite passage of the Kopp Act in 1990, a loophole allowing parties before the BOE, as well as parties' agents, to aggregate multiple contributions that individually fall below the \$250 limit but together exceed \$250 creates a perceived conflict of interest when the BOE hears the parties' appeals. Similarly, payments made at the behest of a BOE member by parties with an approaching appeal before the BOE create a perceived conflict of interest.
  - d) The intent of the Legislature in enacting this bill is to eliminate the perceived conflicts of interest associated with contributions and behested payments by parties, participants, and their agents related to appeals before the BOE.
- 7) Makes corresponding and technical changes.

**EXISTING LAW:**

- 1) Limits, pursuant to the Kopp Act, the ability of a member of the BOE to participate in an adjudicatory proceeding that involves a participant or party who contributed \$250 or more in the preceding 12 months to that member, as follows:
  - a) Requires a member of the BOE who knows or has reason to know that he or she received a contribution or contributions totaling \$250 or more in the last 12 months from a party, participant, or agent of a party or participant, to an adjudicatory proceeding before the BOE, to disclose the fact on the record prior to rendering a decision on the proceeding.
  - b) Requires a party or participant in an adjudicatory proceeding before the BOE to disclose on the proceeding's record any contribution or contributions of \$250 or more made in the last 12 months by that party, participant, or his or her agent to any member of the BOE. Provides that when a "close corporation" is the party or participant, disclosure only applies to the majority shareholder.
  - c) Prohibits a member of the BOE from making, participating in making, or otherwise attempting to use his or her official position to influence, a decision in an adjudicatory proceeding if the member knows or has reason to know that he or she received a

contribution or contributions totaling \$250 or more in the last 12 months from a party, participant, or agent of a party or participant, and if the member knows or has reason to know that the participant has a financial interest in the decision, as specified. Permits a member to participate in a decision under the circumstances described above if the member returns the contribution within 30 days from the time that he or she knows or has reason to know about the contribution and the adjudicatory proceeding.

- 2) Provides that a knowing or willful violation of the Kopp Act is a misdemeanor, and provides that in addition to other penalties provided by law, a violation is punishable by a fine of \$10,000, or three times the amount the person failed to disclose or report properly, whichever is greater. Requires prosecution for a violation to be commenced within four years after the date of the violation.
- 3) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 4) Prohibits a person, other than a small contributor committee or political party committee, from making any contribution totaling more than \$7,000 to any candidate for BOE, and prohibits candidates from accepting a contribution that exceeds that amount. Requires the FPPC to adjust this limit in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index, and requires those adjustments to be rounded to the nearest \$100.
- 5) Provides that a payment made at the behest of a candidate is a contribution unless at least one of the following criteria are satisfied:
  - a) Full and adequate consideration is received from the candidate; or,
  - b) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to the candidate's candidacy for elective office.
- 6) 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:

The BOE is a unique governmental entity. Its members maintain the dual role of administering the sales and use tax and a variety of fee programs, as well as adjudicating disputes between taxpayers and the state regarding those same programs. Further, the BOE Chair, and the State Controller, a BOE member, also serve on the state Franchise Tax Board, which administers income and franchise taxes. Disputes pertaining to those two programs are also adjudicated by the BOE. Finally, the BOE issues regulations and sets property tax values for utilities, railroads and telecommunication companies.

California elected officials, including BOE members are subject to campaign contribution limits in primary and general elections. However, BOE members are subject to an additional set of rules – the Quentin L. Kopp Act, which requires BOE members to recuse themselves, or return a contribution of \$250 or more, before voting on matters affecting the contributor for a 12 month period. Nothing in the Act, however, prohibits multiple individuals within the same organization who did not actually work on the case from contributing up to the \$250 limit without triggering the Act's recusal/return provisions.

As is the case with any other elected official, BOE members can request an individual or organization contribute money to a non-profit entity, like a charity. If a contribution over a certain amount is made at a member's behest, the member must report it, as any elected official is required to do.

Notwithstanding existing campaign finance and reporting laws in general, and the additional rules pertaining to the BOE, recent reports have highlighted contribution activities of individuals and organizations having cases before the [BOE], which, while not illegal, raise concerns about potential conflicts of interest. For example, organizations having cases before the BOE have had multiple individuals associated with that same organization each make \$249 contributions to a single [BOE] member, thereby complying with the letter of the Kopp Act, but cumulatively, exceeding the contribution threshold triggering recusal or a return of the contribution. Concerns have also been raised that organizations having cases before the BOE have contributed substantial sums to a [Political Action Committee], which in turn contributes an unlimited amount to a BOE member.

To be clear, there is no allegation of improper action by any BOE member who may have received such contributions. AB 1858 would, however, remove any perception of a conflict of interest, and would have the effect and benefit of increasing the public's trust in the BOE, which is responsible for collecting approximately \$60 billion in state revenue each year.

- 2) **Board of Equalization Background:** Established in 1879 by a constitutional amendment, the BOE is composed of four members elected by districts and the State Controller, and was initially charged with responsibility for ensuring that county property tax assessment practices were equal and uniform throughout the state. Currently, the BOE also administers the sales and use tax, locally-imposed transactions and use taxes, several excise taxes, and more than 30 other fee programs, and considers all appeals under these laws and programs. Additionally, the BOE hears appeals from Franchise Tax Board actions. The BOE is the only elected tax board in the country.
- 3) **Kopp Act:** Under the PRA, campaign contributions generally cannot be the basis for a disqualifying conflict of interest. There is one exception—the Levine Act—which was enacted in 1982 as a response to reports that members of a state agency sought to raise money from individuals and entities that had permit requests pending before the agency.

The Levine Act is narrowly drafted to apply only to decisions made by agencies with membership that is not directly elected by voters, and only to proceedings involving licenses, permits, or other entitlements for use. Proceedings of a more general nature and with broader applicability are not covered by the Levine Act. The Levine Act expressly provides that it does not apply to the Legislature, the BOE, or constitutional officers.

In 1990, the Legislature approved and Governor Deukmejian signed SB 1738 (Roberti), Chapter 84, Statutes of 1990, a comprehensive ethics reform package that enacted new legislative conflict of interest rules, banned honoraria and limited gifts to public officials, and imposed new post-government employment restrictions on former public officials, among other provisions. One provision of SB 1738 established the Kopp Act—so named because those provisions originally were contained in legislation authored by then-Senator Quentin Kopp. The Kopp Act—which was modeled after the Levine Act—prohibits a member of the BOE from participating in an adjudicatory proceeding if the member knows or has reason to know that he or she received contributions totaling \$250 or more in the 12 months prior to the proceeding from a party, participant, or agent of a party or participant, as specified. Members are permitted to participate in the decision, however, if they return the contribution within a specified time period. When the Kopp Act was being considered, the author argued that the BOE should be subject to rules similar to those that applied to appointed boards and commissions under the Levine Act because of the BOE's quasi-judicial role as the appellate body for state tax appeals. Unlike the Levine Act, the Kopp Act is not part of the PRA, and is neither administered nor enforced by the FPPC.

- 4) **Behested Payments:** 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.

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.

- 5) **Strategic Disqualification Under the Kopp Act:** Under the BOE's Regulation 5550, any three members of the BOE constitute a quorum, except in specified circumstances, and a majority of the quorum is required to approve or disapprove taxpayer appeals and other matters. As a result, if two members of the BOE are disqualified under the Kopp Act from participating in a proceeding, it would take only two of the remaining three members to reach a decision in the proceeding. The fact that disqualifications due to the Kopp Act can reduce the number of votes necessary for the BOE to reach a decision has led to concern that parties and participants can strategically disqualify members of the BOE from certain proceedings by making campaign contributions of \$250 or more to those members. To the extent that the Kopp Act is actually being used to strategically disqualify members in proceedings, this bill could exacerbate that problem, as detailed below.
- 6) **Restrictions on Behested Payments and FPPC Regulation:** This bill defines the term "contribution," for the purposes of the Kopp Act, to include behested payments aggregating \$5,000 or more that are made by a party, participant, or agent of a party or participant in an adjudicatory proceeding at the BOE. While the behested payments language in this bill is similar to language in PRA and related regulations that were adopted by the FPPC, the Kopp Act is not enforced by the FPPC, nor would it be enforced by the FPPC under this bill. As a result, regulations adopted by the FPPC to implement the behested payments provisions of the PRA, and advice letters and opinions issued by the FPPC interpreting the behested payments provisions of the PRA would not necessarily govern the interpretation of this bill. While the behested payments provisions of the PRA and related regulations, advice letters, and opinions likely would be considered when interpreting and enforcing the provisions of this bill, there is no guarantee that the similar provisions necessarily will be interpreted and enforced consistently.

Furthermore, while this bill defines the term "at the behest of a member of the board" in a manner that is similar to the way that term is defined in FPPC regulations, the definition in this bill *does not* include exceptions that are found in the FPPC regulation. Specifically, the FPPC's regulations provide that a payment is *not* "made at the behest" of an elected officer if

the payment is made in response to a fundraising solicitation that does not feature an elected officer, as defined. Generally, a solicitation is deemed to feature an elected officer if it includes the officer's photograph or signature, if it singles out the elected officer, or if it includes a roster or letterhead listing in which a majority of the people listed are elected officers. Additionally, the FPPC's regulations provide that certain payments made by governmental agencies are not behested payments. Because this bill does not include those exceptions, and because the Kopp Act is neither contained in the PRA nor administered by the FPPC, the behested payment restrictions found in this bill could be construed much more broadly than existing rules governing behested payments.

- 7) **Implementation and Compliance Issues:** The broad new additions to the Kopp Act that are proposed by this bill could make compliance with that Act considerably more difficult, could increase the risk of inadvertent violations of the law, and could exacerbate the potential for parties and participants in BOE proceedings to use the Act's conflict of interest provisions strategically to force BOE members to disqualify themselves from participating in certain proceedings. While the reduction in the campaign contribution threshold that triggers the conflict of interest requirements under the Kopp Act from \$250 to \$0 could present all of those challenges, three other aspects of this bill arguably would present even greater challenges to implementation of and compliance with this bill.
- a) **Making Behested Payments Subject to Disqualification under the Kopp Act:** While behested payments must be publicly *reported* by public officials in certain circumstances, under no area of existing law are they the basis for a disqualifying conflict of interest. This bill, however, not only creates a situation where a behested payment could create a disqualifying conflict of interest, but also subjects a member of the BOE to potential criminal penalties if that member fails to recuse himself or herself from participating in a proceeding involving a party or participant that made certain payments at that member's behest. This restriction could make compliance with the Kopp Act considerably more difficult given the fact that public officials have much less control over payments made at their behest than they do over other types of interests that can be the basis for disqualification under existing law.

If a member of the BOE has received a potentially disqualifying campaign contribution from a party to or participant in a proceeding before the BOE, that member can return the contribution, as specified, in order to preserve his or her ability to participate in the proceeding. Unlike campaign contributions made to members of the BOE, however, payments made at the behest of a member of the BOE are not necessarily made to or received by an entity under the control of the member. As a result, it will be considerably more difficult for members to reject or return behested payments that create conflicts under the Kopp Act than it is for members to reject or return campaign contributions that would create conflicts.

For example, if a member of the BOE agrees to lend his or her name to a fundraising solicitation by a charitable organization, payments made in response to that solicitation could be considered "behested payments" even if the nonprofit organization distributed the solicitation itself and the BOE member had no control over or knowledge of the entities to which the solicitation was being sent. If a party to an adjudicatory proceeding

before the BOE made a donation of \$5,000 or more in response to such a solicitation, this bill would prohibit the BOE member from participating in the proceeding, unless the behested payment was somehow returned. Even though the member could not control whether the nonprofit organization chose to accept the donation, and could not compel the nonprofit organization to return it, the payment nonetheless would create a disqualifying conflict of interest for that member under this bill.

Furthermore, making behested payments the basis for disqualification under the Kopp Act could make it easier for parties to BOE proceedings to force strategic disqualifications of BOE members, as described above. If a party wanted to prevent a member of the BOE from participating in a proceeding, that party could donate to a charitable organization in response to a solicitation by that member of the BOE. The member would then be forced either to recuse himself or herself from the proceeding, or to prevail upon the charitable organization to return the donation that it had received.

- b) **Making the Kopp Act Applicable to Contributions and Behested Payments Made in the 12 Months After Proceedings:** Currently, the Kopp Act applies only to contributions that were made in the 12 months *prior to* a BOE proceeding. As a result, a member of the BOE has the ability to determine at the time of a proceeding whether that member has a conflict under the Kopp Act. This bill, however, makes the Kopp Act applicable to contributions and behested payments that are made after a BOE proceeding has occurred. In a situation where a proceeding has already occurred, there is no ability for a member of the BOE to recuse himself or herself from participating in that proceeding. As a result, the only way for a BOE member to avoid a violation of the Kopp Act would be to refuse or return a contribution from a party to or participant in a proceeding that is received in the 12 months following a BOE proceeding.

As detailed above, however, particularly with respect to behested payments, the decision of whether to return a payment may not always be a decision that is within the control of the member of the BOE. Using the example from above, if a party to a proceeding made a \$5,000 charitable donation to an organization in response to a solicitation that featured a member of the BOE, and that donation was made six months *after* the proceeding, the only way for the member to avoid violating this bill would be for the organization to return the donation. The member, however, would not be able to compel the organization to return the donation, and if the organization refused to do so, the member could face potential criminal penalties under this bill.

- c) **Making the Kopp Act Applicable to Situations Where BOE Members "Suggest" a Contribution or Behest:** Under current law, a member of the BOE can have a conflict of interest under the Kopp Act only if that member *received* a campaign contribution of \$250 or more from a party to or participant in a proceeding. This bill, however, creates a disqualifying conflict of interest in situations where no contribution or behested payment is ever made. Specifically, this bill prohibits a member of the BOE from *requesting* or *suggesting* a contribution from a party to or participant in a proceeding in the 12 months after that proceeding. Even if the request or suggestion does not result in a contribution or payment being made, the BOE member still would have violated the provisions of this bill, and could face criminal penalties.



This restriction would seem to create a significant potential for inadvertent violations of the law. Prior to sending any solicitation for campaign contributions, a member of the BOE would have to compare the list of entities to which the solicitation will be sent against all parties to and participants in BOE adjudicatory proceedings in the prior 12 months in order to ensure that the member does not "request" or "suggest" a contribution as prohibited by this bill. Similarly, with respect to behested payments, a member would have to ensure that nothing he or she did could be construed as requesting or suggesting a behested payment from a party to or participant in any BOE proceeding in the previous 12 months. Would a general solicitation—as opposed to an individualized solicitation—be sufficient to conclude that a member had requested or suggested a contribution or behested payment? If so, this bill could significantly restrict the ability of members of the BOE to solicit campaign contributions or behested payments from *anyone*, not only from entities that were parties to or participants in BOE proceedings in the prior 12 months.

Furthermore, the broad definition of the term "suggest" could increase the potential for inadvertent violations of this bill. "Suggest" is defined to mean "to mention or imply as a possibility or put forward for consideration." If a member of the BOE was speaking at the annual conference of a nonprofit organization, and broadly praised the organization and encouraged attendees to support its work, could such a statement be construed as a suggestion that attendees make behested payments to the organization? If so, the restrictions of this bill presumably would apply if any attendee at the conference was a party to or participant in a BOE proceeding in the previous 12 months.

- 8) **Arguments in Support:** In support of a prior version of this bill, BOE Chair Fiona Ma wrote:

This legislation strengthens a number of key provisions that exist in current law, including toughening the reporting requirements for contributions to [BOE] Members' political committees from individuals and businesses with petitions before the [BOE]...and extending the blackout period by which individuals and businesses with petitions before the board are prohibited from contributing to [BOE] Members' political committees from one year prior to their petition hearing until one year after.

In addition, this Legislation adds new provisions to the law prohibiting [BOE] Members from soliciting behested payments from businesses or individuals with petitions before the [BOE]. In general, behested payments do not represent a conflict of interest for members of the Legislature or the Constitutional Officers of the State, provided they are appropriately disclosed. However, the duties of the members of the [BOE] are not analogous to Legislators or Executive Branch officers. The [BOE] carries out a number of quasi-judicial functions in their capacity as the Appeals Board for tax payers in California.

Also in support of a prior version of this bill, California Common Cause wrote:

The [BOE] is the only elected tax commission in the nation; it is also unique in that it not only *administers* tax programs, but also *adjudicates* individual tax disputes as an appellate body. To ensure commissioner impartiality in tax disputes, state law requires a member of the [BOE] to recuse himself or herself from hearing the appeal of any party who has contributed \$250 or more to member's campaign in the prior twelve months. This recusal limit, which is lower than the campaign contribution limits to a member of the [BOE], helps to ensure that members do not have a conflict of interest or the appearance of a conflict of interest as they adjudicate tax claims...

AB 1828 would require recusal whenever a member has received any value donation from a party or one of their agents... The recusal rule would also apply when a member has received a behested payment. Finally, the bill also prevents parties before the [BOE] from donating to members for 12 months after any adjudication, to prevent the possibility or the appearance that members are being "paid off" for a favorable decision. These are common sense amendments that reinforce the basic notion that quasi-judicial bodies should be above reproach when hearing and deciding cases.

9) **Arguments in Opposition:** In opposition to this bill, BOE Member Jerome Horton writes:

[This] bill... has three major constitutional, fairness, and equality flaws as summarized below.

First, the bill has overly restrictive contribution limits that violate free speech. In *Randall v. Sorrell*, 548 U.S. 230 (2006), the Supreme Court found that Vermont's limits on contributions were so restrictive as to violate the First Amendment.... AB 1828 is a far more egregious violation of political free speech, in that it reduces the contribution limit to one cent from the current Kopp Act restriction of \$249 – already the lowest contribution limit in the nation for statewide elected officials – without valid cause. This is also a direct violation of the equal protection to which every citizen and elected official is entitled.

Second, the bill violates the Equal Protection Clause... It does not treat equally all California elected officials or the citizens who donate to nonprofit organizations they support, but singles out BOE members and their contributors only, with no justification or compelling reasons. Other elected officials with similar duties, and even more authority, responsibilities, and influence – e.g., judges, commissioners, and legislators – are not similarly restricted, despite the countless articles about their appearance of influence/corruption and conflicts of interest....

Third, the bill violates equal protection and *Davis v. Federal Election Commission*, 554 U.S. 724 (2008). In that Supreme Court case, Justice Samuel Alito noted that the court had never upheld the constitutionality of a law imposing different contribution limits for candidates competing against one another. This

bill however, will give candidates for the Senate and Assembly a distinct advantage over BOE candidates, in that they can raise \$8,400 (combined) without being disqualified from voting on any matter (or being accused of a conflict of interest) - and then they can transfer these funds to a campaign committee for [BOE], without restriction. Conversely, Members of the [BOE] who seek another office would be subjected to the provisions in this bill, but their opponents seeking the same office would not.

In a letter opposing a prior version of this bill, the California State Conference of the National Association for the Advancement of Colored People wrote:

Proponents admit that there is no evidence of any wrongdoing or illegal activity by any BOE member, nor any evidence that a charitable donation to a nonprofit influenced a Member's decision on an adjudicatory matter. Yet, AB 1828 would have the effect of prohibiting the [BOE], its Members, and the State Controller from publicizing, partnering, hosting, or co-hosting any events with nonprofit organizations... which have a charitable, governmental, or legislative purpose...

Further, this bill places an enormous administrative, as well as economic, burden on the nonprofit—both in terms of reporting and in terms of discouraging donors. It would also be a great financial and accounting challenge for nonprofits to actually return the money to contributors when a [BOE] Member is required to do so in order to vote.

- 10) **Technical Amendments:** The current version of this bill contains ambiguous language that could be interpreted to permit members of the BOE to accept contributions made by parties and participants to a proceeding in the 12-month period subsequent to the decision in that proceeding. Such an interpretation, however, seems contrary to the author's and sponsor's intent. To eliminate that ambiguity, committee staff recommends that the language on page 4, lines 35-39 and page 5, lines 1-2 of the bill be amended as follows:

(d) (1) Notwithstanding subdivision (c), a contribution shall not be deemed received by a member for the purposes of ~~if a member receives a contribution which would otherwise require~~ disqualification under subdivision (c), ~~and he or she~~ if the member returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the board, ~~his or her participation in the proceeding shall be deemed lawful.~~

Additionally, as currently drafted, this bill appears to make it illegal for a member of the BOE to accept contributions from parties and participants to a proceeding in the 12-month period following that proceeding even if the member did not participate in that proceeding. In fact, this provision appears to apply even in the situation where the BOE member was not on the BOE at the time the decision was made. The committee may wish to consider whether the post-decision restrictions of this bill should be limited only to those members who participated in the decision.

- 11) **Related Legislation:** SB 816 (Hill), which is pending in the Senate Elections & Constitutional Amendments Committee, eliminates the current \$250 campaign contribution threshold that triggers conflict of interest requirements for members of the BOE under the Kopp Act, thereby prohibiting a member of the BOE from participating in an adjudicatory proceeding if the member received a contribution *of any amount* in the preceding 12 months from a party or participant in the proceeding, as specified.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Board of Equalization Chair Fiona Ma (prior version)  
Board of Equalization Member George Runner (prior version)  
California Clean Money Campaign (prior version)  
California Common Cause (prior version)  
CALPIRG (prior version)

### **Opposition**

Beverly Hills Chamber of Commerce (prior version)  
Black Business Association (prior version)  
Board of Equalization Member Diane Harkey (prior version)  
Board of Equalization Member Jerome Horton  
California State Conference of the National Association for the Advancement of Colored People (prior version)  
Jewish Labor Committee Western Region (prior version)  
National Association for Equal Justice in America (prior version)  
Orange County Assessor Claude Parrish (prior version)

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