

AMENDED IN SENATE MAY 31, 2011

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 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. Public officials: compensation disclosure.

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, *commencing on January 1, 2013, and continuing until January 1, 2019*, require every *designated employee and other person*, 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. ~~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, *commencing January 1, 2013 and continuing until January 1, 2019*, require each agency to post on that agency's Internet Web site the information contained on the compensation disclosure form filed by a 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~~ *March 1, 2013*, 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~~ *2013*, to recommend to the Governor and the Legislature methods for compiling the information contained on 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 provisions of the bill, as specified.

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 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 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
2 Code, 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 a
6 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
10 relating to the disclosure of compensation information by persons
11 employed by the agency.

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

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

16 (B) The written policy for the reimbursement of actual and
17 necessary expenses adopted pursuant to Section 53232.2, if
18 applicable.

19 (b) As an alternative to subdivision (a), if an agency maintains
20 an Internet Web site, it may compile the information required by
21 subdivision (c) for each person employed by the agency who is
22 required to file a statement of economic interests pursuant to
23 Section 87202 and post that information on its Internet Web site.

1 The information for each of those persons shall be available upon
2 request pursuant to Section 81008.

3 (c) (1) On or before ~~October 1, 2011~~ *March 1, 2013*, the
4 Controller shall adopt emergency regulations pursuant to Section
5 11346.1 for the implementation of this section, including the format
6 of the compensation disclosure form.

7 (2) The compensation disclosure form shall provide for the
8 disclosure of each of the following:

9 (A) The agency’s cost for a person’s annual salary or stipend.

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

12 (C) The agency’s reimbursement payments to a person for actual
13 and necessary expenses incurred on behalf of the local agency in
14 the performance of official duties.

15 (D) The agency’s cost to provide a person with any other
16 monetary or nonmonetary perquisites of office.

17 (E) The date on which a person completed the training required
18 by Section 8956, Article 12 (commencing with Section 11146) of
19 Chapter 1 of Part 1 of Division 3 of Title 2, or Article 2.4
20 (commencing with Section 53234) of Chapter 2 of Part 1 of
21 Division 2 of Title 5, if applicable.

22 (3) The information disclosed pursuant to this subdivision shall
23 also include any amounts received by a person as a result of that
24 person’s membership with, or employment by, any other entity if
25 the governing body of that entity and the governing body of the
26 agency that the person is a member of, or employed by, share
27 membership.

28 (d) (1) The district attorney or any interested person may
29 commence an action by mandamus or injunction to compel a person
30 or agency to comply with the requirements of this section. Nothing
31 in this section shall be construed to prevent a public official or
32 agency from curing or correcting an action challenged pursuant
33 to this section.

34 (2) Prior to any action being commenced pursuant to this section,
35 the district attorney or interested person shall make a demand of
36 the person or agency to cure or correct the action alleged to have
37 been taken in violation of this section. The demand shall be in
38 writing and clearly describe the nature of the alleged violation.

39 (3) Within 30 days of receipt of the demand, the person or
40 agency shall cure or correct the alleged violation and notify the

1 demanding party in writing of the decision to cure or correct the
2 alleged violation or inform the demanding party in writing of its
3 decision not to cure or correct the alleged violation.

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

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

15 (6) During any action seeking a judicial determination pursuant
16 to this section if the court determines, pursuant to a showing that
17 an alleged violation has been cured or corrected by a subsequent
18 action, the action filed pursuant to this section shall be dismissed
19 with prejudice

20 (e) (1) On or before July 1, ~~2012~~ 2013, the Controller shall
21 recommend to the Governor and the Legislature methods for
22 compiling the information contained on a person's compensation
23 disclosure forms in one or more publicly accessible databases.
24 These recommendations shall include specific proposals for
25 establishment, operation, oversight, and funding.

26 (2) On or before January 1, 2018, to the extent resources are
27 available, the Bureau of State Audits may review and report to the
28 Governor and the Legislature regarding the implementation and
29 effectiveness of this section. The bureau's report shall rely on
30 criteria, including, but not limited to, the accuracy, completeness,
31 ease of use, and timeliness of the compensation disclosure forms
32 filed pursuant to this section. The bureau's report may include
33 recommendations for the Legislature's consideration.

34 (f) This section shall *become operative January 1, 2013, and*
35 *shall remain in effect only until January 1, 2019, and as of that*
36 *date is repealed, unless a later enacted statute, that is enacted before*
37 *January 1, 2019, deletes or extends that date.*

38 SEC. 2. Section 87302.2 is added to the Government Code, to
39 read:

1 87302.2. (a) (1) In addition to the requirements of subdivision
2 (b) of Section 87302, every designated employee shall also include,
3 as a part of that filing, a compensation disclosure form as provided
4 for in Section 87202.5. The compensation disclosure form shall
5 comply with the regulations promulgated by the Controller pursuant
6 to subdivision (c) of Section 87202.5.

7 (2) Nothing in this section shall be construed to prevent an
8 agency from adopting more extensive procedures and standards
9 relating to the disclosure of compensation information by its
10 designated employees.

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

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

15 (B) The written policy for the reimbursement of actual and
16 necessary expenses adopted pursuant to Section 53232.2, if
17 applicable.

18 (b) As an alternative to subdivision (a), if an agency maintains
19 an Internet Web site, it may compile the information required by
20 subdivision (a) for each of its designated employees and post that
21 information on its Internet Web site. The information for each of
22 those designated employees shall be available upon request
23 pursuant to Section 81008.

24 (c) The district attorney or any interested person may commence
25 an action by mandamus or injunction to compel a designated
26 employee or agency to comply with the requirements of this section
27 by following the procedure enumerated in subdivision (d) of
28 Section 87202.5.

29 (d) (1) On or before July 1, ~~2012~~ 2013, the Controller shall
30 recommend to the Governor and the Legislature methods for
31 compiling the information contained on a designated employee's
32 compensation disclosure forms in one or more publicly accessible
33 databases. These recommendations shall include specific proposals
34 for establishment, operation, oversight, and funding.

35 (2) On or before January 1, 2018, to the extent resources are
36 available, the Bureau of State Audits may review and report to the
37 Governor and the Legislature regarding the implementation and
38 effectiveness of this section. The bureau's report shall rely on
39 criteria, including, but not limited to, the accuracy, completeness,
40 ease of use, and timeliness of the compensation disclosure forms

1 filed pursuant to this section. The bureau’s report may include
2 recommendations for the Legislature’s consideration.

3 (e) This section shall *become operative January 1, 2013, and*
4 *shall* remain in effect only until January 1, 2019, and as of that
5 date is repealed, unless a later enacted statute, that is enacted before
6 January 1, 2019, deletes or extends that date.

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

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

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

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

37 ~~Maintaining the public’s trust in the efficiency, transparency,~~
38 ~~and accountability of their public agencies is essential to the~~
39 ~~operation of governments that protect the public peace, health, and~~

- 1 safety of all Californians. It is essential that measures which protect
- 2 the public trust take effect immediately.

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