

[Senate Bill 816](#) (Hill)

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Program: Administration

Sponsor: Author

Government Code Section 15626

Effective: January 1, 2017

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Summary: Reduces the contribution disclosure and disqualification limits of Board of Equalization (BOE) members from \$250 to an aggregate amount of \$100 or more from a party, agent or participant in a pending adjudicatory proceeding within twelve months prior to that proceeding.

Summary of Amendments: The amendments to this bill since the previous analysis increase the disclosure and disqualification limit from 'any contribution' to an aggregate of \$100 or more.

Purpose: To prohibit BOE members from participating in adjudicatory proceedings when they have accepted a contribution of an aggregate amount of \$100 from the taxpayer or any other person related to the case.

Fiscal Impact Summary: No direct effect on state and 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.

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.

¹ Government Code Section 15626.

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 Act³ 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 committees,"⁵ per election.

Under the law,⁶ the BOE is required to, among other things, prescribe rules for its own government 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 that a quorum's majority vote is required for all BOE's 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's⁷ 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 reduces the \$250 contribution threshold to an aggregate amount of \$100 or more thereby making the above-described disclosure and disqualification provisions applicable whenever a BOE member receives a contribution of an aggregate amount of \$100 or more from a party, agent, or participant, as provided.

Commentary:

- 1. Effect of the bill.** This bill addresses a perceived conflict of interest that may arise if a BOE member receives a contribution of an aggregate amount of \$100 or more, from a party, agent, or participant in an adjudicatory matter before the BOE.
- 2. The April 26, 2016 amendments** reduce the disclosure and disqualification limits from \$250 to an aggregate of \$100 or more. In the prior version, the bill would have prohibited BOE Members from participating in adjudicatory proceedings for *any* contribution.
- 3. How the 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. 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.

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 15606.

⁷ Government Code Sections 81000, et seq.

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.

4. What are the contribution rules for judges and other officials involved in adjudicatory processes?

A judge, for example, 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, as specified.⁸ Do other state officials, such as appointed commissioners, have similar limits?

5. Bill would not be cumbersome to administer. The bill would not materially affect the BOE's administrative responsibilities, as staff currently tracks BOE member contributions.

Costs: The BOE will incur some administrative costs related to tracking contributions, notifying taxpayers, participants and agents, and revising affected contribution disclosure regulations found at 18 C.C.R. §§ 7001-7011. In addition, the bill enables more parties to make contributions to disqualify Members in controversial matters, which could result in a corresponding workload increase. These costs appear to be insignificant (less than \$10,000).

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

⁸ Code of Civil Procedure Section 170.1.