

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON ELECTIONS  
Gail Pellerin, Chair  
SB 1476 (Blakespear) – As Amended June 4, 2024

**SENATE VOTE:** 37-0

**SUBJECT:** Political Reform Act of 1974: State Bar of California.

**SUMMARY:** Makes members of the Board of Trustees (trustees) and designated employees of the State Bar of California (State Bar) subject to the conflict of interest provisions of the Political Reform Act (PRA). Specifically, **this bill:**

- 1) Provides that the term “public official,” for the purposes of the PRA, includes trustees and designated employees of the State Bar. Specifies that these officials must file statements of economic interests (SEIs) in accordance with conflict of interest codes adopted for the trustees and designated employees of the State Bar.
- 2) Requires the conflict of interest code for trustees and for designated employees of the State Bar to include provisions that set forth the circumstances under which covered individuals must disqualify themselves from making governmental decisions, as specified.
- 3) Makes technical changes.

**EXISTING LAW:**

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA. (Government Code §§83100, 83111)
- 2) Makes violations of the PRA subject to administrative, civil, and criminal penalties. (Government Code §§83116, 91000-91005.5)
- 3) Requires every state or local agency to adopt a conflict of interest code that identifies the officials and employees within the agency who make governmental decisions based on the positions they hold, as specified. Provides that a conflict of interest code shall have the force of law. Requires the individuals in the designated positions, commonly referred to as “designated employees,” to file SEIs that publicly disclose the employees’ financial interests, as specified. (Government Code §§87300, 87302)
- 4) Makes the Chief Justice of California or the Chief Justice’s designee responsible for reviewing and approving the conflict of interest code of the Board of Governors (since renamed the “Board of Trustees”) of the State Bar. Makes the Board of Governors of the State Bar responsible for reviewing and approving the conflict of interest code of the State Bar. (Government Code §§82011(e) & (f), 87303)

- 5) Provides that the conflict of interest codes of the Judicial Council, the Commission on Judicial Performance, and the Board of Governors and designated employees of the State Bar, are not required to include provisions that otherwise generally are required to be included in a conflict of interest code that set forth the circumstances under which designated employees or categories of designated employees must disqualify themselves from making governmental decisions, as specified. (Government Code §87311.5)
- 6) Provides, for the purposes of the PRA, that the term “public official” does not include a member of the Board of Governors and designated employees of the State Bar. (Government Code §82048)
- 7) Prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use the public official’s official position to influence a governmental decision in which the official knows or has reason to know that the official has a financial interest. (Government Code §87100 et seq.)
- 8) Prohibits a public official of a state agency from, for compensation, acting as an agent or attorney for, or otherwise representing, any other person by making any formal or informal appearance before, or any oral or written communication to, the official’s state agency or any officer or employee thereof, if the appearance or communication is for the purpose of influencing a decision on a contract, grant, loan, license, permit, or other entitlement for use. (Government Code §87104)
- 9) Prohibits a public official from making, participating in making, or using the public official’s official position to influence, any governmental decision directly relating to any person with whom the public official is negotiating, or has any arrangement concerning, prospective employment. (Government Code §87407)
- 10) Establishes the State Bar as a public corporation with the responsibility of licensing, regulation, and discipline of attorneys. Requires attorneys who practice law in California to be licensed by the State Bar. (California Constitution, Article VI, §9; Business and Professions Code §6000 et seq.)
- 11) Provides that no state law restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, shall be applicable to the State Bar, unless the Legislature expressly so declares. Expressly declares that the State Bar is subject to the California Public Records Act, the Bagley-Keene Open Meeting Act, and to specified provisions of state law relating to conflicts of interests in contracting decisions. (Business and Professions Code §§6001(e), 6026.7, 6026.11)
- 12) Requires a trustee of the State Bar to disqualify himself from making, participating in the making of, or attempting to influence any decision of the State Bar in which the trustee has a financial interest, as that term is defined in the PRA, if it is reasonably foreseeable that the financial interest may be affected materially by the decision. Requires a trustee of the State Bar to disqualify himself when there exists a personal interest that may prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions. Makes these provisions applicable to employees

designated in the conflict of interest code of the State Bar with respect to making, participating in the making, or attempting to influence, governmental decisions of the State Bar other than decisions of a judicial or quasi-judicial nature. (Business and Professions Code §§6036, 6038)

**FISCAL EFFECT:** Unknown. State-mandated local program; contains a crimes and infractions disclaimer. Although this bill deals with a similar issue to the version of the bill approved by the Senate, it has been substantially amended from the Senate-approved version. Accordingly, it is unclear whether prior fiscal analyses are relevant to the current version of the bill.

**COMMENTS:**

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

Following an investigation that found regulators at the State Bar had ties to now disbarred attorney Thomas V. Girardi, the State Bar has taken a number of actions to restore the public's trust, including making changes to their conflict of interest provisions and updating their conflict of interest codes that apply to designated employees as well as members of the Board of Trustees. During the process of enacting reforms, it became evident that a clarification was needed eliminating any question that the enforcement provisions of the PRA to apply to the State Bar with respect to violations of the State Bar's conflict of interest codes. Therefore, SB 1476 requires the State Bar's conflict of interest codes to be in compliance with the PRA and clarifies the FPPC's administrative enforcement authority with respect to the State Bar.

2) **Conflict of Interest Rules in the Political Reform Act:** The PRA prohibits a public official from using the person's official position to influence a governmental decision in which the person has a financial interest. As part of the regulatory scheme designed to protect against conflicts of interest, a state or local agency generally is required to adopt a conflict of interest code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. To help identify potential conflicts of interest, the PRA requires individuals in the designated positions to disclose their financial interests as specified in the agency's conflict of interest code on a form called the SEI, also commonly referred to as the "Form 700."

Because the PRA's conflict of interest rules apply generally to state and local agencies, it typically is not necessary for the PRA to identify an agency by name and provide that the agency and its officers and employees are subject to the PRA's conflict of interest rules. When the PRA was first adopted in 1974, however, courts and other agencies in the judicial branch of government were expressly excluded from the definitions of the terms "state agency" and "local government agency." As a result, those agencies and their officers and employees were not subject to the PRA's conflict of interest rules. It appears that the judicial branch of government was excluded from the PRA's conflict of interest provisions in part due to concerns that including the judiciary could present separation of powers issues.

Over time, amendments to the PRA have made judicial officers and employees subject to some aspects of the PRA's regulatory scheme to protect against conflicts of interest, while

still being sensitive to concerns about the separation of powers. In particular, the PRA has been amended to make judicial officers and employees subject to the PRA's financial disclosure requirements while still excluding many officials and employees in the judiciary from the conflict of interest rules in the PRA.

For instance, AB 959 (Badham), Chapter 499, Statutes of 1975, required a judge of a court of record to annually file an SEI with the clerk of the judge's court, but did not make judges subject to the PRA's conflict of interest rules. SB 1427 (Petris), Chapter 727, Statutes of 1984, made members of the Board of Governors and designated employees of the State Bar subject to the PRA's financial disclosure requirements, while exempting them from the PRA's conflict of interest rules. SB 1427 instead made these members and employees subject to separate conflict of interest rules that apply exclusively to State Bar personnel. SB 1427 also made court personnel other than judges and court commissioners subject to the PRA's conflict of interest and financial disclosure rules.

As a result, while the judicial branch of government is subject to some aspects of the PRA's conflict of interest and financial disclosure rules, those rules are not broadly applicable in their entirety to the judiciary. With respect to the State Bar, it must adopt a conflict of interest code for trustees and designated employees in accordance with the PRA, and those trustees and employees must file SEIs under the PRA. However, those trustees and employees are not subject to the PRA's conflict of interest rules but instead are subject to conflict of interest rules found in the Business and Professions Code. While those conflict of interest rules have similarities to the financial conflict of interest rules found in the PRA, they are not enforced by the FPPC, and they also require recusal in other situations that are not covered by the PRA. Relatedly, because those officials are not subject to the PRA's conflict of interest rules, the State Bar's conflict of interest code is not required to include provisions that detail the circumstances under which trustees and designated employees are required to disqualify themselves from making governmental decisions.

Notwithstanding that fact, the most recently adopted conflict of interest codes that govern trustees and designated employees of the State Bar include recusal provisions and provide that trustees and designated employees shall be considered "public officials" for the purpose of the PRA notwithstanding the fact that the PRA specifies that those individuals are not "public officials." Because properly adopted conflict of interest codes have the force of law, it is somewhat unclear whether trustees and designated employees of the State Bar are already subject to enforcement of the PRA's financial conflict of interest rules by the FPPC.

This bill would provide that trustees and designated employees of the State Bar are public officials for the purposes of the PRA, thereby making it clear that these officials are subject to the PRA's conflict of interest rules and related restrictions that apply generally to public officials.

- 3) **State Bar of California:** As detailed above, attorneys who wish to practice law in California generally must be admitted and licensed by the State Bar. The State Bar is the largest state bar in the country, with over 197,000 active licensees and nearly 76,000 inactive licensees as of June 3, 2024. (State Bar of Cal, Attorney Status, available at

<https://members.calbar.ca.gov/search/demographics.aspx>.)

The mission of the State Bar is, “to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system.” The State Bar is the regulatory arm of the California Supreme Court, and is responsible for licensing attorneys and regulating the profession and practice of law in California, enforcing rules of professional conduct for attorneys, disciplining attorneys who violate rules and laws, and administering the California Bar Exam.

The State Bar has been embroiled in scandal over its handling of complaints against once prominent trial attorney Thomas Girardi, who has been accused of stealing millions of dollars from his clients over decades. An independent investigation was conducted examining the State Bar’s handling of complaints against Girardi over the past 20 years, referred to as the May Report. The May Report’s findings detailed a history of weak internal enforcement of conflicts of interests and troubling relationships between employees of the State Bar and Girardi. The May Report noted that the State Bar had adopted a conflict of interest code in accordance with state law, but when investigators requested to review Form 700s for individuals relevant to the inquiry “the State Bar was unable to locate all requested forms.” For the Form 700s that the State Bar had on file, many were “incomplete and sometimes not even signed.” The May Report noted that not requiring Form 700s to be tracked or completed accurately makes it difficult for the State Bar to identify conflicts of interest and hold individuals accountable for not handling conflicts in an appropriate manner. The May Report then went on to detail numerous conflicts of interest between certain State Bar employees that were never reported and several instances when those employees never submitted the required Form 700.

The Senate and Assembly Judiciary Committees held a joint oversight hearing of the State Bar in May 2023, in part to examine the findings of the May Report. In last year’s State Bar fee authorization bill, SB 40 (Umberg), Chapter 697, Statutes of 2023, some changes were made to strengthen conflict of interest rules that apply to the State Bar, including subjecting trustees and employees of the State Bar to specified conflict of interest provisions relating to contracts, and expanding the circumstances under which a trustee is required to disqualify themselves from a decision of the State Bar. This bill would build upon those reforms by authorizing the FPPC to enforce the PRA’s conflict of interest rules against trustees and designated employees of the State Bar, including the potential imposition of administrative, civil, and criminal penalties.

- 4) **Arguments in Support:** The sponsor of this bill, the State Bar of California, writes in support:

The State Bar has initiated several reforms over the past several years to tighten up conflicts rules and strengthen the State Bar’s accountability and transparency... SB 1476 continues those efforts at accountability and transparency. SB 1476 makes explicit in the Political Reform Act the requirement for the State Bar to maintain conflict of interest codes for its Board of Trustees and staff that meet the requirements of the Political Reform Act. The bill clarifies

that violations of the State Bar's conflict of interest codes are violations of law enforceable under the Political Reform Act. Importantly, the bill also makes it explicit that the enforcement provisions of the Act apply to the State Bar. These are important changes to bolster the State Bar's efforts to strengthen our conflict-of-interest rules, policies, and procedures and ensure the conflict-of-interest codes have teeth, by making clear there are consequences for violations.

- 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.
- 6) **Double-Referral:** This bill has been double-referred to the Assembly Judiciary Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

State Bar of California (Sponsor)  
Consumer Protection Policy Center/USD School of Law (prior version)

##### **Opposition**

None on file.

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