

AMENDED IN ASSEMBLY JULY 16, 2001

AMENDED IN ASSEMBLY JUNE 25, 2001

AMENDED IN SENATE MAY 1, 2001

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 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 by board staff or individual members 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 by the state body prior to that state body taking any final action that item.

(2) Existing law, known as the Quentin L. Kopp Conflict of Interest Act of 1990, generally prohibits a member of the *State* 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 that has received a contribution or contributions in an aggregate amount of \$250 or more within the preceding 12 months from a corporation that is a party, participant, or agent, among contributions that would be subject to this prohibition.

(3) Existing law requires a member of the *State* 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 that has received a contribution or contributions in an aggregate amount of \$250 or more within the preceding 12 months from a corporation that is 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 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.

(5) Under existing law there are Taxpayers' Bills of Rights that apply to both the *State* 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 determination of the taxpayer's correct amount of tax liability, and would set forth the Legislature's intent that, in furtherance of this purpose, ~~both the taxing agency and the taxpayer~~ *the taxpayer should have every opportunity to present, and consider all relevant information pertaining to the taxpayer's 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: yes. State-mandated local program: 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



1 meeting if prepared by the state body or a member of the state
2 body, or after the meeting if prepared by some other person.

3 (c) In the case of the Franchise Tax Board, writings that are
4 public records under subdivision (a) that are distributed to
5 members of the state body by board staff or individual members
6 prior to or during a meeting, pertaining to any item to be
7 considered during the meeting, shall be distributed, without delay,
8 to all persons that request notice in writing pursuant to subdivision
9 (a) of Section 11125, and shall be made available, without delay,
10 on the Internet, and shall be made available for public inspection
11 at the meeting by the state body prior to that state body taking any
12 final action on that item.

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

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

28 SEC. 2. Section 15626 of the Government Code is amended
29 to read:

30 15626. (a) This section shall be known, and may be cited, as
31 the Quentin L. Kopp Conflict of Interest Act of 1990.

32 (b) Prior to rendering any decision in any adjudicatory
33 proceeding pending before the State Board of Equalization, each
34 member who knows or has reason to know that he or she received
35 a contribution or contributions within the preceding 12 months in
36 an aggregate amount of two hundred fifty dollars (\$250) or more
37 from a party or his or her agent, from any participant or his or her
38 agent, or from a committee that has received a contribution or
39 contributions in an aggregate amount of two hundred fifty dollars
40 (\$250) or more within the preceding 12 months from a corporation



1 that is a party, participant, or agent shall disclose that fact on the
2 record of the proceeding.

3 (c) A member may not make, participate in making, or in any
4 way attempt to use his or her official position to influence the
5 decision in any adjudicatory proceeding pending before the board
6 if the member knows or has reason to know that he or she received
7 a contribution or contributions in an aggregate amount of two
8 hundred fifty dollars (\$250) or more within the preceding 12
9 months from a party or his or her agent, from any participant or his
10 or her agent, or from a committee that has received a contribution
11 or contributions in an aggregate amount of two hundred fifty
12 dollars (\$250) or more within the preceding 12 months from a
13 corporation that is a party, participant, or agent, and if the member
14 knows or has reason to know that the participant has a financial
15 interest in the decision, as that term is used in Article 1
16 (commencing with Section 87100) of Chapter 7 of Title 9.

17 (d) Notwithstanding subdivision (c), if a member receives a
18 contribution that would otherwise require disqualification under
19 subdivision (c), and he or she returns the contribution within 30
20 days from the time he or she knows, or has reason to know, about
21 the contribution and the adjudicatory proceeding pending before
22 the board, his or her participation in the proceeding shall be
23 deemed lawful.

24 (e) A party to, or a participant in, an adjudicatory proceeding
25 pending before the board shall disclose on the record of the
26 proceeding any contribution or contributions in an aggregate
27 amount of two hundred fifty dollars (\$250) or more made within
28 the preceding 12 months by the party or participant, his or her
29 agent, or by a committee that has received a contribution or
30 contributions in an aggregate amount of two hundred fifty dollars
31 (\$250) or more within the preceding 12 months from a corporation
32 that is the party, participant, or agent, to any member of the board.

33 (f) When a close corporation is a party to, or a participant in,
34 an adjudicatory proceeding pending before the board, the majority
35 shareholder is subject to the disclosure requirement specified in
36 this section.

37 (g) For purposes of this section, if a deputy to the Controller sits
38 at a meeting of the board and votes on behalf of the Controller, the
39 deputy shall disclose contributions made to the Controller and

1 shall disqualify himself or herself from voting pursuant to this
2 section.

3 (h) For purposes of this section:

4 (1) “Committee” has the same meaning prescribed in Section
5 82013 and the regulations adopted thereto.

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

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

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

19 (5) “Agent” means any person who represents a party to or
20 participant in an adjudicatory proceeding pending before the
21 board. If a person acting as an agent is also acting as an employee
22 or member of a law, accounting, consulting, or other firm, or a
23 similar entity or corporation, both the entity or corporation and the
24 person are agents.

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

34 (7) A member knows or has reason to know about a
35 contribution if, after the adjudicatory proceeding first appears on
36 a meeting notice of the board, facts have been brought to the
37 member’s personal attention that he or she has received a
38 contribution which would require disqualification under
39 subdivision (c), or that the member received written notice from
40 the board staff, before commencement of the hearing and before



any subsequent decision on the matter, that a specific party, close corporation, or majority shareholder, or agent thereof, or any participant having a financial interest in the matter, or agent thereof, or a committee that has received a contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a corporation that is a party, participant, or agent, in a specific, named adjudicatory proceeding before the board, made a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars (\$250) or more. Each member shall provide board staff with a copy of each of his or her campaign statements at the time each of those statements is filed.

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

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

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

(B) Whether a committee that has received a contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a corporation that is a party, participant, or agent has made a contribution.

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

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

(2) A person convicted of a misdemeanor under this section may not be a candidate for any elective office nor act as a lobbyist for a period of four years following the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this state has been finally exhausted, unless the court at the time of sentencing specifically determines that this provision shall not

1 be applicable. A plea of nolo contendere shall be deemed a
2 conviction for the purposes of this section.

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

7 (4) Prosecution for violation of this section shall be
8 commenced within four years after the date on which the violation
9 occurred.

10 (5) This section may not prevent any member of the board from
11 making, or participating in making, a governmental decision to the
12 extent that the member's participation is legally required for the
13 action or decision to be made. However, the fact that a member's
14 vote is needed to break a tie does not make the member's
15 participation legally required.

16 (j) No person shall create a committee or use an existing
17 committee for the purpose of making a contribution that, if made
18 directly, would otherwise violate this section.

19 SEC. 3. Section 7081 of the Revenue and Taxation Code is
20 amended to read:

21 7081. The Legislature finds and declares that taxes are the
22 most sensitive point of contact between citizens and their
23 government, and that there is a delicate balance between revenue
24 collection and freedom from government oppression. It is the
25 intent of the Legislature to place guarantees in California law to
26 ensure that the rights, privacy, and property of California
27 taxpayers are adequately protected during the process of the
28 assessment and collection of taxes.

29 The Legislature further finds that the California tax system is
30 based largely on voluntary compliance, and the development of
31 understandable tax laws and taxpayers informed of those laws will
32 improve both voluntary compliance and the relationship between
33 taxpayers and government. It is the further intent of the Legislature
34 to promote improved voluntary taxpayer compliance by
35 improving the clarity of tax laws and efforts to inform the public
36 of the proper application of those laws.

37 The Legislature further finds and declares that the purpose of
38 any tax proceeding between the State Board of Equalization and
39 a taxpayer is the determination of the taxpayer's correct amount of
40 tax liability. It is the intent of the Legislature that, in furtherance



1 of this purpose, ~~both the Board of Equalization and the taxpayer~~
2 ~~be accorded every opportunity to present and consider all relevant~~
3 ~~information the State Board of Equalization may inquire into, and~~
4 ~~shall allow the taxpayer every opportunity to present, all relevant~~
5 ~~information pertaining to the taxpayer's liability.~~

6 SEC. 4. Section 21002 of the Revenue and Taxation Code is
7 amended to read:

8 21002. The Legislature finds and declares that taxes are the
9 most sensitive point of contact between citizens and their
10 government, and that there is a delicate balance between revenue
11 collection and freedom from government oppression. It is the
12 intent of the Legislature to place guarantees in California law to
13 ensure that the rights, privacy, and property of California
14 taxpayers are adequately protected during the process of the
15 assessment and collection of taxes.

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

24 The Legislature further finds and declares that the purpose of
25 any tax proceeding between the Franchise Tax Board and a
26 taxpayer is the determination of the taxpayer's correct tax liability.
27 ~~It is the intent of the Legislature that, in furtherance of this purpose,~~
28 ~~both the Franchise Tax Board and the taxpayer be accorded every~~
29 ~~opportunity to present and consider all relevant information of the~~
30 ~~Legislature that, in the furtherance of this purpose, the Franchise~~
31 ~~Tax Board may inquire into, and shall allow the taxpayer every~~
32 ~~opportunity to present, all relevant information pertaining to the~~
33 ~~taxpayer's liability.~~

34 SEC. 5. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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