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SB-21 Political Reform Act of 1974: gifts of travel. (2015-2016)

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Senate Bill No. 21

CHAPTER 757

An act to amend Sections 87207 and 89506 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 10, 2015. Filed with Secretary of State October 10, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 21, Hill. Political Reform Act of 1974: gifts of travel.

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing and related matters, including the reporting of gifts, as defined. The act prohibits specified officers from receiving gifts in excess of \$440 in value from a single source in a calendar year. The act exempts gift payments for the actual costs of specified types of travel that are reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, from the annual limit on the value of gifts from a single source.

This bill would require a nonprofit organization that regularly organizes and hosts travel for elected officials, as specified, and that pays for these types of travel for an elected state officer or local elected officeholder to disclose the names of donors who, in the preceding year, both donated to the nonprofit organization and accompanied an elected officer or officeholder for any portion of the travel, as specified. The bill would require a person who receives a gift of a travel payment from any source to report the travel destination on his or her statement of economic interests.

This bill would incorporate additional changes to Section 87207 of the Government Code proposed by both this bill and AB 10, which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.

A violation of the act's provisions is punishable as a misdemeanor. By expanding the scope of an existing crime, 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.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $2/3$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 87207 of the Government Code is amended to read:

87207. (a) If income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):

(1) The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least five hundred dollars (\$500) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but was not greater than ten thousand dollars (\$10,000), whether it was greater than ten thousand dollars (\$10,000) but not greater than one hundred thousand dollars (\$100,000), or whether it was greater than one hundred thousand dollars (\$100,000).

(3) A description of the consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received, and the travel destination for purposes of a gift that is a travel payment, advance, or reimbursement.

(5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

(b) If the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity.

(2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(c) If a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

SEC. 1.5. Section 87207 of the Government Code is amended to read:

87207. (a) Except as provided in subdivision (b), if income is required to be reported under this article, the statement shall contain all of the following:

(1) The name and address of each source of income aggregating one thousand dollars (\$1,000) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) A statement indicating which of the following represents the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source:

(A) At least one thousand dollars (\$1,000) but not greater than ten thousand dollars (\$10,000).

(B) Greater than ten thousand dollars (\$10,000) but not greater than one hundred thousand dollars (\$100,000).

(C) Greater than one hundred thousand dollars (\$100,000) but not greater than two hundred fifty thousand dollars (\$250,000).

(D) Greater than two hundred fifty thousand dollars (\$250,000) but not greater than five hundred thousand dollars (\$500,000).

(E) Greater than five hundred thousand dollars (\$500,000).

(3) A description of the consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received, and the travel destination for purposes of a gift that is a travel payment, advance, or reimbursement.

(5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

(b) If the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain the following:

(1) (A) The name, address, and, except as provided in subparagraph (B), a thorough and detailed description of the business activity of the business entity based on criteria established by the commission.

(B) A filer is not required to provide a thorough and detailed description of the business activity of the business entity if the business entity is publicly traded.

(2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(c) If a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule, which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

SEC. 2. Section 89506 of the Government Code is amended to read:

89506. (a) Payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following applies:

(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elective state office or local elective office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Gifts of travel not described in subdivision (a) are subject to the limits in Section 89503.

(c) Subdivision (a) applies only to travel that is reported on the recipient's statement of economic interests.

(d) For purposes of this section, a gift of travel does not include any of the following:

(1) Travel that is paid for from campaign funds, as permitted by Article 4 (commencing with Section 89510), or that is a contribution.

(2) Travel that is provided by the agency of a local elected officeholder, an elected state officer, member of a state board or commission, an individual specified in Section 87200, or a designated employee.

(3) Travel that is reasonably necessary in connection with a bona fide business, trade, or profession and that satisfies the criteria for federal income tax deduction for business expenses in Sections 162 and 274 of the Internal Revenue Code, unless the sole or predominant activity of the business, trade, or profession is making speeches.

(4) Travel that is excluded from the definition of a gift by any other provision of this title.

(e) This section does not apply to payments, advances, or reimbursements for travel and related lodging and subsistence permitted or limited by Section 170.9 of the Code of Civil Procedure.

(f) (1) A nonprofit organization that regularly organizes and hosts travel for elected officials and that makes payments, advances, or reimbursements that total more than ten thousand dollars (\$10,000) in a calendar year, or that total more than five thousand dollars (\$5,000) in a calendar year for a single person, for travel by an elected state officer or local elected officeholder as described in subdivision (a) shall disclose to the Commission the names of donors who did both of the following in the preceding year:

(A) Donated one thousand dollars (\$1,000) or more to the nonprofit organization.

(B) Accompanied an elected state officer or local elected officeholder, either personally or through an agent, employee, or representative, for any portion of travel described in subdivision (a).

(2) For purposes of this subdivision, an organization "regularly organizes and hosts travel for elected officials" if the sum of the organization's expenses that relate to any of the following types of activities with regard to elected officials was greater than one-third of its total expenses reflected on the organization's Internal Revenue Service Form 990, or the equivalent, filed most recently within the last 12 months:

(A) Travel.

(B) Study tours.

(C) Conferences, conventions, and meetings.

(3) This subdivision does not preclude a finding that a nonprofit organization is acting as an intermediary or agent of the donor. If the nonprofit organization is acting as an intermediary or agent of the donor, all of the following apply:

(A) The donor to the nonprofit organization is the source of the gift.

(B) The donor shall be identified as a financial interest under Section 87103.

(C) The gift shall be reported as required by Section 87207.

(D) The gift shall be subject to the limitations on gifts specified in Section 89503.

(4) For purposes of this subdivision, a nonprofit organization includes an organization that is exempt from taxation under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 87207 of the Government Code proposed by both this bill and Assembly Bill 10. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 87207 of the Government Code, and (3) this bill is enacted after Assembly Bill 10, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.