

Amend Section 15626 of the Government Code to include the annual value setting for state assessees and political action committees contributions under the Kopp Act.

Source: Honorable Dean Andal

Under current law, the Quentin L. Kopp Conflict of Interest Act of 1990 (Section 15626 of the Government Code) provides that Board of Equalization members who know or have reason to know that a contribution has been received within the preceding 12 months amounting to \$250 or more from any person who is the subject of a pending adjudicatory proceeding, shall disclose that fact on the record of the proceeding prior to rendering any decision in any adjudicatory proceeding, as specified. For purposes of the Kopp Act, political action committees (PACs) are not considered a "person" or "taxpayer" subject to the contribution limits.

Section 19 of Article XIII of the California Constitution requires the Board to annually determine the value of: (1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties, and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity for property tax purposes. Taxpayers whose property is assessed by the Board, commonly referred to as "state assessees," may challenge the value determined by it by filing an appeal.

Regulation 7003 defines "adjudicatory proceedings pending before the Board" for purposes of the Kopp Act. Subdivision (c) of Regulation 7003 specifies that the annual valuation process *is not* considered an adjudicatory proceeding. However, any subsequent appeal of the value determined by the Board of Equalization by these same taxpayers would be an adjudicatory proceeding subject to the Kopp Act conflict of interest provisions. This proposal would close a perceived loophole in the conflict of interest provisions of the Kopp Act by including the annual value setting for state assessees under the Kopp Act. Thus both the annual valuation of the state assessee property and any subsequent appeals of those initial valuations would be subject to the Kopp Act.

In addition, this proposal would provide that, when PACs include more than one taxpayer and contribute more than \$250 annually, any individual is subject to the Kopp Act limits if more than 10 percent of the PAC's total contributions are contributed by that individual within one year of a Board hearing.

Section 15626 of the Government Code is amended to read:

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

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

(c) No member shall make, participate in making, or in any way attempt to use his or her official position to influence, the decision in any 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 two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or his or her agent, or from any participant or his or her agent, and if the member knows or has reason to know that the participant has a financial interest in the decision, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9.

(d) Notwithstanding subdivision (c), if a member receives a contribution which would otherwise require disqualification under subdivision (c), and he or she returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the board, his or her participation in the proceeding shall be deemed lawful.

(e) A party to, or a participant in, an adjudicatory proceeding pending before the board shall disclose on the record of the proceeding any contribution or contributions in an aggregate amount of two hundred fifty dollars (\$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.

(1) When a political action committee includes more than one taxpayer and that political action committee also contributes two hundred fifty dollars (\$250) or more within the preceding 12 months, any individual is subject to the Kopp Act limits if more than 10 percent of the political action committee's total contributions are contributed by that individual within one year of a board hearing.

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

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

(h) For purposes of this section:

(1) "Contribution" has the same meaning prescribed in Section 82015 and the regulations adopted thereto.

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

(3) "Participant" means 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, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9. A person actively supports or opposes a particular decision if he or she lobbies in person the members or employees of the board, testifies in person before the board, or otherwise acts to influence the members of the board.

(4) "Agent" means 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, both the entity or corporation and the person are agents.

(5) "Adjudicatory proceeding pending before the board" means a matter for adjudication, including annual value setting for state assessees as required pursuant to Section 19 of Article XIII of the California Constitution, that has been scheduled and appears as an item on a meeting notice of the board as required by Section 11125 as a contested matter for administrative hearing before the board members. A consent calendar matter is not included unless the matter has previously appeared on the calendar as a nonconsent item, or has been removed from the consent calendar for separate discussion and vote, or the item is one about which the member has previously contacted the staff or a party.

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

The notice of contribution shall be on a form prescribed under rules adopted by the board to provide for staff inquiry of each party, participant, close corporation, and its majority shareholder, and any agent thereof, to determine whether any contribution has been made to a member, and if so, in what

aggregate amount and on what date or dates within the 12 months preceding an adjudicatory proceeding or decision.

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

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

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

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

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

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

(4) Prosecution for violation of this section shall be commenced within four years after the date on which the violation occurred. (5) This section shall not prevent any member of the board from making, or participating in making, a governmental decision to the extent that the member's participation is legally required for the action or decision to be made. However, the fact that a member's vote is needed to break a tie does not make the member's participation legally required.