

Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: Correa Analyst: Michelle Chan Bill Number: SB 46

Related Bills: None Telephone: 845-6805 Amended Date: June 2, 2011

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Official Compensation Disclosure/Agencies Post Information Contained On Disclosure Form On Internet Web Site

SUMMARY

This bill would require state and local officials and designated employees to file a compensation disclosure form and would require each agency to post the compensation information on its website.

RECOMMENDATION

No position.

Summary of Amendments

The bill as introduced on December 9, 2010, added provisions that would require certain individuals employed by local government to file a compensation disclosure form and that the compensation information may be posted on the internet if the local government maintains a website.

The March 7, 2011, amendments added a coauthor and renumbered the provisions within the Government Code to expand the compensation disclosure requirement to state officials and employees.

The April 6, 2011, amendments also renumbered the provisions within the Government Code to expand the compensation disclosure requirement to most state and local officials and employees, and modified the reporting requirements.

The May 31, 2011, and June 2, 2011, amendments modified the operative dates.

This is the department's first analysis of this bill.

REASON FOR THE BILL

According to the language of the bill, the reason for this bill is to ensure the public has access to the public records to which they are entitled and to ensure an open and accessible government.

Board Position:	Executive Officer	Date
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EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective immediately upon enactment and specifically operative beginning on and after January 1, 2013, and before January 1, 2019, unless the Legislature extends that date or makes the requirements permanent.

ANALYSIS

FEDERAL/STATE LAW

The Freedom of Information Act (FOIA) generally provides that any person has the right to request access to federal agency records or information. All agencies of the Executive Branch of the United States (U.S.) Government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by law. Federal agencies are given 20 days to determine whether the agency is able to comply with the information request and notify the requestor of their determination. FOIA directs each federal agency to provide an electronic access mechanism for disseminating records to the public and requires the federal government to publish a list of its systems of records. The U.S. Department of Justice's Office of Information and Privacy is the principal contact point within the executive branch for advice and policy guidance on matters pertaining to the administration of FOIA. The U.S. Department of Justice's Internet site maintains a list of principal FOIA contacts for each federal agency. The list contains the name of the principal contact, address, phone, and, in some instances, the e-mail address. Each federal agency is responsible for meeting its FOIA responsibilities for its own records.

Under the California Public Records Act (PRA), every person is allowed to inspect and obtain copies of public records that are not exempt from disclosure. If a portion of the record is confidential, the person generally may obtain the remainder of the record after that portion has been redacted.

Currently, the PRA requires that all state and local agencies make public records available for public inspection during office hours, unless exempted by law. The act further requires that if a state agency withholds any public record, it must demonstrate that: (1) the record was exempt from disclosure, or (2) the public interest for nondisclosure outweighed the public interest for disclosure.

The Political Reform Act requires most state and local government officials and employees to publicly disclose their personal assets and income. They also must disqualify themselves from participating in decisions that may affect their personal economic interests. The Fair Political Practices Commission (FPPC) is the state agency responsible for issuing the Statement of Economic Interests, Form 700, and for interpreting the law's provisions. The Statement of Economic Interests are public documents. The filing officer must permit any member of the public to inspect and receive a copy of any statement.

THIS BILL

This bill would require, beginning January 1, 2013, and until January 1, 2019, that every person who is required to file a statement of economic interests, Form 700, and designated employees who file statements under a conflict of interest code, to also file a compensation disclosure form, as prescribed by the State Controller's Office (SCO).

The bill would require each state agency to compile and post the employee compensation information on the agency's Web site, and the agency's written policy for reimbursing expenses on its website, if applicable.

Under this bill, the SCO would be required to adopt emergency regulations for the implementation of these provisions by March 1, 2013. SCO would prescribe the format of the compensation disclosure form and will provide for disclosure of the following information:

- The public agency's cost for a public official's annual salary or stipend.
- The public agency's cost to provide benefits to a public official, including, but not limited to, deferred compensation or defined benefit plans.
- The public agency's reimbursement payments to a public official for actual and necessary expenses incurred on behalf of the agency in the performance of official duties.
- The public agency's cost to provide a public official with any other monetary or nonmonetary perquisites.
- The date on which a public official completed the required ethics training, if applicable.
- A public official must also disclose any amounts received from another entity if the other governing board shares membership with the public agency.

On or before July 1, 2013, the SCO would recommend to the Governor and the Legislature, methods for compiling the information contained on a public official's compensation disclosure forms in one or more publicly accessible databases.

On or before January 1, 2018, the Bureau of State Audits may report to the Governor and Legislature regarding the bill's implementation and effectiveness, including the compensation disclosure forms' accuracy, completeness, ease of use, and timeliness.

The requirements created by this bill would expire on January 1, 2019, unless the Legislature extends that date or makes the requirements permanent.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 1393 (Leno, 2007/2008) would have required a state agency to include specific information on its Web site about requesting copies of public records. This bill was vetoed by Governor Arnold Schwarzenegger, with the following veto message -- "This bill imposes an unnecessary one-size-fits-all mandate on state agencies." The complete veto message is attached in Appendix A.

OTHER STATES' INFORMATION

A comparison with other states would not be meaningful as this bill pertains to administrative procedures that are specific to California.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenues.

SUPPORT/OPPOSITION¹

Support: American Federation of State, County and Municipal Employees, California Newspaper Publishers Association, Secretary of State Debra Bowen.

Opposition: Association of California Healthcare Districts, Association of California School Administrators, Association of California Water Agencies, California Association of Clerks and Election Officials, California Special Districts Association, California State Association of Counties, County of Stanislaus, Regional Council of Rural Counties.

ARGUMENTS

Proponents: Some may argue that this bill would provide greater transparency, open and accessible government.

Opponents: Some may argue that this bill would require additional staffing in state government to meet the bill mandates at a time when the economic conditions are requiring the state government to reduce its workforce.

LEGISLATIVE STAFF CONTACT

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¹ As provided in the Senate Committee on Governmental Organization of the bills as amended June 2, 2011, at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_46_cfa_20110608_143028_sen_floor.html] as of April 17, 2011

Appendix A

Prior Legislation Veto Messages

BILL NUMBER: AB 1393
VETOED DATE: 10/11/2007

To the Members of the California State Assembly:

I am returning Assembly Bill 1393 without my signature.

Ensuring access to public information is one of my Administration's top priorities. That is why last year I issued Executive Order S-03-06 (Order), requiring all state agencies to review their guidelines governing access to public information. In addition, the Order required that every agency identify and train staff to be responsible for ensuring compliance with the California Public Records Act.

As I noted in my veto of similar legislation last year, I believe the steps that were taken as a result of the Order, combined with the ongoing efforts of agencies to comply with the law, are working to ensure the needs of the public are met. This bill imposes an unnecessary one-size-fits-all mandate on state agencies. In addition, this bill would require the formation of a task force to consider even more statutory standards to govern the disclosure of public records. Such a task force and such additional statutory changes are also unnecessary. My Administration's commitment to the Public Records Act is unwavering and I am confident future Administrations will share this attitude.

Sincerely,

Arnold Schwarzenegger