California State
Board *of* Equalization

Legislative Bill Analysis

Legislative and Research Division

Assembly Bill 1828 (Dodd)
Date: 04/28/16
Program: Administration
Sponsor: BOE Member Fiona Ma
Government Code Section 15626
Effective: January 1, 2017

Michele Pielsticker (Chief) 916.322.2376
Sheila T. Waters (Analyst) 916.445.6579

Summary: Makes several changes to the Quentin L. Kopp Conflict of Interest Act of 1990 ("Kopp Act") related to contribution limits and disclosures applicable to Board of Equalization (BOE) Members.

Summary of Amendments: The amendments since the previous analysis specify that these conflict of interest provisions apply when a BOE Member receives a behested payment from a party, participant, or agent that is reportable under the Political Reform Act within 12 months before an adjudicatory proceeding to a BOE decision, and when a Member receives a contribution within 3 months *after* an adjudicatory proceeding in which that Member made, participated in making, or in any way attempted to use his or her official position to influence the decision. Also, requires a party, participant, or agent to disclose contributions and behested payments made 12 months prior to an adjudicatory proceeding and, for contributions, 3 months subsequent to a decision in an adjudicatory proceeding.

Purpose: To eliminate the perceived conflicts of interest associated with contributions and specified behested payments by parties, participants and their agents related to appeals before the BOE.

Fiscal Impact Summary: This bill would not directly affect state or local revenues.

Existing Law: The BOE consists of four elected members, one from each equalization district, and the State Controller. Among other things, the BOE hears appeals relating to all of the taxes and fees it administers, as well as disputes arising from certain Franchise Tax Board (FTB) actions.

Under existing law, the Quentin L. Kopp Conflict of Interest Act of 1990 ("Kopp Act") [1] requires that, prior to rendering any decision in any adjudicatory proceeding before the BOE, each BOE Member who knows or has reason to know that he or she received a contribution of $250 or more within the preceding 12 months from a party or participant, or his or her agent, shall disclose that fact on the record of the proceeding, as specified. Further, the Kopp Act prohibits each BOE Member from participating in the decision or using his or her position to influence the decision if a contribution was made, as specified.

The Kopp Act defines "party," "participant," and "agent" as follows:

- "Party" is the subject of an adjudicatory proceeding pending before the BOE.
- "Participant" is any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the board and who has a financial interest in the decision.
- "Agent" is any person who represents a party to or participant in an adjudicatory proceeding pending before the board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, the Kopp Act provides that both the entity or corporation and the person are agents.

The Kopp Act also provides that a party or a participant is required to disclose for the record whether they have contributed to a BOE Member an amount of $250 or more in the preceding 12 months. The Act further requires BOE staff to inquire and report to the BOE whether any such contributions have been made. Any person who knowingly or willfully violates any of those provisions is guilty of a misdemeanor.

[1] Government Code Section 15626.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

A political action committee (PAC) is not included within the Kopp Act's definition of a "party," "participant," or "agent." Therefore, a PAC's contribution to a BOE Member requires neither disclosure nor disqualification of the affected BOE Member.

Generally, many states, including California, restrict the amount of contributions that any one individual can contribute to a candidate's campaign. These limits are typically dependent upon the office the candidate seeks. In California, the Fair Political Practices Commission (FPPC) is primarily responsible for administering the Political Reform Act,[2] which regulates campaign financing, conflicts of interest, lobbying, and governmental ethics. The Act[3] limits the allowable contributions to BOE members, and requires the FPPC to adjust the limits according to the CPI.[4] Currently (through December 31, 2016) the contribution limit for BOE Members is $7,000 per person (including business entities and PACs) per election, and $14,100 per "small contributor committee,[5]" per election.

Under existing law, payments to third parties made at the behest of BOE Members are not subject to the Kopp Act and therefore do not interfere with a BOE Member's participation in adjudicatory proceedings. The Political Reform Act only requires a BOE Member to report to the FPPC within 30 days of the payment any behested payments totaling $5,000 or more from a single source in a calendar year.[6]

Under the law,[7] the BOE is required to, among other things, prescribe rules for its own governance and the transaction of its business. Under the BOE's Regulation 5550, *Quorum,* any three members of the BOE present at a meeting constitute a quorum, except under specified circumstances, and a quorum's majority vote is required for all BOE decisions or actions. Therefore, under current rules of practice, a majority of the quorum – two Members – can approve or disapprove taxpayer appeals and other matters coming before them. When a BOE Member is disqualified from participating in a decision under the contribution disclosure provisions (described above) or the Political Reform Act's[8] conflict of interest provisions, the BOE Member may not be counted for a quorum. However, when the BOE lacks a quorum due to these disqualifications and the BOE is legally required to make a decision, it may bring back, through random selection or other impartial selection means, as many disqualified Members as necessary to establish a quorum.

Proposed Law: This bill does all the following:

- Deletes the $250 disclosure threshold, so that BOE Members would be subject to disclosure and prohibitions in decisions for *any* contribution he or she receives from a party, participant, or agent within 12 months before an adjudicatory proceeding and 3 months after a decision in the adjudicatory proceeding, but only when the Member made a decision, participated in making a decision, or attempted to use his or her official position to influence the decision.
- Applies these provisions additionally to a behested payment by a party, participant or agent that is reportable under the Political Reform Act within 12 months before an adjudicatory proceeding.
- Specifies that if a Member receives such a contribution within the 12 months before an adjudicatory proceeding and 3 months after the decision in the adjudicatory proceeding and returns that contribution within 30 days from the date he or she has knowledge of the contribution, his or her acceptance of the contribution shall be deemed lawful.
- Requires a party, participant, or agent in an adjudicatory proceeding to disclose on the record of the proceeding *any* contribution or reportable behested payment made to a BOE Member within 12 months before the adjudicatory proceeding or, with respect to contributions made 3 months

[2] Government Code Title 9 (commencing with Section 81000).
[3] Government Code Sections 85300-85321.
[4] Government Code Section 83124.
[5] A committee that has been in existence for at least six months, receives contributions from 100 or more persons in amounts of not more than $200 per person, and makes contributions to five or more candidates (Government Code Section 85203).
[6] Government Code Section 82015.
[7] Government Code Section 15606.
[8] Government Code Sections 81000, et seq.

subsequent to any BOE decision in the adjudicatory proceeding, disclose within 30 days of making that contribution when the Member made a decision, participated in making a decision, or attempted to use his or her official position to influence the decision.

- Requires the BOE to make publicly available on its website, contributions and reportable behested payments disclosed by a party, participant, or agent in an adjudicatory proceeding pending before the BOE within the preceding 12 months, or, with respect to contributions, the subsequent 3 months, of any BOE decision in the adjudicatory proceeding.

Commentary:

1. **Effect of the bill.** Within 12 months before an adjudicatory proceeding or 3 months after a BOE decision in an adjudicatory proceeding, this bill prohibits BOE Members from participating in that adjudicatory proceeding when he or she receives any contribution from a party, participant, or their agent, or in situations where a reportable behested payment was made 12 months prior to an adjudicatory proceeding by a party, participant, or agent, when the Member made a decision, participated in making a decision, or attempted to use his or her official position to influence the decision in an adjudicatory proceeding.

2. **The April 28, 2016 amendments** specify that these conflict of interest provisions apply when a party, participant or agent makes a behested payment within 12 months prior to an adjudicatory proceeding and the payment is reportable by the BOE Member under the Political Reform Act, or when a Member receives a contribution (and does not return it) from a party, participant or agent within 3 months subsequent to a decision in an adjudicatory proceeding in which that Member made, participated in making, or in any way attempted to use his or her official position to influence the decision. Also requires a party, participant or agent to disclose to the BOE these contributions or reportable behested payments. The **April 19, 2016 amendments** specified that these conflict of interest provisions apply to a Member only with respect to an adjudicatory proceeding in which that Member made, participated in making, or in any way attempted to use his or her official position to influence the decision. The amendments also made non-substantive clarifying changes. The **April 4, 2016 amendments** defined "suggest" for purposes of clarifying when a BOE Member suggests a contribution to address an issue raised in the BOE's previous analysis. Amendments also modified the behested payment provisions to include only those behested payments of $5,000 or more in the aggregate, and removed employee contributions from the proposed contribution limits.

3. **Tracking potentially disqualifying behested payments and contributions would increase the complexity of the due diligence required under the Kopp Act.** FPPC rules require an elected officer to track and report a behested payment if the behested payment(s) totals $5,000 or more from a single source in a calendar year. By including reportable behested payments in these conflict of interest provisions, the bill would require BOE members to track behested payments made 12 months before an adjudicatory proceeding, requiring a separate tracking than that required under the FPPC calendar year reporting obligation.

4. **Bill appears to include contributions and reportable behested payments made prior to the bill's effective date, which could be problematic.** The bill would become effective January 1, 2017. BOE Members meet monthly, and a Member may not be able to return a small contribution received during the 12 months before the bill's effective date within 30 days, as the bill requires. Perhaps the bill should specify that its provisions shall apply to contributions and reportable behested payments made after the bill's effective date, at a minimum.

5. **How current law applies to multiple small contributions.** A party's and his or her agent's contributions are aggregated for purposes of determining whether the total contribution is $250 or more. A participant's and his or her agent's contributions are also aggregated for purposes of determining if the total contribution is $250 or more. The contributions of a party and a participant are not aggregated. If an agent is also acting as an employee or member of a law, accounting, consulting, or other similar firm, both the agent and the firm are considered agents, and their contributions are aggregated with those of the party or participant. Other firm members' contributions, such as employees, are not disclosable unless they are or were involved in representing the taxpayer on the matter before the BOE, or were responsible for bringing the client to the firm/company. Therefore, if a BOE Member receives multiple contributions of amounts less than $250 from such persons, the BOE Member is not disqualified from participating in the adjudicatory proceeding.

6. **How this bill applies to multiple small contributions.** For contributions, aggregation is irrelevant for purposes of determining whether a contribution meets or exceeds a limit, as this bill requires that *any* contribution be disclosed 12 months before the adjudicatory proceeding and 3 months after a decision in that adjudicatory proceeding. This includes both monetary donations of a penny or more, as well as any property donation, regardless of its value.

7. **What are the contribution rules for judges and other officials involved in adjudicatory processes?** A judge is disqualified if he or she receives a contribution in excess of $1,500 from any party or lawyer in a proceeding that is before the court, and either (1) the contribution was received in support of the judge's last election, if the last election was within the last six years; or, (2) the contribution was received in anticipation of an upcoming election.
   In addition, a judge is disqualified when receiving campaign contributions of lesser amounts if the judge believes the contribution would compromise his or her impartiality or if a person aware of the contribution might reasonably entertain a doubt that the judge could be impartial.[9]

   With respect to other state and local boards and agencies and proceedings on licenses, permits, and other entitlements for use, the law[10] provides the following:

   - Covered officials are prohibited from receiving or soliciting campaign contributions of more than $250 from parties or other financially interested persons during the pendency of the proceeding and for three months after its conclusion. However, local ordinances may impose limits on campaign contributions that are lower than $250. (Government Code Section 85703 et seq.)
   - Covered officials must disqualify themselves from participating in the proceeding if they have received contributions of more than $250 during the previous 12 months from a party or a person who is financially interested in the outcome of the proceeding.
   - At the time parties initiate proceedings, they must list all contributions to covered officials within the previous 12 months.
   - Elected state and local officials are expressly exempted except when they serve in a capacity other than that for which they were directly elected.

8. **Consequences for a BOE Members' noncompliance.** Since creation of the 1990 Kopp Act, existing law has provided that if a BOE Member, or any person, *knowingly or willfully* violates any of those provisions, he or she is guilty of a misdemeanor. This misdemeanor provision would apply to this bill's proposed Kopp Act revisions.

9. **Political action committee (PAC) contributions and behested payments are unaffected by this bill**. As stated earlier, a PAC is not included within the Kopp Act's definition of a "party," "participant," or "agent." Therefore, a PAC's contribution to a BOE Member or a PAC's behested payment requires neither disclosure nor disqualification of the affected BOE Member.

---

[9] Code of Civil Procedure Section 170.1.
[10] Government Code Section 84308.

Costs: The BOE staff will incur administrative costs related to notifying taxpayers, participants and agents, programming costs related to creation of on-line fillable contribution and behested payment disclosure forms for ease of compliance, tracking and updating the BOE's website with contributions and behested payments disclosed before and after the adjudicatory proceeding, revising contribution forms, and revising affected contribution disclosure regulations found at 18 C.C.R. §§ 7001-7011. Preliminarily, most of these costs are absorbable, with the exception of $35,000 in one-time implementation costs the first year. Additional costs may be incurred by individual BOE Members' offices to comply with the additional tracking requirements under this bill. These costs range from absorbable to an estimated $673,000 in the first year, and absorbable to $516,000 in the second year and ongoing. Additional costs may be incurred depending on the Attorney General's and FPPC's interpretation of the behested payment provisions proposed in the bill.

Revenue Impact: This bill would not directly affect state or local revenues.