

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 1443 (De León, et al.) – As Amended: April 10, 2014

SENATE VOTE: 34-0

SUBJECT: Political Reform Act of 1974: gift limitations.

SUMMARY: Limits the value and types of gifts that can be given to and received by public officials. Specifically, this bill:

- 1) Prohibits a lobbyist or lobbying firm from making *any* gift to a candidate for elective state office, an elected state officer, or a legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist, instead of limiting such gifts to an aggregate value of not more than \$10 in a calendar month, as is the case under existing law. Prohibits an official from knowingly receiving a gift that is unlawful under this provision.
- 2) Lowers, from \$440 to \$200, the limit on the aggregate value of gifts that specified public officials can receive from a single source in a calendar year. Ends a requirement for the Fair Political Practices Commission (FPPC) to adjust this limit in January of each odd-numbered year to reflect any changes in the Consumer Price Index (CPI), and instead permits the FPPC, at its discretion, to increase the limit in January of each odd-numbered year by an amount that does not exceed any changes reflected in the CPI.
- 3) Prohibits a candidate for elective state office, an elected state officer, or a legislative official from accepting the following gifts:
 - a) A gift of tickets or the equivalent of tickets to any of the following events or venues:
 - i) A professional concert or other professional entertainment event, regardless of the value of the ticket;
 - ii) A professional sporting event, regardless of the value of the ticket;
 - iii) An amateur sporting event for which the value of the ticket received exceeds \$50;
 - iv) A racetrack event, regardless of the value of the ticket;
 - v) A theme park, amusement park, or other similar venue, regardless of the value of the ticket; or,
 - vi) An amateur theatre, concert, or other entertainment event for which the value of the ticket received exceeds \$50;

- b) Golfing green fees, complimentary golf course access, or the equivalent, regardless of the value;
 - c) Skiing, hunting, or fishing trips or other recreational outings, regardless of the value;
 - d) Spa treatments, spa access fees, or other equivalent complimentary beauty or cosmetic services, regardless of the value; or
 - e) Cash, gift cards, or cash equivalents, regardless of the value.
- 4) Provides that, for the purposes of the ban on certain gifts of tickets outlined above, the term "professional" means an event with performers who are compensated for the event or who engage in the performance activity as their vocation.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Makes it a felony for a public official or public employee to accept or agree to accept anything of value in exchange for an official act.
- 3) Defines "agency official" to mean any member, officer, employee, or consultant of any state agency who as part of his or her official responsibilities participates in any administrative action, as defined, other than in a purely clerical, secretarial, or ministerial capacity.
- 4) Defines "legislative official" to mean any employee or consultant of the Legislature whose duties are not solely secretarial, clerical, or manual.
- 5) Prohibits a lobbyist or lobbying firm from making gifts aggregating more than \$10 in a calendar month to a candidate for elective state office, an elected state officer, or a legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist. Prohibits an official from knowingly receiving a gift that is unlawful under this provision.
- 6) Prohibits elected state and local officers, candidates for elective state or local office, members of state boards and commissions, and designated employees of state or local government agencies from accepting gifts from a single source in a calendar year with a total value of more than \$440, with certain limited exceptions. Requires the FPPC to adjust this gift limit on January 1 of each odd-numbered year to reflect changes in the CPI, rounded to the nearest \$10.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

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

SB 1443 is a product of the Senate Ethics Working Group, and a part of a legislative package supported by the Senate Democratic Caucus (the others are SB 1441 and SB 1442) aimed at bolstering public confidence in California's elected officials and improving transparency in the gift reporting process.

This measure seeks to severely reduce the gift limit and completely ban gifts such as tickets to professional sporting events and concerts, amusement parks, golfing green fees, spa treatments, and recreational trips. Increasing of the gift limit over the years, which is currently set at \$440, is...approaching the conflict of interest threshold of \$500. SB 1442 would reduce the gift limit to \$200.

The legislative package put forward by the Senate Ethics Working Group represents the most comprehensive reform to the Political Reform Act in decades.

2) Gift Definitions and Exemptions: The following is a description of existing statutory and regulatory gift definitions and a list of exemptions taken from an FPPC fact sheet intended for elected state officers, candidates for elective state office, members of state boards and commissions, designated employees of state government agencies, and state officials who manage public investments. For a complete discussion of these definitions and exemptions please see the fact sheet at <http://www.fppc.ca.gov/factsheets/StateGiftFactSheet2014.pdf>.**Gift Definition**

A "gift" is any payment or other benefit provided to an official that confers a *personal* benefit for which the official does not provide payment or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.

Gifts to Family Members

Under certain circumstances, a gift to an official's family member is considered a gift to the official. Anything given to a family member is presumed to be a gift to the official if: (1) there is no established relationship between the donor and the family member where it would generally be considered appropriate for the family member to receive the gift or; (2) the donor is someone who lobbies the official's agency, is involved in an action before the official's agency in which the official may foreseeably participate, or engages in business with the agency in which the official will foreseeably participate. (Wedding gifts are treated differently, see below.)

For purposes of this rule, an official's "family member" includes the official's spouse; registered domestic partner; any minor child of the official who the official can claim as a dependent for federal tax purposes; and a child of the official who is aged 18 to 23 years old, attends school, resides with the official when not attending school, and provides less than one-half of his or her own support.

General Gift Exceptions

The following payments are not gifts, are not required to be reported on an official's Statement of Economic Interests (SEI) (Form 700), and are not subject to the \$10 lobbyist gift limit:

1. Items that are returned unused to the donor or for which the recipient reimburses the donor.
2. Items that are donated unused to a non-profit, tax-exempt (501(c)(3)) organization or to a government agency without claiming a tax deduction.
3. Gifts from a family member unless the family member is acting as an agent or intermediary for another person who is the true source of the gift.
4. Informational material provided to assist the recipient in the performance of official duties.
5. A devise or inheritance.
6. Campaign contributions.
7. Personalized plaques and trophies with an individual value of less than \$250.
8. Admission for the official and one guest at an event where the official performs a ceremonial role.
9. Admission, and food and nominal items, at an event at which the official makes a speech.
10. Benefits received as a guest attending a wedding reception.
11. Bereavement offerings, such as flowers at a funeral.
12. Benefits received as an act of neighborliness such as the loan of an item, an occasional ride, or help with a repair.
13. Two tickets for admission to attend a campaign or charity fundraiser, as specified.
14. Passes or tickets that the recipient does not use and does not give to another person.
15. Certain travel payments, as specified.
16. Gifts provided to the recipient's government agency, as specified.
17. Leave credits (e.g., sick leave or vacation credits), as specified.
18. Food, shelter, or similar assistance received in connection with a disaster relief program.

19. Items awarded in an employee raffle, as specified.
20. Items received by an employee during an employee gift exchange.

Limited Gift Exceptions

The following payments generally are not considered gifts, and are not required to be reported on an official's SEI (Form 700), but may be subject to the \$10 lobbyist gift limit:

1. Gifts of hospitality including food, drink, or occasional lodging that is received in an individual's home when the individual or a member of his or her family is present. Such hospitality provided by a lobbyist is a gift unless the hospitality is related to another purpose unconnected with the lobbyist's professional activities.
2. Gifts commonly exchanged between an official and another individual (other than a lobbyist registered to lobby the official's agency) on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value.
3. Reciprocal exchanges between the recipient and another individual (other than a lobbyist registered to lobby the official's agency) that occur on an ongoing basis, as specified.
4. Personal benefits commonly received from a dating partner. These benefits are subject to disqualification under conflict of interest laws if the dating partner is a lobbyist registered to lobby the official's agency, as specified.
5. Acts of human compassion provided by an individual other than a lobbyist registered to lobby the official's agency, as specified.
6. Benefits received from a long-time personal friend, other than a lobbyist registered to lobby the official's agency, where the gift is unrelated to the official's duties.
7. Benefits received from an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position, as specified.

Gift Exceptions Requiring Alternate Reporting

The following payments are not subject to the gift limit, but the recipient may be required to report these items and they can subject the recipient to disqualification under conflict of interest laws:

1. A prize or award received in a bona fide competition, contest, or game of chance not related to the official's duties is not subject to the gift limit, but must be reported as income on the official's SEI (Form 700) if the prize or award is valued at \$500 or more, and can subject the recipient to disqualification under conflict of interest laws.
2. Gifts or donations made to an agency and used by one or more officials in the agency are

not gifts to the officials, subject to certain conditions, and do not subject the officials to disqualification under conflict of interest laws, but the agency must report the gift, as specified.

3. A payment made at the behest of an official that is principally for legislative, governmental, or charitable purposes is not a gift and does not subject the official to disqualification under conflict of interest laws, but must be reported under certain circumstances.

4. Wedding gifts are not subject to the \$440 gift limit, but are subject to the \$10 lobbyist/lobbying firm gift limit, are reportable, and can subject the recipient to disqualification under conflict of interest laws. For purposes of valuing wedding gifts, one-half of the value of each gift is attributable to each spouse.

- 3) Any Public Official May Choose to Decline Gifts: No public official is compelled to accept gifts. To the extent that a public official is concerned that the acceptance of gifts may result in a negative public perception, that official is free to decline any or all gifts. In fact, a number of members of the Legislature have chosen not to accept gifts of any kind or value.
- 4) Lobbyist Gift Limit & Inadvertent Violations of the Law: As noted above, existing law prohibits lobbyists and lobbying firms from making gifts aggregating more than \$10 in a calendar month to a candidate for elective state office, an elected state officer, or a legislative official. This bill would eliminate that \$10 limit, and instead would prohibit a lobbyist or lobbying firm from making a gift of *any* value to a candidate for elective state office, an elected state officer, or a legislative official.

By prohibiting lobbyists and lobbying firms from making gifts of any value to candidates for elective state office, elected state officers, and legislative officials, this bill could result in an inadvertent violation of the law if an official accepted a bottle of water while meeting with a lobbyist.

Given the fact that the \$10 gift limit has long protected against this type of inadvertent violation, and given that it is unlikely that a gift valued at \$10 or less could raise the possibility of corruption or the appearance thereof, the committee may wish to consider whether it is prudent to prohibit gifts of less than \$10.

- 5) Different Gifts, Different Limits: This bill would establish restrictions on gifts given to certain officials based not on the value of the gift, but rather on the type of gift given. As a result, it would be legal for an elected state official to accept a gift of a bottle of wine valued at \$200, but it would be illegal for the same official to accept an \$8 ticket to a minor league baseball game. An elected state official could not accept a \$5 gift card to a coffee shop from the shop's owner, but could accept \$200 worth of coffee from the same person. The committee may wish to consider whether it is rational to restrict gifts in this manner, based not on the value of the gift, but rather on the type of gift.
- 6) Why \$200? When the PRA was enacted in 1974, it did not include a general limit on the value of gifts that could be received by public officials, though it did include the \$10 lobbyist gift limit. In 1988, the voters approved Proposition 73, which prohibited elected

officeholders from accepting any gift exceeding \$1,000 in value in a calendar year from a single source, among other provisions. SB 1738 (Roberti), Chapter 84, Statutes of 1990, subsequently lowered the gift limit to \$250 for elected state officials, and made the same \$250 gift limit applicable to members of state boards and commissions and to designated employees of state agencies, among other provisions (though the gift limit remained at \$1,000 for local elected officeholders until the passage of SB 701 (Craven), Chapter 690, Statutes of 1995). SB 1738 also required the FPPC to adjust the gift limit every two years to reflect inflation. Based on those adjustments, the gift limit has risen to \$440.

This bill lowers the gift limit from \$440 to \$200, and makes it discretionary for the FPPC to decide whether to adjust that limit to reflect any inflation. The author argues these changes are appropriate because the \$440 limit "may be perceived as too high a level." While it is almost certainly true that some individuals view a \$440 gift limit as "too high a level," it is also likely true that some individuals view a \$200 gift limit as too high, while others may not be concerned with a gift limit that is higher. To the extent that the concern is one of public perception, the rationale for setting the gift limit at \$200 is unclear.

- 7) Technical Amendment: While this bill lowers the gift limit, it does not adjust the corresponding conflict of interest threshold for gifts received by public officials. To resolve this technical issue, committee staff recommends that this bill be amended to adjust the conflict of interest threshold in Government Code Section 87103 (e).
- 8) Previous Legislation: SB 1426 (Blakeslee) of 2012, would have prohibited lobbyists, lobbyist firms, and lobbyist employers from giving specific types of gifts (such as gift cards, and amusement park and racetrack tickets) to elected state officers and members of their immediate family. SB 1426 was approved by this committee, but was held on the Assembly Appropriations Committee's suspense file. A similar bill, SB 18 (Blakeslee) of 2011, was held on the Senate Appropriations Committee's suspense file.

AB 1412 (Torrico) of 2009, and AB 2368 (Blakeslee) of 2010, would have prohibited a lobbyist employer from making gifts to a Member of the Legislature aggregating more than \$10 in a calendar month. AB 1412 was approved by this committee, but died on the inactive file on the Assembly Floor. AB 2368 was approved by this committee, but was held on the Assembly Appropriations Committee's suspense file.

AB 2795 (Blakeslee) of 2008, would have prohibited a lobbyist employer from making gifts to state candidates, elected state officers, legislative officials, and certain agency officials aggregating more than \$10 in a calendar month with certain exceptions for food or refreshments of a nominal value offered other than as part of a meal and tickets to certain events sponsored by the lobbyist employer. AB 2795 was approved by this committee but was held on the Assembly Appropriations Committee's suspense file.

- 9) 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 Common Cause

Opposition

Professional Beauty Federation of California (unless amended)

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