Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Sebastian Ridley-Thomas, Chair
SB 21 (Hill) – As Introduced December 1, 2014

SENATE VOTE: 36-1

SUBJECT: Political Reform Act of 1974: gifts of travel.

SUMMARY: Requires nonprofit organizations that make travel payments for travel by public officials to disclose the names of the donors who funded such payments, as specified. Requires a public official who receives a gift that is a travel payment to disclose the destination of the travel, as specified. Specifically, **this bill**:

1) Requires a nonprofit organization that makes payments, advances, or reimbursements that total more than $10,000 in a calendar year, or that total more than $5,000 in a calendar year for a single person, for travel by an elected state officer or local elected officeholder related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, to disclose to the Fair Political Practices Commission (FPPC) the names of donors responsible for funding the payments, advances, or reimbursements. Provides that the names must be disclosed only for donors who donated $1,000 or more in a calendar year and who knew or had reason to know that their donation would be used for a payment, advance, or reimbursement for the travel. Provides that a donor knows or has reason to know that his or her donation will be used for the travel under any of the following conditions:

   a) The donor directed the nonprofit organization to use the donation for the travel;

   b) The donation was made in response to a solicitation for donations for the travel; or,

   c) The donor, or an agent, employee, or representative of the donor, accompanied the officeholder for any portion of the travel.

2) Provides that a nonprofit organization that makes payments, advances, or reimbursements for travel by an elected state officer or local elected officeholder related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, is the source of the gift to the officer unless the nonprofit organization is acting as an intermediary or agent of the donor. Provides that if the nonprofit is acting as an intermediary or agent, all of the following apply:

   a) The donor to the nonprofit organization is the source of the gift;

   b) The donor shall be identified as a financial interest, as specified;

   c) The gift is required to be reported, as specified; and,

   d) The gift is subject to the limitation on gifts, as specified.

3) Requires a public official who receives a gift that is a travel payment, advance, or reimbursement, and who is required to report that gift on his or her Statement of Economic Interests (SEI), to disclose the travel destination on the SEI in addition to the value of the payment, advance, or reimbursement.

EXISTING LAW:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

2) Prohibits specified elected officers and other public officials from receiving gifts, as defined, in excess of $460 in value from a single source in a calendar year. Provides that payments for travel that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not subject to the gift limit if either of the following is true:

   a) The travel is in connection with a speech given by the official and the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States; or,

   b) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

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, including gifts.

4) Provides that a person who makes a gift to a public official is the source of the gift for reporting and other applicable purposes unless that person is acting as an intermediary. Provides that the person is acting as an intermediary for the source of the gift when the gift to the official was provided under any of the following conditions:

   a) The person receives a payment from a source and the payment is made to the official after the source identifies the official as the intended recipient of the gift;

   b) The person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or,

   c) The person receives a payment from a source after the payment was solicited by the official or the official's agent for the purpose of making a gift to the official.

5) Provides that in the case where a person is acting as an intermediary in making a gift, the source of the payment to that person that is used to make the gift is considered the source of

the gift.

FISCAL EFFECT: According to the Senate Appropriations Committee, annual costs of $178,778 to the FPPC (General Fund). This estimate includes the need for one Political Reform Consultant and 1/2 of an Attorney III position to create the new form and update related materials; promulgate regulations; handle advice requests; and provide public outreach and education. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

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

> SB 21 increases transparency within the [PRA] by requiring non-profits that pay for elected official travel to disclose to the FPPC the names of the donors responsible for funding the travel.
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> Currently non-profits do not have to disclose the source of travel funding preventing the public from knowing who was behind the gift to the elected official.
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> The bill would also require elected officials to disclose to the FPPC the destination of the travel.
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> This is a scaled back version of last year's SB 831 – I've only included the transparency provisions to address the Governor's veto message.

2) **Gifts of Travel**: As noted above, the PRA generally prohibits elected state and local officers, among others, from accepting gifts from a single source in a calendar year with a total value of more than $460. This gift limit is adjusted every two years to reflect changes in inflation. Additionally, elected state officers, among others, may not accept gifts aggregating more than $10 in a calendar month from or arranged by registered state lobbyists or lobbying firms. Travel payments received by public officials generally are considered to be reportable gifts or income under the PRA, with certain exceptions. If a travel payment is a gift, it is also normally subject to the $460 gift limit and $10 lobbyist gift limit, though certain exceptions apply.

   Payments for travel (including lodging and subsistence) that are related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are considered gifts but are not subject to the $460 gift limit if the travel is: (1) in connection with a speech given by the official and any lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States, or (2) provided by a government agency or authority, a bona fide public or private educational institution, as specified, or a nonprofit organization pursuant to Section 501(c)(3) of the Internal Revenue Code or a similar foreign organization. Although these payments are not subject to the $460 gift limit, they must be reported on an official's SEI, and the travel payments can create a conflict of interest for the official.

While nonprofit organizations must submit some financial information to the United States Internal Revenue Service and make it publicly available, they are not generally required to publicly disclose the identity of their donors. As a result, nonprofit organizations that provide payments for foreign and domestic travel for California public officials are not required to publicly disclose this information, even when donations are solicited for those purposes, as long as the payments are not solicited for a specific recipient of the travel payment.

3) **Arguments in Support**: In support of this bill, the League of Women Voters of California writes:

> Californians have the right to know how travel by their elected officials is financed. SB 21 requires nonprofits that make significant payments for officials' travel in connection with public policy issues or legislative or governmental purposes to disclose the names of donors who fund those payments. It also requires that gifts of travel disclosed on Statements of Economic Interests list the travel destination.
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> This improved transparency will reduce the public's perception of undue influence and corruption and bolster citizens' faith in the honesty of their elected representatives, thus encouraging citizen participation in the political process.

4) **Previous Legislation**: This bill is similar to portions of SB 831 (Hill) of 2014, which was vetoed by Governor Brown. In addition to the portions that were similar to this bill, SB 831 also proposed new restrictions on the use of campaign funds and would have prohibited an elected official from requesting that behested payments be made to specified nonprofit organizations that are owned or controlled by that official or by family members of the official. In his veto message, the Governor wrote "The activities that are addressed by this bill are already subject to extensive regulation, including robust disclosure requirements. The additional restrictions proposed by this bill would add more complexity to the regulations governing elected officials, without reducing undue influence."

5) **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 Newspaper Publishers Association
League of Women Voters of California

Opposition

None on file.

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