

AMENDED IN ASSEMBLY APRIL 28, 2016

AMENDED IN ASSEMBLY APRIL 19, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1828**

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**Introduced by Assembly Member Dodd**

February 9, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1828, as amended, 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 *or has behested a payment that is reportable pursuant to the Political Reform Act* 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~~ 3 months subsequent to a decision in the adjudicatory proceeding before the board in which the party or participant is involved, and in which the member made, participated in making, or in any way attempted to use his or her official position to influence the decision, except as provided. The bill would also require a party, participant, or agent that makes a contribution within ~~the~~ 3 months subsequent to a decision in an adjudicatory proceeding in which the party or participant is involved, and in which the member made, participated in making, or in any way attempted to use his or her official position to influence the decision, to disclose to the board contributions to a member within 30 days. The bill would require the board to make all disclosures *by a party, participant, or agent* 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 that are at least \$5,000 in aggregate made at the behest of a member of the board. The bill would make various findings and declarations.~~

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  
7 terms at gubernatorial elections. The board is the only elected tax  
8 commission in the United States.

9 (b) The board is entrusted by statute to administer more than  
10 30 tax and fee programs that generate state revenue. The board is  
11 also charged with public utility property tax assessments and  
12 overseeing the property tax assessment practices of the state's 58  
13 county assessors.

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

16 (d) Board members are subject to the Political Reform Act of  
17 1974 (Title 9 (commencing with Section 81000) of the Government  
18 Code) and rules of the Fair Political Practices Commission  
19 applicable to all other state elected officials.

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

32 (f) ~~The strict contribution limits of~~ *Despite its conflict-of-interest*  
33 *provisions, the Kopp Act does not apply to payments made at*  
34 *the behest of a board candidate or committee when the payment*  
35 *is made for purposes unrelated to his or her candidacy for elected*  
36 *office: office, which can create a perceived conflict of interest.*

37 (g) ~~Despite passage of the Kopp Act in 1990, a loophole~~  
38 ~~allowing parties before the board, as well as parties' agents, to~~

1 ~~aggregate multiple contributions that individually fall below the~~  
2 ~~two hundred fifty dollar (\$250) limit but together exceed two~~  
3 ~~hundred fifty dollars (\$250) creates a perceived conflict of interest~~  
4 ~~when the board hears the parties' appeals. Similarly, payments~~  
5 ~~made at the behest of a board member by parties with an~~  
6 ~~approaching appeal before the board create a perceived conflict~~  
7 ~~of interest.~~

8 (h)

9 (g) By enactment of this act, it is the intent of the Legislature  
10 to eliminate the perceived conflicts of interest associated with  
11 contributions and behested payments by parties, participants, and  
12 their agents related to appeals before the board.

13 SEC. 2. Section 15626 of the Government Code is amended  
14 to read:

15 15626. (a) This section shall be known, and may be cited, as  
16 the Quentin L. Kopp Conflict of Interest Act of 1990.

17 (b) Prior to rendering any decision in any adjudicatory  
18 proceeding pending before the State Board of Equalization, each  
19 member who knows or has reason to know that he or she received  
20 a contribution or ~~contributions~~ *contributions, or has behested a*  
21 *payment of five thousand dollars (\$5,000) or more that is*  
22 *reportable pursuant to clause (iii) of subparagraph (B) of*  
23 *paragraph (2) of subdivision (b) of Section 82015, within the*  
24 *preceding 12 months from a party or his or her agent, or from any*  
25 *participant or his or her agent, shall disclose that fact on the record*  
26 *of the proceeding.*

27 (c) (1) A member shall not make, participate in making, or in  
28 any way attempt to use his or her official position to influence, the  
29 decision in any adjudicatory proceeding pending before the board  
30 if the member knows or has reason to know that he or she received  
31 a contribution or ~~contributions~~ *contributions, or has behested a*  
32 *payment of five thousand dollars (\$5,000) or more that is*  
33 *reportable pursuant to clause (iii) of subparagraph (B) of*  
34 *paragraph (2) of subdivision (b) of Section 82015, within the*  
35 *preceding 12 months from a party or his or her agent, or from any*  
36 *participant or his or her agent, and if the member knows or has*  
37 *reason to know that the participant has a financial interest in the*  
38 *decision, as that term is used in Article 1 (commencing with*  
39 *Section 87100) of Chapter 7 of Title 9.*

1 ~~(2) A member shall not request or suggest a contribution or~~  
2 ~~contributions from a party or his or her agent, or from any~~  
3 ~~participant or his or her agent, within the 12-month period~~  
4 ~~subsequent to a decision in the adjudicatory proceeding before the~~  
5 ~~board in which the party or participant is involved. For purposes~~  
6 ~~of this paragraph, “suggest” means to mention or imply as a~~  
7 ~~possibility or put forward for consideration. This paragraph shall~~  
8 ~~apply to a member only with respect to an adjudicatory proceeding~~  
9 ~~in which that member made, participated in making, or in any way~~  
10 ~~attempted to use his or her official position to influence the~~  
11 ~~decision.~~

12 ~~(3) In addition to paragraph (2), a~~

13 (2) A member shall not accept a contribution or contributions  
14 from a party or his or her agent, or from any participant or his or  
15 her agent, within the ~~12-month~~ *three-month* period subsequent to  
16 a decision in the adjudicatory proceeding before the board in which  
17 the ~~party or participant~~ *party, participant, or agent* is involved.  
18 This paragraph shall apply to a member only with respect to an  
19 adjudicatory proceeding in which that member made, participated  
20 in making, or in any way attempted to use his or her official  
21 position to influence the decision.

22 (d) (1) Notwithstanding paragraph (1) of subdivision (c), a  
23 contribution shall not be deemed received by a member for the  
24 purposes of disqualification under subdivision (c), if the member  
25 returns the contribution within 30 days from the time he or she  
26 knows, or has reason to know, about the contribution and the  
27 adjudicatory proceeding pending before the board.

28 (2) Notwithstanding paragraph ~~(3)~~ (2) of subdivision (c), if a  
29 member receives a contribution within the ~~12-month~~ *three-month*  
30 period subsequent to a decision in the adjudicatory proceeding  
31 before the board from a party, participant, or agent and the member  
32 returns the contribution within 30 days from the time he or she  
33 knows, or has reason to know, about the contribution and the  
34 decision in the adjudicatory proceeding pending before the board,  
35 the member shall be deemed not to have accepted the contribution.

36 (e) (1) ~~A party to, or a participant in,~~ *party, participant, or*  
37 *agent* in an adjudicatory proceeding pending before the board shall  
38 disclose on the record of the proceeding any contribution or  
39 contributions *and any behested payment of five thousand dollars*  
40 *(\$5,000) or more that is reportable by a member pursuant to clause*

1 (iii) of subparagraph (B) of paragraph (2) of subdivision (b) of  
2 Section 82015, made within the preceding 12 months by the party  
3 or participant, or his or her agent, to any member of the board. The  
4 board shall make the disclosure publicly available on its Internet  
5 Web site.

6 (2) ~~A party to, or a participant~~ *party, participant, and agent* in,  
7 an adjudicatory proceeding before the board that makes a  
8 contribution to a member of the board within the ~~12 months~~ *three*  
9 *months* subsequent to a decision in the adjudicatory proceeding in  
10 which the party or agent was involved, and in which the member  
11 made, participated in making, or in any way attempted to use his  
12 or her official position to influence the decision, shall disclose that  
13 contribution to the board within 30 days of making the contribution.  
14 The board shall make the disclosure publicly available on its  
15 Internet Web site as promptly as feasible.

16 (f) When a close corporation is a party to, or a participant in,  
17 an adjudicatory proceeding pending before the board, the majority  
18 shareholder is subject to the disclosure requirement specified in  
19 this section.

20 (g) For purposes of this section, if a deputy to the Controller  
21 sits at a meeting of the board and votes on behalf of the Controller,  
22 the deputy shall disclose contributions made to the ~~Controller~~  
23 *Controller, and any behested payment of five thousand dollars*  
24 *(\$5,000) or more that is reportable by the Controller pursuant to*  
25 *clause (iii) of subparagraph (B) of paragraph (2) of subdivision*  
26 *(b) of Section 82015, and shall disqualify himself or herself from*  
27 *voting pursuant to the requirements of this section.*

28 (h) For purposes of this section:

29 (1) “Contribution” has the same meaning as prescribed in  
30 Section 82015 and the regulations adopted pursuant to that ~~section,~~  
31 ~~except that “contribution” shall also include a payment or payments~~  
32 ~~made at the behest of a member of the board principally for~~  
33 ~~legislative, governmental, or charitable purposes when that~~  
34 ~~payment is or those payments are at least five thousand dollars~~  
35 ~~(\$5,000) in the aggregate and is or are made by a party or his or~~  
36 ~~her agent or a participant or his or her agent.~~ *section.*

37 (2) ~~“At the behest of a member of the board” means made under~~  
38 ~~the control or at the direction of, in cooperation, consultation,~~  
39 ~~coordination, or concert with, at the request or suggestion of, or~~  
40 ~~with the express prior consent of a member of the board.~~

1     ~~(3)~~

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

4     ~~(4)~~

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

14     ~~(5)~~

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

21     ~~(6)~~

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

31     ~~(7)~~

32     (6) A member knows or has reason to know about a contribution  
33 *or a reportable behested payment* if, after the adjudicatory  
34 proceeding first appears on a meeting notice of the board, facts  
35 have been brought to the member’s personal attention that he or  
36 she has received a contribution *or reportable behested payment*  
37 which would require disqualification under *paragraph (1) of*  
38 *subdivision (c)*, or that the member received written notice from  
39 the board staff, before commencement of the hearing and before  
40 any subsequent decision on the matter, that a specific party, close

1 corporation, or majority shareholder, or agent thereof, or any  
2 participant having a financial interest in the matter, or agent thereof,  
3 in a specific, named adjudicatory proceeding before the board,  
4 made a contribution or contributions *or reportable behested*  
5 *payment* within the preceding 12 months. Each member shall  
6 provide board staff with a copy of each of his or her campaign  
7 statements at the time each of those statements is filed.

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

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

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

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

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

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

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

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

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

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

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