

ASSEMBLY BILL

No. 1828

Introduced by Assembly Member Dodd

February 9, 2016

An act to amend Section 15626 of the Government Code, relating to the State Board of Equalization.

LEGISLATIVE COUNSEL'S DIGEST

AB 1828, as introduced, Dodd. State Board of Equalization: members: conflicts of interest.

The Quentin L. Kopp Conflict of Interest Act of 1990 requires a member of the State Board of Equalization who has received a contribution or contributions within the preceding 12 months in an aggregate amount of \$250 or more from a party or his or her agent, or from any participant or his or her agent, to, prior to rendering any decision in any adjudicatory proceeding pending before board, disclose that fact on the record of the proceeding. A member is prohibited from making, participating in making, or in any way attempting to use his or her official position to influence, the decision in an adjudicatory proceeding pending before the board if the member knows or has reason to know that he or she received a contribution or contributions in an aggregate amount of \$250 or more from a party to the proceeding, or from a participant in the proceeding the member knows or has reason to know has a financial interest in the decision. The act also requires a party to, or a participant in, an adjudicatory proceeding pending before the board to disclose on the record of the proceeding any contribution or contributions in an aggregate amount of \$250 or more made within the preceding 12 months by the party or participant, or his or her agent,

to any member of the board. A person who knowingly or willfully violates any provision of the act is guilty of a misdemeanor.

This bill would delete the \$250 limitation and instead apply the above-described disclosure and disqualification provisions if a board member receives any contribution from a party, participant, or agent, as provided. The bill would also prohibit a board member from requesting, suggesting, or accepting a contribution from a party, participant, or agent within the 12 months subsequent to a decision in the adjudicatory proceeding before the board in which the party or participant is involved, except as provided. The bill would also require a party, participant, or agent that makes a contribution within 12 months subsequent to a decision in an adjudicatory proceeding in which the party or participant is involved to disclose to the board contributions to a member within 30 days. The bill would require the board to make all disclosures required by these provisions publicly available on its Internet Web site. The bill would also expand the definition of the term “contribution” to include certain payments made at the behest of a member of the board, as defined, and of the terms “party,” “participant,” and “agent” to include employees of those persons. The bill would make various findings and declaration.

By expanding the application of the criminal sanctions of the Quentin L. Kopp Conflict of Interest Act of 1990, this bill would impose 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.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The State Board of Equalization (the board) is a
- 4 constitutionally authorized quasi-judicial body consisting of five
- 5 voting members, including the Controller and four members
- 6 representing four equalization districts and elected to four-year

1 terms at gubernatorial elections. The board is the only elected tax
2 board in the United States.

3 (b) The board is entrusted by statute to administer more than
4 30 tax and fee programs that generate state revenue. The board is
5 also charged with public utility property tax assessments and
6 overseeing the property tax assessment practices of the state's 58
7 county assessors.

8 (c) Additionally, the board hears appeals from various business
9 tax assessments and Franchise Tax Board actions.

10 (d) Board members are subject to the Political Reform Act of
11 1974 (Title 9 (commencing with Section 81000) of the Government
12 Code) and rules of the Fair Political Practices Commission
13 applicable to all other state elected officials.

14 (e) As a quasi-judicial body, the board is also subject to strict
15 contribution limits under the Quentin L. Kopp Conflict of Interest
16 Act of 1990 (Section 15626 of the Government Code) (the Kopp
17 Act). The Kopp Act recognizes the unique positions of board
18 members as both elected officials and judges presiding over tax
19 appeals. The Kopp Act is intended to prevent a board member
20 from creating conflicts of interest by participating in making or
21 influencing a decision of the board if the member has accepted a
22 contribution in excess of two hundred fifty dollars (\$250) from a
23 party to an appeal or his or her agent, or a participant or his or her
24 agent, within the 12 months preceding the appeal.

25 (f) The strict contribution limits of the Kopp Act do not apply
26 to payments made at the behest of a board candidate or committee
27 when the payment is made for purposes unrelated to his or her
28 candidacy for elected office.

29 (g) Despite passage of the Kopp Act in 1990, a loophole
30 allowing parties before the board and their employees, as well as
31 parties' agents and their employees, to aggregate multiple
32 contributions that individually fall below the two hundred fifty
33 dollar (\$250) limit but together exceed two hundred fifty dollars
34 (\$250) creates a perceived conflict of interest when the board hears
35 the parties' appeals. Similarly, payments made at the behest of a
36 board member by parties with an approaching appeal before the
37 board create a perceived conflict of interest.

38 (h) By enactment of this act, it is the intent of the Legislature
39 to eliminate the perceived conflicts of interest associated with

1 contributions and behested payments by parties, participants, their
2 agents, and employees related to appeals before the board.

3 SEC. 2. Section 15626 of the Government Code is amended
4 to read:

5 15626. (a) This section shall be known, and may be cited, as
6 the Quentin L. Kopp Conflict of Interest Act of 1990.

7 (b) Prior to rendering any decision in any adjudicatory
8 proceeding pending before the State Board of Equalization, each
9 member who knows or has reason to know that he or she received
10 a contribution or contributions within the preceding 12 months ~~in~~
11 ~~an aggregate amount of two hundred fifty dollars (\$250) or more~~
12 from a party or his or her agent, or from any participant or his or
13 her agent, shall disclose that fact on the record of the proceeding.

14 (c) ~~No~~ (1) A member shall *not* make, participate in making, or
15 in any way attempt to use his or her official position to influence,
16 the decision in any adjudicatory proceeding pending before the
17 board if the member knows or has reason to know that he or she
18 received a contribution or contributions ~~in an aggregate amount~~
19 ~~of two hundred fifty dollars (\$250) or more~~ within the preceding
20 12 months from a party or his or her agent, or from any participant
21 or his or her agent, and if the member knows or has reason to know
22 that the participant has a financial interest in the decision, as that
23 term is used in Article 1 (commencing with Section 87100) of
24 Chapter 7 of Title 9.

25 (2) *A member shall not request or suggest a contribution or*
26 *contributions from a party or his or her agent, or from any*
27 *participant or his or her agent, within the 12-month period*
28 *subsequent to a decision in the adjudicatory proceeding before*
29 *the board in which the party or participant is involved.*

30 (3) *In addition to paragraph (2), a member shall not accept a*
31 *contribution or contributions from a party or his or her agent, or*
32 *from any participant or his or her agent, within the 12-month*
33 *period subsequent to a decision in the adjudicatory proceeding*
34 *before the board in which the party or participant is involved.*

35 (d) (1) Notwithstanding subdivision (c), if a member receives
36 a contribution which would otherwise require disqualification
37 under subdivision (c), and he or she returns the contribution within
38 30 days from the time he or she knows, or has reason to know,
39 about the contribution and the adjudicatory proceeding pending

1 before the board, his or her participation in the proceeding shall
2 be deemed lawful.

3 (2) *Notwithstanding paragraph (3) of subdivision (c), if a*
4 *member receives a contribution within the 12-month period*
5 *subsequent to a decision in the adjudicatory proceeding before*
6 *the board from a party, participant, or agent and he or she returns*
7 *the contribution within 30 days from the time he or she knows, or*
8 *has reason to know, about the contribution and the decision in the*
9 *adjudicatory proceeding pending before the board, his or her*
10 *acceptance of the contribution shall be deemed lawful.*

11 (e) (1) A party to, or a participant in, an adjudicatory
12 proceeding pending before the board shall disclose on the record
13 of the proceeding any contribution or contributions ~~in an aggregate~~
14 ~~amount of two hundred fifty dollars (\$250) or more~~ made within
15 the preceding 12 months by the party or participant, or his or her
16 agent, to any member of the board. *The board shall make the*
17 *disclosure publicly available on its Internet Web site.*

18 (2) *A party to, or a participant in, an adjudicatory proceeding*
19 *before the board that makes a contribution to a member of the*
20 *board within the 12 months subsequent to a decision in the*
21 *adjudicatory proceeding in which the party or agent was involved*
22 *shall disclose that contribution to the board within 30 days of*
23 *making the contribution. The board shall make the disclosure*
24 *publicly available on its Internet Web site as promptly as feasible.*

25 (f) When a close corporation is a party to, or a participant in,
26 an adjudicatory proceeding pending before the board, the majority
27 shareholder is subject to the disclosure requirement specified in
28 this section.

29 (g) For purposes of this section, if a deputy to the Controller
30 sits at a meeting of the board and votes on behalf of the Controller,
31 the deputy shall disclose contributions made to the Controller and
32 shall disqualify himself or herself from voting pursuant to the
33 requirements of this section.

34 (h) For purposes of this section:

35 (1) “Contribution” has the same meaning as prescribed in
36 Section 82015 and the regulations adopted ~~thereto~~ pursuant to
37 that section, except that “contribution” shall also include a
38 payment made at the behest of a member of the board principally
39 for legislative, governmental, or charitable purposes when that

1 *payment is made by a party or his or her agent or a participant*
 2 *or his or her agent.*

3 (2) *“At the behest of a member of the board” means made under*
 4 *the control or at the direction of, in cooperation, consultation,*
 5 *coordination, or concert with, at the request or suggestion of, or*
 6 *with the express prior consent of a member of the board.*

7 ~~(2)~~

8 (3) *“Party” means any ~~person~~ person, or his or her employees,*
 9 *who is the subject of an adjudicatory proceeding pending before*
 10 *the board.*

11 ~~(3)~~

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

21 ~~(4)~~

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

28 ~~(5)~~

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

38 ~~(6)~~

39 (7) *A member knows or has reason to know about a contribution*
 40 *if, after the adjudicatory proceeding first appears on a meeting*

1 notice of the board, facts have been brought to the member's
2 personal attention that he or she has received a contribution which
3 would require disqualification under subdivision (c), or that the
4 member received written notice from the board staff, before
5 commencement of the hearing and before any subsequent decision
6 on the matter, that a specific party, close corporation, or majority
7 shareholder, or agent thereof, or any participant having a financial
8 interest in the matter, or agent thereof, in a specific, named
9 adjudicatory proceeding before the board, made a contribution or
10 contributions within the preceding 12 months in an aggregate
11 amount of two hundred fifty dollars (\$250) or more. *months*. Each
12 member shall provide board staff with a copy of each of his or her
13 campaign statements at the time each of those statements is filed.

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

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

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

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

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

32 (2) No person convicted of a misdemeanor under this section
33 shall be a candidate for any elective office or act as a lobbyist for
34 a period for four years following the time for filing a notice of
35 appeal has expired, or all possibility of direct attack in the courts
36 of this state has been finally exhausted, unless the court at the time
37 of sentencing specifically determines that this provision shall not
38 be applicable. A plea of nolo contendere shall be deemed a
39 conviction for the purposes of this section.

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

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

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

13 SEC. 3. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.