

AMENDED IN SENATE APRIL 6, 2011

AMENDED IN SENATE MARCH 7, 2011

SENATE BILL

No. 46

Introduced by Senator Correa
(Coauthor: Assembly Member Smyth)

December 9, 2010

~~An act to add and repeal Article 2.5 (commencing with Section 1050) of Chapter 1 of Division 4 of Title 1 of the Government Code, relating to local government, and declaring the urgency thereof, to take effect immediately. An act to add and repeal Sections 87202.5 and 87302.2 of the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 46, as amended, Correa. ~~Local government:~~ *Public officials:* compensation disclosure.

~~Existing law provides for the compensation of local government officers and employees, as specified.~~

Existing provisions of the Political Reform Act of 1974 require certain persons employed by agencies to file annually a written statement of the economic interests they possess during specified periods. The act requires that state agencies promulgate a conflict of interest code that must contain, among other topics, provisions that require designated employees to file statements disclosing reportable investments, business positions, interests in real property, and income. The act requires that every report and statement filed pursuant to the act is a public record and is open to public inspection.

This bill would, until January 1, 2019, ~~require each public official every person, defined to mean a public official required to file a~~

~~statement of economic interest pursuant to the Political Reform Act of 1974, to annually file except a candidate for public office, who is required to file a statement of economic interests to include, as a part of that filing, a compensation disclosure form that provides compensation information for the preceding calendar year, as specified. The bill would specify that compensation disclosure forms are open to public inspection, as specified. This bill would, until January 1, 2019, require each designated employee who is required to file statements under a conflict of interest code to include, as a part of that filing, a compensation disclosure form that provides compensation information for the preceding calendar year.~~

The bill would, until January 1, 2019, require each ~~public agency, as defined,~~ to post on that ~~public agency's~~ Internet Web site the information contained on the compensation disclosure form filed by a ~~public official person required to file a statement of economic interest or a designated employee,~~ and the written policy for the reimbursement of actual and necessary expenses.

The bill would require the Controller, on or before October 1, 2011, to adopt *emergency* regulations for the implementation of these requirements, including the format of the compensation disclosure form. The bill would also require the Controller, on or before July 1, 2012, to recommend to the Governor and the Legislature methods for compiling the information contained on ~~public officials'~~ *a person's or a designated employee's* compensation disclosure forms in one or more publicly accessible databases, including specific proposals for establishment, operation, oversight, and funding, as specified.

This bill would authorize the Bureau of State Audits to report to the Governor and the Legislature regarding the implementation and effectiveness of this bill.

The bill would also authorize a district attorney or any interested person to commence an action by *mandamus or injunction* to enforce the ~~provision~~ *provisions* of the bill, as specified.

~~The duties imposed on local agencies by the bill would create a state-mandated local program.~~

Existing provisions of the act make a violation of the act subject to administrative, civil, and criminal penalties.

This bill would impose a state-mandated local program by imposing those criminal penalties on persons who violate the provisions of the bill.

The bill would express a legislative finding and declaration that it addresses the right of access by the people of the state to information concerning the conduct of the people’s business.

The bill would express a legislative finding and declaration that, to ensure the statewide integrity of local government, disclosure of compensation paid ~~filers~~ *to public officials and designated employees* is an issue of statewide concern and not a municipal affair and that, therefore, all cities, including charter cities, would be subject to the provisions of the bill.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions:~~

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

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a ²/₃ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. 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 87202.5 is added to the Government Code,
2 to read:

3 87202.5. (a) (1) Every person, except a candidate for public
4 office, who is required to file a statement of economic interests
5 pursuant to Section 87202, shall, as a part of that filing, include
6 a compensation disclosure form that provides compensation
7 information for the preceding calendar year.

8 (2) Nothing in this section shall be construed to prevent an
9 agency from adopting more extensive procedures and standards

1 relating to the disclosure of compensation information by persons
2 employed by the agency.

3 (3) If an agency maintains an Internet Web site, it shall post the
4 following information on its Internet Web site:

5 (A) The information contained on the compensation disclosure
6 form filed by a person pursuant to this section.

7 (B) The written policy for the reimbursement of actual and
8 necessary expenses adopted pursuant to Section 53232.2, if
9 applicable.

10 (b) As an alternative to subdivision (a), if an agency maintains
11 an Internet Web site, it may compile the information required by
12 subdivision (c) for each person employed by the agency who is
13 required to file a statement of economic interests pursuant to
14 Section 87202 and post that information on its Internet Web site.
15 The information for each of those persons shall be available upon
16 request pursuant to Section 81008.

17 (c) (1) On or before October 1, 2011, the Controller shall adopt
18 emergency regulations pursuant to Section 11346.1 for the
19 implementation of this section, including the format of the
20 compensation disclosure form.

21 (2) The compensation disclosure form shall provide for the
22 disclosure of each of the following:

23 (A) The agency's cost for a person's annual salary or stipend.

24 (B) The agency's cost to provide benefits to a person, including,
25 but not limited to, deferred compensation or defined benefit plans.

26 (C) The agency's reimbursement payments to a person for actual
27 and necessary expenses incurred on behalf of the local agency in
28 the performance of official duties.

29 (D) The agency's cost to provide a person with any other
30 monetary or nonmonetary perquisites of office.

31 (E) The date on which a person completed the training required
32 by Section 8956, Article 12 (commencing with Section 11146) of
33 Chapter 1 of Part 1 of Division 3 of Title 2, or Article 2.4
34 (commencing with Section 53234) of Chapter 2 of Part 1 of
35 Division 2 of Title 5, if applicable.

36 (3) The information disclosed pursuant to this subdivision shall
37 also include any amounts received by a person as a result of that
38 person's membership with, or employment by, any other entity if
39 the governing body of that entity and the governing body of the

1 agency that the person is a member of, or employed by, share
2 membership.

3 (d) (1) The district attorney or any interested person may
4 commence an action by mandamus or injunction to compel a
5 person or agency to comply with the requirements of this section.
6 Nothing in this section shall be construed to prevent a public
7 official or agency from curing or correcting an action challenged
8 pursuant to this section.

9 (2) Prior to any action being commenced pursuant to this
10 section, the district attorney or interested person shall make a
11 demand of the person or agency to cure or correct the action
12 alleged to have been taken in violation of this section. The demand
13 shall be in writing and clearly describe the nature of the alleged
14 violation.

15 (3) Within 30 days of receipt of the demand, the person or
16 agency shall cure or correct the alleged violation and notify the
17 demanding party in writing of the decision to cure or correct the
18 alleged violation or inform the demanding party in writing of its
19 decision not to cure or correct the alleged violation.

20 (4) Within 15 days of receipt of the written notice of the decision
21 to cure or correct an alleged violation, or not to cure or correct,
22 or within 15 days of the expiration of the 30-day period to cure or
23 correct, whichever is earlier, the demanding party shall be required
24 to commence the action pursuant to this section or thereafter be
25 barred from commencing the action.

26 (5) If the person or agency takes no action within the 30-day
27 period, the inaction shall be deemed a decision not to cure or
28 correct the alleged violation, and the 15-day period to commence
29 the action described in paragraph (4) shall commence to run the
30 day after the 30-day period to cure or correct expires.

31 (6) During any action seeking a judicial determination pursuant
32 to this section if the court determines, pursuant to a showing that
33 an alleged violation has been cured or corrected by a subsequent
34 action, the action filed pursuant to this section shall be dismissed
35 with prejudice

36 (e) (1) On or before July 1, 2012, the Controller shall
37 recommend to the Governor and the Legislature methods for
38 compiling the information contained on a person's compensation
39 disclosure forms in one or more publicly accessible databases.

1 *These recommendations shall include specific proposals for*
2 *establishment, operation, oversight, and funding.*

3 (2) *On or before January 1, 2018, to the extent resources are*
4 *available, the Bureau of State Audits may review and report to the*
5 *Governor and the Legislature regarding the implementation and*
6 *effectiveness of this section. The bureau's report shall rely on*
7 *criteria, including, but not limited to, the accuracy, completeness,*
8 *ease of use, and timeliness of the compensation disclosure forms*
9 *filed pursuant to this section. The bureau's report may include*
10 *recommendations for the Legislature's consideration.*

11 (f) *This section shall remain in effect only until January 1, 2019,*
12 *and as of that date is repealed, unless a later enacted statute, that*
13 *is enacted before January 1, 2019, deletes or extends that date.*

14 SEC. 2. *Section 87302.2 is added to the Government Code, to*
15 *read:*

16 87302.2. (a) (1) *In addition to the requirements of subdivision*
17 *(b) of Section 87302, every designated employee shall also include,*
18 *as a part of that filing, a compensation disclosure form as provided*
19 *for in Section 87202.5. The compensation disclosure form shall*
20 *comply with the regulations promulgated by the Controller*
21 *pursuant to subdivision (c) of Section 87202.5.*

22 (2) *Nothing in this section shall be construed to prevent an*
23 *agency from adopting more extensive procedures and standards*
24 *relating to the disclosure of compensation information by its*
25 *designated employees.*

26 (3) *If an agency maintains an Internet Web site, it shall post the*
27 *following information on its Internet Web site:*

28 (A) *The information contained on the compensation disclosure*
29 *form filed by a designated employee pursuant to this section.*

30 (B) *The written policy for the reimbursement of actual and*
31 *necessary expenses adopted pursuant to Section 53232.2, if*
32 *applicable.*

33 (b) *As an alternative to subdivision (a), if an agency maintains*
34 *an Internet Web site, it may compile the information required by*
35 *subdivision (a) for each of its designated employees and post that*
36 *information on its Internet Web site. The information for each of*
37 *those designated employees shall be available upon request*
38 *pursuant to Section 81008.*

39 (c) *The district attorney or any interested person may commence*
40 *an action by mandamus or injunction to compel a designated*

1 *employee or agency to comply with the requirements of this section*
2 *by following the procedure enumerated in subdivision (d) of Section*
3 *87202.5.*

4 *(d) (1) On or before July 1, 2012, the Controller shall*
5 *recommend to the Governor and the Legislature methods for*
6 *compiling the information contained on a designated employee’s*
7 *compensation disclosure forms in one or more publicly accessible*
8 *databases. These recommendations shall include specific proposals*
9 *for establishment, operation, oversight, and funding.*

10 *(2) On or before January 1, 2018, to the extent resources are*
11 *available, the Bureau of State Audits may review and report to the*
12 *Governor and the Legislature regarding the implementation and*
13 *effectiveness of this section. The bureau’s report shall rely on*
14 *criteria, including, but not limited to, the accuracy, completeness,*
15 *ease of use, and timeliness of the compensation disclosure forms*
16 *filed pursuant to this section. The bureau’s report may include*
17 *recommendations for the Legislature’s consideration.*

18 *(e) This section shall remain in effect only until January 1, 2019,*
19 *and as of that date is repealed, unless a later enacted statute, that*
20 *is enacted before January 1, 2019, deletes or extends that date.*

21 ~~SECTION 1. Article 2.5 (commencing with Section 1050) is~~
22 ~~added to Chapter 1 of Division 4 of Title 1 of the Government~~
23 ~~Code, to read:~~

24
25 ~~Article 2.5. DISCLOSURE OF PUBLIC OFFICIALS’~~
26 ~~COMPENSATION~~
27

28 ~~1050. As used in this section, the following terms have the~~
29 ~~following meanings:~~

- 30 ~~(a) “City” means a general law city or a charter city.~~
- 31 ~~(b) “Local agency” means any county, city, special district, or~~
32 ~~school district, or any other local or regional political subdivision,~~
33 ~~including a joint powers agency formed pursuant to the Joint~~
34 ~~Exercise of Powers Act (Chapter 5 (commencing with Section~~
35 ~~6500) of Division 7).~~
- 36 ~~(c) “Public agency” means any state agency or local agency.~~
- 37 ~~(d) “Public official” means any person, except a candidate for~~
38 ~~office, who is required to file a statement of economic interests~~
39 ~~pursuant to Section 87200.~~

1 (e) ~~“School district” means a school district, community college~~
2 ~~district, county board of education, or county superintendent of~~
3 ~~schools.~~

4 (f) ~~“Special district” means any agency of the state established~~
5 ~~for the local performance of governmental or proprietary functions~~
6 ~~within limited boundaries.~~

7 (g) ~~“State agency” means every state office, department,~~
8 ~~division, bureau, board, or commission, or the Legislature.~~

9 1051. (a) ~~Each public official shall annually file a~~
10 ~~compensation disclosure form that provides compensation~~
11 ~~information for the preceding calendar year. A public official shall~~
12 ~~file the compensation disclosure form with the same office that~~
13 ~~receives his or her statement of economic interest pursuant to~~
14 ~~Section 87500. The annual deadline for filing a compensation~~
15 ~~disclosure form shall be the same as the deadline for filing annual~~
16 ~~statements of economic interest, pursuant to Sections 87203 and~~
17 ~~87302.~~

18 (b) ~~Nothing in this article shall be construed to prevent a public~~
19 ~~agency from adopting more restrictive procedures and standards~~
20 ~~relating to the disclosure of compensation information.~~

21 (e) ~~If a public agency maintains an Internet Web site, it shall~~
22 ~~post the following information on its Internet Web site:~~

23 (1) ~~The information contained on the compensation disclosure~~
24 ~~form filed by a public official.~~

25 (2) ~~The written policy for the reimbursement of actual and~~
26 ~~necessary expenses adopted pursuant to Section 53232.2, if~~
27 ~~applicable.~~

28 1052. ~~As an alternative to Section 1051, if a public agency~~
29 ~~maintains an Internet Web site, it may compile the information~~
30 ~~required by Section 1053 for each of its public officials and post~~
31 ~~that information on its Internet Web site. The information for each~~
32 ~~of those public officials shall be available upon request pursuant~~
33 ~~to Section 1055.~~

34 1053. (a) ~~On or before October 1, 2011, the Controller shall~~
35 ~~adopt regulations pursuant to Chapter 3.5 (commencing with~~
36 ~~Section 11340) of Part 1 of Division 3 of Title 2 for the~~
37 ~~implementation of this article, including the format of the~~
38 ~~compensation disclosure form.~~

39 (b) ~~The compensation disclosure form shall provide for the~~
40 ~~disclosure of each of the following:~~

1 ~~(1) The public agency's cost for the public official's annual~~
2 ~~salary or stipend.~~

3 ~~(2) The public agency's cost to provide benefits to the public~~
4 ~~official, including but not limited to, deferred compensation or~~
5 ~~defined benefit plans.~~

6 ~~(3) The public agency's reimbursement payments to the public~~
7 ~~official for actual and necessary expenses incurred on behalf of~~
8 ~~the local agency in the performance of official duties.~~

9 ~~(4) The public agency's cost to provide the public official with~~
10 ~~any other monetary or nonmonetary perquisites of office.~~

11 ~~(5) The date on which the public official completed the training~~
12 ~~required by Section 8956, Article 12 (commencing with Section~~
13 ~~11146) of Chapter 1 of Part 1 of Division 3 of Title 2, or Article~~
14 ~~2.4 (commencing with Section 53234) of Chapter 2 of Part 1 of~~
15 ~~Division 2 of Title 5, if applicable.~~

16 ~~1054. The information disclosed pursuant to Section 1053 shall~~
17 ~~also include any amounts received by a public official as a result~~
18 ~~of that person's membership with, or employment by, any other~~
19 ~~public agency if the membership of the other public agency's~~
20 ~~governing body is sufficient in number to constitute a quorum or~~
21 ~~a majority of the governing body membership of the first public~~
22 ~~agency.~~

23 ~~1055. Every compensation disclosure form filed pursuant to~~
24 ~~this article shall be open for public inspection and reproduction~~
25 ~~during regular business hours, commencing as soon as practicable,~~
26 ~~but not later than the second business day following the day on~~
27 ~~which it was received. No conditions shall be imposed upon a~~
28 ~~person desiring to inspect or reproduce a compensation disclosure~~
29 ~~form filed pursuant to this article, nor shall any information or~~
30 ~~identification be required from the person. Copies shall be provided~~
31 ~~at a charge not to exceed ten cents (\$0.10) per page. In addition,~~
32 ~~a retrieval fee not to exceed five dollars (\$5) per request may be~~
33 ~~charged for copies of reports and statements that are more than~~
34 ~~five years old. A request for more than one compensation~~
35 ~~disclosure form at the same time shall be considered a single~~
36 ~~request.~~

37 ~~1056. (a) The district attorney or any interested person may~~
38 ~~commence an action by mandamus or injunction to compel a public~~
39 ~~official or public agency to comply with the requirements of this~~
40 ~~article. Nothing in this article shall be construed to prevent a public~~

1 official or public agency from curing or correcting an action
2 challenged pursuant to this article.

3 (b) ~~Prior to any action being commenced pursuant to this article,~~
4 ~~the district attorney or interested person shall make a demand of~~
5 ~~the public official or public agency to cure or correct the action~~
6 ~~alleged to have been taken in violation of this article. The demand~~
7 ~~shall be in writing and clearly describe the nature of the alleged~~
8 ~~violation.~~

9 (c) ~~Within 30 days of receipt of the demand, the public official~~
10 ~~or public agency shall cure or correct the alleged violation and~~
11 ~~notify the demanding party in writing of the decision to cure or~~
12 ~~correct the alleged violation or inform the demanding party in~~
13 ~~writing of its decision not to cure or correct the alleged violation.~~

14 (d) ~~Within 15 days of receipt of the written notice of the decision~~
15 ~~to cure or correct an alleged violation, or not to cure or correct, or~~
16 ~~within 15 days of the expiration of the 30-day period to cure or~~
17 ~~correct, whichever is earlier, the demanding party shall be required~~
18 ~~to commence the action pursuant to this article or thereafter be~~
19 ~~barred from commencing the action.~~

20 (e) ~~If the public official or public agency takes no action within~~
21 ~~the 30-day period, the inaction shall be deemed a decision not to~~
22 ~~cure or correct the alleged violation, and the 15-day period to~~
23 ~~commence the action described in subdivision (d) shall commence~~
24 ~~to run the day after the 30-day period to cure or correct expires.~~

25 (f) ~~During any action seeking a judicial determination pursuant~~
26 ~~to this article if the court determines, pursuant to a showing that~~
27 ~~an alleged violation has been cured or corrected by a subsequent~~
28 ~~action, the action filed pursuant to this article shall be dismissed~~
29 ~~with prejudice.~~

30 1057. ~~(a) On or before July 1, 2012, the Controller shall~~
31 ~~recommend to the Governor and the Legislature methods for~~
32 ~~compiling the information contained on public officials'~~
33 ~~compensation disclosure forms in one or more publicly accessible~~
34 ~~databases. These recommendations shall include specific proposals~~
35 ~~for establishment, operation, oversight, and funding.~~

36 (b) ~~On or before January 1, 2018, the Bureau of State Audits~~
37 ~~shall report to the Governor and the Legislature regarding the~~
38 ~~implementation and effectiveness of this article.~~

1 ~~1058. This article shall remain in effect only until January 1,~~
2 ~~2019, and as of that date is repealed, unless a later enacted statute,~~
3 ~~that is enacted before January 1, 2019, deletes or extends that date.~~

4 ~~SEC. 2.~~

5 ~~SEC. 3.~~ The Legislature finds and declares that the fiscal
6 integrity and stability of local governmental agencies in this state,
7 including charter cities, directly affects the long-term well-being
8 of all the residents of this state. The public perception of efficient,
9 transparent, and accountable governmental structures in public
10 agencies in California affects the likelihood of businesses locating
11 to or remaining in the state. Therefore, the Legislature finds and
12 declares that to ensure the statewide integrity of state agencies and
13 local agencies, the disclosure of compensation paid to public
14 officials *or designated employees* is an issue of statewide concern
15 and not a municipal affair, as that term is used in Section 5 of
16 Article XI of the California Constitution. Therefore, this act shall
17 apply to all cities, including charter cities.

18 ~~SEC. 3.— If the Commission on State Mandates determines that~~
19 ~~this act contains costs mandated by the state, reimbursement to~~
20 ~~local agencies and school districts for those costs shall be made~~
21 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
22 ~~4 of Title 2 of the Government Code.~~

23 ~~SEC. 4.~~ *No reimbursement is required by this act pursuant to*
24 ~~Section 6 of Article XIII B of the California Constitution because~~
25 ~~the only costs that may be incurred by a local agency or school~~
26 ~~district will be incurred because this act creates a new crime or~~
27 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
28 ~~for a crime or infraction, within the meaning of Section 17556 of~~
29 ~~the Government Code, or changes the definition of a crime within~~
30 ~~the meaning of Section 6 of Article XIII B of the California~~
31 ~~Constitution.~~

32 ~~SEC. 5.~~ *The Legislature finds and declares that this bill furthers*
33 ~~the purposes of the Political Reform Act of 1974 within the meaning~~
34 ~~of subdivision (a) of Section 81012 of the Government Code.~~

35 ~~SEC. 4.~~

36 ~~SEC. 6.~~ This act is an urgency statute necessary for the
37 immediate preservation of the public peace, health, or safety within
38 the meaning of Article IV of the Constitution and shall go into
39 immediate effect. The facts constituting the necessity are:

1 Maintaining the public’s trust in the efficiency, transparency,
2 and accountability of their public agencies is essential to the
3 operation of governments that protect the public peace, health, and
4 safety of all Californians. It is essential that measures which protect
5 the public trust take effect immediately.

O