

AMENDED IN SENATE MARCH 26, 2001

SENATE BILL

No. 445

Introduced by Senator Burton

February 21, 2001

An act to amend *Sections 11125.1 and 15626 of the Government Code, and to amend Sections 7081 and 21002 of the Revenue and Taxation Code*, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 445, as amended, Burton. Taxation: taxpayers' bill of rights.

(1) *The Bagley-Keene Open Meeting Act generally requires that the meetings of state bodies, as defined, be conducted openly. Existing law requires that public writings, pertaining to a matter subject to discussion or consideration at a public meeting, that are distributed to a majority of the members of the state body shall be made available for public inspection.*

This bill would require, in the case of the Board of Equalization and the Franchise Tax Board, public writings, pertaining to a matter subject to discussion or consideration at a public meeting, that are distributed to a majority of the members of the state body shall be distributed, without delay, to all persons that request notice in writing and shall be made available, without delay, on the Internet and shall be made available for public inspection at the meeting, prior to the time the item is scheduled to be heard.

(2) *Existing law, known as the Quentin L. Kopp Conflict of Interest Act of 1990, generally prohibits a member of the Board of Equalization from making or participating in a decision in an adjudicatory proceeding pending before the board if the member knows he or she received a contribution aggregating \$250 or more within the preceding*

12 months from a party or his or her agent, or from a participant or his or her agent, and if the member knows the participant has a financial interest in the decision.

This bill would include a contribution aggregating \$250 or more within the preceding 12 months from a committee controlled by a party, participant, or agent, among contributions that would be subject to this prohibition.

(3) Existing law requires a member of the Board of Equalization who knows he or she has received a contribution aggregating \$250 or more within the preceding 12 months to disclose that fact on the record of the proceeding prior to rendering any decision in an adjudicatory proceeding pending before the board, and requires a party or participant in the proceeding to disclose on the record these contributions.

This bill would require disclosure of a contribution aggregating \$250 or more within the preceding 12 months from a committee controlled by a party, participant, or agent.

(4) Existing law makes it a misdemeanor to knowingly or willfully violate the provisions described in (2) and (3) above, and prohibits a person convicted of such a misdemeanor from being a candidate for elective office or acting as a lobbyist for 4 years, unless a court specifically determines that this disability is not be applicable. Existing law also authorizes imposition of a fine up to \$10,000 or 3 times the amount that was failed to be disclosed upon conviction for each violation.

This bill, by adding to the acts that would be subject to these criminal and financial penalties, would impose a state-mandated local program.

~~Under~~

(5) Under existing law there are Taxpayers' Bills of Rights that apply to both the Board of Equalization and the Franchise Tax Board to ensure that these taxing agencies conduct their operations of tax assessment and tax collection in a manner that ensures the privacy and property rights of California's taxpayers. In adopting the respective Taxpayers' Bills of Rights, the Legislature made specific findings and declarations of intent regarding the expectations and responsibilities of taxpayers and the taxing agencies.

This bill would add the Legislature's finding that the purpose of any proceeding between a taxing agency and a taxpayer is the correct determination of the taxpayer's liability, and would set forth the Legislature's intent that, in furtherance of this purpose, both the taxing



agency and the taxpayer should have every opportunity to present and consider all relevant information pertaining to the disputed tax liability.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 11125.1 of the Government Code is*
2 *amended to read:*

3 11125.1. (a) Notwithstanding Section 6255 or any other
4 provisions of law, agendas of public meetings and other writings,
5 when distributed to all, or a majority of all, of the members of a
6 state body by any person in connection with a matter subject to
7 discussion or consideration at a public meeting of the body, are
8 disclosable public records under the California Public Records Act
9 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
10 Title 1), and shall be made available upon request without delay.
11 However, this section shall not include any writing exempt from
12 public disclosure under Section 6253.5, 6254, or 6254.7 of this
13 code, or Section 489.1 or 583 of the Public Utilities Code.

14 (b) Writings that are public records under subdivision (a) and
15 that are distributed to members of the state body prior to or during
16 a meeting, pertaining to any item to be considered during the
17 meeting, shall be made available for public inspection at the
18 meeting if prepared by the state body or a member of the state
19 body, or after the meeting if prepared by some other person.

20 (c) *In the case of the Board of Equalization and Franchise Tax*
21 *Board, writings that are public records under subdivision (a) that*
22 *are distributed to members of the state body prior to or during a*
23 *meeting, pertaining to any item to be considered during the*
24 *meeting, shall be distributed, without delay, to all persons that*
25 *request notice in writing and shall be made available, without*
26 *delay, on the Internet and shall be made available for public*



1 *inspection at the meeting, prior to the time the item is scheduled*
 2 *to be heard.*

3 (d) Nothing in this section shall be construed to prevent a state
 4 body from charging a fee or deposit for a copy of a public record
 5 pursuant to Section 6257. The writings described in subdivision
 6 (b) are subject to the requirements of the California Public Records
 7 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
 8 of Title 1), and shall not be construed to limit or delay the public's
 9 right to inspect any record required to be disclosed by that act, or
 10 to limit the public's right to inspect any record covered by that act.
 11 This section shall not be construed to be applicable to any writings
 12 solely because they are properly discussed in a closed session of
 13 a state body. Nothing in this article shall be construed to require a
 14 state body to place any paid advertisement or any other paid notice
 15 in any publication.

16 ~~(d)~~

17 (e) "Writing" for purposes of this section means "writing" as
 18 defined under Section 6252.

19 *SEC. 2. Section 15626 of the Government Code is amended to*
 20 *read:*

21 15626. (a) This section shall be known, and may be cited, as
 22 the Quentin L. Kopp Conflict of Interest Act of 1990.

23 (b) Prior to rendering any decision in any adjudicatory
 24 proceeding pending before the State Board of Equalization, each
 25 member who knows or has reason to know that he or she received
 26 a contribution or contributions within the preceding 12 months in
 27 an aggregate amount of two hundred fifty dollars (\$250) or more
 28 from a party or his or her agent, ~~or~~ from any participant or his or
 29 her agent, *or from a committee controlled by a party, participant,*
 30 *or agent,* shall disclose that fact on the record of the proceeding.

31 (c) ~~No~~ A member ~~shall~~ *may not* make, participate in making, or
 32 in any way attempt to use his or her official position to influence,
 33 the decision in any adjudicatory proceeding pending before the
 34 board if the member knows or has reason to know that he or she
 35 received a contribution or contributions in an aggregate amount of
 36 two hundred fifty dollars (\$250) or more within the preceding 12
 37 months from a party or his or her agent, ~~or~~ from any participant or
 38 his or her agent, *or from a committee controlled by a party,*
 39 *participant, or agent,* and if the member knows or has reason to
 40 know that the participant has a financial interest in the decision, as



1 that term is used in Article 1 (commencing with Section 87100) of
2 Chapter 7 of Title 9.

3 (d) Notwithstanding subdivision (c), if a member receives a
4 contribution ~~which~~ *that* would otherwise require disqualification
5 under subdivision (c), and he or she returns the contribution within
6 30 days from the time he or she knows, or has reason to know,
7 about the contribution and the adjudicatory proceeding pending
8 before the board, his or her participation in the proceeding shall be
9 deemed lawful.

10 (e) A party to, or a participant in, an adjudicatory proceeding
11 pending before the board shall disclose on the record of the
12 proceeding any contribution or contributions in an aggregate
13 amount of two hundred fifty dollars (\$250) or more made within
14 the preceding 12 months by the party or participant, ~~or~~ his or her
15 agent, *or by a committee controlled by the party, participant, or*
16 *agent*, to any member of the board.

17 (f) When a close corporation is a party to, or a participant in,
18 an adjudicatory proceeding pending before the board, the majority
19 shareholder is subject to the disclosure requirement specified in
20 this section.

21 (g) For purposes of this section, if a deputy to the Controller sits
22 at a meeting of the board and votes on behalf of the Controller, the
23 deputy shall disclose contributions made to the Controller and
24 shall disqualify himself or herself from voting pursuant to ~~the~~
25 ~~requirements of this section.~~

26 (h) For purposes of this section:

27 (1) *A committee is controlled by a party, participant, or agent*
28 *if the committee directly or indirectly acts jointly with a party,*
29 *participant, or agent in connection with the making of a*
30 *contribution. A committee is controlled by a party, participant, or*
31 *agent if the party, participant, or agent, or any other committee he*
32 *or she controls has a significant influence on the actions or*
33 *decisions of the committee.*

34 (2) “Contribution” has the same meaning prescribed in
35 Section 82015 and the regulations adopted thereto.

36 ~~(2)~~

37 (3) “Party” means any person who is the subject of an
38 adjudicatory proceeding pending before the board.

39 ~~(3)~~



1 (4) “Participant” means any person who is not a party but who
2 actively supports or opposes a particular decision in an
3 adjudicatory proceeding pending before the board and who has a
4 financial interest in the decision, as described in Article 1
5 (commencing with Section 87100) of Chapter 7 of Title 9. A
6 person actively supports or opposes a particular decision if he or
7 she lobbies in person the members or employees of the board,
8 testifies in person before the board, or otherwise acts to influence
9 the members of the board.

10 ~~(4)~~

11 (5) “Agent” means any person who represents a party to or
12 participant in an adjudicatory proceeding pending before the
13 board. If a person acting as an agent is also acting as an employee
14 or member of a law, accounting, consulting, or other firm, or a
15 similar entity or corporation, both the entity or corporation and the
16 person are agents.

17 ~~(5)~~

18 (6) “Adjudicatory proceeding pending before the board”
19 means a matter for adjudication that has been scheduled and
20 appears as an item on a meeting notice of the board as required by
21 Section 11125 as a contested matter for administrative hearing
22 before the board members. A consent calendar matter is not
23 included unless the matter has previously appeared on the calendar
24 as a nonconsent item, or has been removed from the consent
25 calendar for separate discussion and vote, or the item is one about
26 which the member has previously contacted the staff or a party.

27 ~~(6)~~

28 (7) A member knows or has reason to know about a
29 contribution if, after the adjudicatory proceeding first appears on
30 a meeting notice of the board, facts have been brought to the
31 member’s personal attention that he or she has received a
32 contribution which would require disqualification under
33 subdivision (c), or that the member received written notice from
34 the board staff, before commencement of the hearing and before
35 any subsequent decision on the matter, that a specific party, close
36 corporation, or majority shareholder, or agent thereof, or any
37 participant having a financial interest in the matter, or agent
38 thereof, *or a committee controlled by a party, participant, or agent,*
39 in a specific, named adjudicatory proceeding before the board,
40 made a contribution or contributions within the preceding 12



1 months in an aggregate amount of two hundred fifty dollars (\$250)
2 or more. Each member shall provide board staff with a copy of
3 each of his or her campaign statements at the time each of those
4 statements is filed.

5 The notice of contribution shall be on a form prescribed under
6 rules adopted by the board to provide for staff inquiry of each
7 party, participant, close corporation, and its majority shareholder,
8 and any agent thereof, to determine whether any contribution has
9 been made to a member, and if so, in what aggregate amount and
10 on what date or dates within the 12 months preceding an
11 adjudicatory proceeding or decision.

12 In addition, the staff shall inquire and report on the record as
13 follows:

14 (A) Whether any party or participant is a close corporation, and
15 if so, the name of its majority shareholder.

16 (B) *Whether a committee controlled by a party, participant, or*
17 *agent has made a contribution.*

18 (C) Whether any agent is an employee or member of any law,
19 accounting, consulting or other firm, or similar entity or
20 corporation, and if so, its name and address and whether a
21 contribution has been made by any such person, firm, corporation,
22 or entity.

23 (i) (1) Any person who knowingly or willfully violates any
24 provision of this section is guilty of a misdemeanor.

25 (2) ~~No~~ A person convicted of a misdemeanor under this section
26 ~~shall~~ *may not* be a candidate for any elective office ~~or~~ *nor* act as a
27 lobbyist for a period for four years following the time for filing a
28 notice of appeal has expired, or all possibility of direct attack in the
29 courts of this state has been finally exhausted, unless the court at
30 the time of sentencing specifically determines that this provision
31 shall not be applicable. A plea of nolo contendere shall be deemed
32 a conviction for the purposes of this section.

33 (3) In addition to other penalties provided by law, a fine of up
34 to the greater of ten thousand dollars (\$10,000), or three times the
35 amount the person failed to disclose or report properly, may be
36 imposed upon conviction for each violation.

37 (4) Prosecution for violation of this section shall be
38 commenced within four years after the date on which the violation
39 occurred.



1 (5) This section ~~shall~~ *may* not prevent any member of the board
2 from making, or participating in making, a governmental decision
3 to the extent that the member’s participation is legally required for
4 the action or decision to be made. However, the fact that a
5 member’s vote is needed to break a tie does not make the member’s
6 participation legally required.

7 *SEC. 3.* Section 7081 of the Revenue and Taxation Code is
8 amended to read:

9 7081. The Legislature finds and declares that taxes are the
10 most sensitive point of contact between citizens and their
11 government, and that there is a delicate balance between revenue
12 collection and freedom from government oppression. It is the
13 intent of the Legislature to place guarantees in California law to
14 ensure that the rights, privacy, and property of California
15 taxpayers are adequately protected during the process of the
16 assessment and collection of taxes.

17 The Legislature further finds that the California tax system is
18 based largely on voluntary compliance, and the development of
19 understandable tax laws and taxpayers informed of those laws will
20 both improve voluntary compliance and the relationship between
21 taxpayers and government. It is the further intent of the Legislature
22 to promote improved voluntary taxpayer compliance by
23 improving the clarity of tax laws and efforts to inform the public
24 of the proper application of those laws.

25 The Legislature further finds and declares that the purpose of
26 any tax proceeding between the ~~Franchise Tax Board~~ *State Board*
27 *of Equalization* and a taxpayer is the correct determination of the
28 taxpayer’s liability. It is the intent of the Legislature that, in
29 furtherance of this purpose, both the Board of Equalization and the
30 taxpayer be accorded every opportunity to present and consider all
31 relevant information pertaining to the disputed liability.

32 ~~*SEC. 2.*~~

33 *SEC. 4.* Section 21002 of the Revenue and Taxation Code is
34 amended to read:

35 21002. The Legislature finds and declares that taxes are the
36 most sensitive point of contact between citizens and their
37 government, and that there is a delicate balance between revenue
38 collection and freedom from government oppression. It is the
39 intent of the Legislature to place guarantees in California law to
40 ensure that the rights, privacy, and property of California



1 taxpayers are adequately protected during the process of the
2 assessment and collection of taxes.

3 The Legislature further finds that the California tax system is
4 based largely on self-assessment, and the development of
5 understandable tax laws and taxpayers informed of those laws will
6 both improve self-assessment and the relationship between
7 taxpayers and government. It is the further intent of the Legislature
8 to promote improved taxpayer self-assessment by improving the
9 clarity of tax laws and efforts to inform the public of the proper
10 application of those laws.

11 The Legislature further finds and declares that the purpose of
12 any tax proceeding between the ~~Board of Equalization~~ *Franchise*
13 *Tax Board* and a taxpayer is the correct determination of the
14 taxpayer's liability. It is the intent of the Legislature that, in
15 furtherance of this purpose, both the Franchise Tax Board and the
16 taxpayer be accorded every opportunity to present and consider all
17 relevant information pertaining to the disputed liability.

18 *SEC. 5. No reimbursement is required by this act pursuant to*
19 *Section 6 of Article XIII B of the California Constitution because*
20 *the only costs that may be incurred by a local agency or school*
21 *district will be incurred because this act creates a new crime or*
22 *infraction, eliminates a crime or infraction, or changes the penalty*
23 *for a crime or infraction, within the meaning of Section 17556 of*
24 *the Government Code, or changes the definition of a crime within*
25 *the meaning of Section 6 of Article XIII B of the California*
26 *Constitution.*

