

AMENDED IN ASSEMBLY APRIL 8, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1728**

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**Introduced by Assembly Member Garcia**

February 14, 2014

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An act to amend Section 84308 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL’S DIGEST

AB 1728, as amended, Garcia. Political Reform Act of 1974.

(1) The Political Reform Act of 1974 prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 3 months following the date a final decision is rendered in the proceeding, if the officer knows or has reason to know that the participant has a financial interest, as defined. The act also requires an officer to disclose on the record a contribution of more than \$250 from a party or participant received within the 12 months preceding a decision in a proceeding and would prohibit the official from making, participating in making, or otherwise using his or her official position to influence a decision in a proceeding in which the official knows or has reason to know that the party or participant has a financial interest in the decision.

The act defines an “agency,” for these purposes, to mean any state or local government agency, except certain entities, including local governmental agencies whose members are directly elected by the voters. ~~The act defines a “participant,” for these purposes, as a person who is not a party but who actively supports or opposes a particular~~

decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision. The act defines a “license, permit, or other entitlement for use,” for these purposes, to include, among other things, all contracts except competitively bid, labor, or personal employment contracts.

This bill would revise the definition of “agency” to include a local government agency formed pursuant to provisions of the Water Code. The bill would revise the definition of “license, permit, or other entitlement for use” with respect to proceedings before a local government agency formed pursuant to the Water Code to apply to all contracts that are not competitively bid. ~~The bill would deem the financial interests of a person who compensates a participant to actively support or oppose a particular decision in a proceeding on his or her behalf to also be a financial interest of the participant.~~

(2) Violations of the act are punishable as a misdemeanor. By expanding the scope of an existing crime, this bill imposes a state-mandated local program.

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.

(3) 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  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.

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

Vote:  $\frac{2}{3}$ . 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 84308 of the Government Code is  
2 amended to read:

3 84308. (a) The definitions set forth in this subdivision shall  
4 govern the interpretation of this section.

5 (1) “Party” means any person who files an application for, or  
6 is the subject of, a proceeding involving a license, permit, or other  
7 entitlement for use.

1 (2) “Participant” means any person who is not a party but who  
2 actively supports or opposes a particular decision in a proceeding  
3 involving a license, permit, or other entitlement for use and who  
4 has a financial interest in the decision, as described in Article 1  
5 (commencing with Section 87100) of Chapter 7. A person actively  
6 supports or opposes a particular decision in a proceeding if he or  
7 she lobbies in person the officers or employees of the agency,  
8 testifies in person before the agency, or otherwise acts to influence  
9 officers of the agency.

10 (3) “Agency” means an agency as defined in Section 82003  
11 except that it does not include the courts or any agency in the  
12 judicial branch of government, local governmental agencies whose  
13 members are directly elected by the voters except local government  
14 agencies formed pursuant to provisions of the Water Code, the  
15 Legislature, the Board of Equalization, or constitutional officers.  
16 However, this section applies to any person who is a member of  
17 an exempted agency but is acting as a voting member of another  
18 agency.

19 (4) “Officer” means any elected or appointed officer of an  
20 agency, any alternate to an elected or appointed officer of an  
21 agency, and any candidate for elective office in an agency.

22 (5) “License, permit, or other entitlement for use” means all  
23 business, professional, trade, and land use licenses and permits  
24 and all other entitlements for use, including all entitlements for  
25 land use, all contracts (other than competitively bid, labor, or  
26 personal employment contracts), and all franchises. For purposes  
27 of proceedings before an agency formed pursuant to provisions of  
28 the Water Code, “license, permit, or other entitlement for use”  
29 applies to all contracts except contracts that are competitively bid.

30 (6) “Contribution” includes contributions to candidates and  
31 committees in federal, state, or local elections.

32 (b) No officer of an agency shall accept, solicit, or direct a  
33 contribution of more than two hundred fifty dollars (\$250) from  
34 any party, or his or her agent, or from any participant, or his or her  
35 agent, while a proceeding involving a license, permit, or other  
36 entitlement for use is pending before the agency and for three  
37 months following the date a final decision is rendered in the  
38 proceeding if the officer knows or has reason to know that the  
39 participant has a financial interest, as that term is used in Article  
40 1 (commencing with Section 87100) of Chapter 7. This prohibition

1 shall apply regardless of whether the officer accepts, solicits, or  
2 directs the contribution for himself or herself, or on behalf of any  
3 other officer, or on behalf of any candidate for office or on behalf  
4 of any committee.

5 (c) Prior to rendering any decision in a proceeding involving a  
6 license, permit, or other entitlement for use pending before an  
7 agency, each officer of the agency who received a contribution  
8 within the preceding 12 months in an amount of more than two  
9 hundred fifty dollars (\$250) from a party or from any participant  
10 shall disclose that fact on the record of the proceeding. No officer  
11 of an agency shall make, participate in making, or in any way  
12 attempt to use his or her official position to influence the decision  
13 in a proceeding involving a license, permit, or other entitlement  
14 for use pending before the agency if the officer has willfully or  
15 knowingly received a contribution in an amount of more than two  
16 hundred fifty dollars (\$250) within the preceding 12 months from  
17 a party or his or her agent, or from any participant, or his or her  
18 agent if the officer knows or has reason to know that the participant  
19 has a financial interest in the decision, as that term is described  
20 with respect to public officials in Article 1 (commencing with  
21 Section 87100) of Chapter 7.

22 If an officer receives a contribution which would otherwise  
23 require disqualification under this section, returns the contribution  
24 within 30 days from the time he or she knows, or should have  
25 known, about the contribution and the proceeding involving a  
26 license, permit, or other entitlement for use, he or she shall be  
27 permitted to participate in the proceeding.

28 (d) A party to a proceeding before an agency involving a license,  
29 permit, or other entitlement for use shall disclose on the record of  
30 the proceeding any contribution in an amount of more than two  
31 hundred fifty dollars (\$250) made within the preceding 12 months  
32 by the party, or his or her agent, to any officer of the agency. No  
33 party, or his or her agent, to a proceeding involving a license,  
34 permit, or other entitlement for use pending before any agency  
35 and no participant, or his or her agent, in the proceeding shall make  
36 a contribution of more than two hundred fifty dollars (\$250) to  
37 any officer of that agency during the proceeding and for three  
38 months following the date a final decision is rendered by the  
39 agency in the proceeding. When a closed corporation is a party to,  
40 or a participant in, a proceeding involving a license, permit, or

1 other entitlement for use pending before an agency, the majority  
2 shareholder is subject to the disclosure and prohibition  
3 requirements specified in subdivisions (b), (c), and this subdivision.

4 ~~(e) For purposes of this section, a financial interest as described,~~  
5 ~~with respect to public officials, in Article 1(commencing with~~  
6 ~~Section 87100) of Chapter 7 of a person on whose behalf a~~  
7 ~~participant receives compensation to actively support or oppose a~~  
8 ~~particular decision in a proceeding is deemed to be a financial~~  
9 ~~interest of the participant.~~

10 ~~(f)~~

11 (e) Nothing in this section shall be construed to imply that any  
12 contribution subject to being reported under this title shall not be  
13 so reported.

14 SEC. 2. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.

23 SEC. 3. The Legislature finds and declares that this bill furthers  
24 the purposes of the Political Reform Act of 1974 within the  
25 meaning of subdivision (a) of Section 81012 of the Government  
26 Code.