BILL NUMBER: Senate Bill 1271 (Romero) as amended August 9, 2010

SUMMARY

SB 1271 would require an appendix be attached to the Conflict of Interest Code (Code) that additionally lists the positions of public officials who manage public investments that are also subject to financial disclosure. SB 1271 defines "public official" for purposes of the measure and requires the board, commission, or agency to post the appendix on its Internet Web site.

BOARD POSITION

Support. This bill supports good governance practices by increasing transparency and reducing potential conflicts.

PURPOSE OF THE BILL

To facilitate the disclosure of the economic interests of public officials serving any public retirement system that may be materially affected by the actions of the retirement boards in which they participate.

ANALYSIS

Existing Law:

The Political Reform Act requires each state and local government agency to adopt and promulgate a Conflict of Interest Code that establishes conflict of interest standards for designated employees of that agency and requires those employees to file statements of economic interest disclosing specified personal financial information. The act further requires specified public officials, including officials who manage public investments, to also file a Statement, but does not require those officials to be specifically enumerated in the agency's Code.

This bill:

SB 1271 requires CalSTRS and all public retirement boards, commissions, or agencies to attach to its Conflict of Interest Code an appendix entitled *"Agency Positions that Manage Public Investments for Purposes of Section 87200 of the Government Code,"* that lists each position for which an individual occupying that position is required to file a state of economic interests as a public official who manages public investments, as defined. The bill further requires the Board to post the appendix on its Internet Web site in a manner that is easily identifiable and accessible.

SB 1271 defines the term "public official who manages public investments" for purposes of the measure as a salaried or unsalaried member of a committee or board, commission, or other entity that exists as a governmental agency and that possesses decision making authority. The committee, board, commission, or entity is considered to possess decision making authority if any of the following apply:

- The entity may make a final governmental decision.
- The entity may compel or prevent a governmental decision, either by virtue of possessing exclusive power to initiate the decision or by having veto authority that may not be overridden.
- The entity makes substantive recommendations that are, and over an extended period of time have been, regularly approved, without significant amendment or modifications, by another public official or governmental agency.

SB 1271 also clarifies that an entity does not possess decision making authority if it is formed for the sole purpose of researching a subject and preparing a report for submission to another governmental entity that has final decision authority.

CalSTRS has adopted and strictly adheres to a Conflict of Interest Code, as mandated by the PRA, that can be accessed through the CalSTRS website. Additionally, CalSTRS Code, under the designation of “Officials Who Manage Public Investments” already lists the positions of public officials that are required to file a Statement of Economic Interests. However, to comply with the provisions of this measure, CalSTRS would need to amend its Code to add an additional appendix, entitled “Agency Positions that Manage Public Investments for Purposes of Section 82700 of the Government Code” that lists the positions of public officials that are required to file a Statement of Economic Interests and make the appendix easily identifiable and accessible on the CalSTRS’ website. There would be no costs associated with these changes and this measure would not have a substantial impact to CalSTRS.

LEGISLATIVE HISTORY

Chapter 488, Statutes of 2009 (AB 906—Hill) revises the definition of "remote interest" in the existing conflict of interest statute pertaining to government officials in order to allow a government entity to enter into a contract with an investor-owned utility, if the purpose of the contract is to provide energy efficiency, as specified.

Chapter 348, Statutes of 2007 (SB 512—Elections, Reapportionment & Constitutional Amendments) amended the PRA by codifying the Elmore opinion by the Fair Political Practices Commission (FPPC) to exclude interests in government defined-benefit pension plans from the definition of "investment" and makes clarifying and technical changes to candidate statements of economic interest.

Chapter 264, Statutes of 2002 (SB 1620—Knight) requires members of a board or commission of a newly created agency to file a Statement according to the PRA requirements until the agency adopts an approved Conflict of Interest Code.

Chapter 352, Statutes of 2000 (AB 1838—Leonard) expressed the intent of the Legislature that the FPPC, as part of its Conflict of Interest Regulatory Improvement Project of 1999-2000, adopt regulations that would accomplish specified goals relative to the disqualification of public officials of local government agencies in governmental decisions that do not directly and materially affect an official's economic interest.

Proposition 9 – Political Reform Act of 1974 (approved by the voters June 4, 1974) created the FPPC and required reports of receipts and expenditures in campaigns for state and local offices and ballot measures. Limited expenditures for statewide candidates and measures. Prohibited public officials from participating in governmental decisions affecting their "financial interests." Required disclosure of certain assets and income by certain public officials. Required "Lobbyists" to register and file reports showing receipts and expenditures in lobbying activities.

PROGRAM BACKGROUND

The PRA requires state and local government agencies to adopt a Conflict of Interest Code in accordance with specified provisions. One provision is that the Code list those positions within the agency that involve the making or participation in the making of decisions that could have a material effect on any financial interest. Individuals holding those positions are "designated employees," who are required to periodically file a Statement of Economic Interests (Statement) disclosing reportable investments, business positions, interests in real property and income. Furthermore, the PRA also requires specified public officials, including officials who manage public investments (such as Board members), to file a Statement but current law does not require those official positions to be listed in the Code.

The FPPC has adopted regulations which contain the terms of a Standard Conflict of Interest Code, which conforms to the provisions of the PRA. CalSTRS incorporated by reference the terms of those FPPC regulations in the Teachers Retirement Law, which constitutes the adoption and promulgation of a Code within the meaning of the law. The specific enumeration of those designated positions within CalSTRS that are required to file a Statement is noted in existing regulations promulgated by CalSTRS. Additionally, though not currently required by law, positions of officials who manage public investments who are required to file a Statement are also listed in those regulations, under the disclosure category titled "Officials Who Manage Public Investments." CalSTRS' Conflict of Interest Code is available on CalSTRS' public internet website.

FISCAL IMPACT

Benefit Program Cost – None.

Administrative Costs/Savings – None.

SUPPORT/OPPOSITION

Support: American Federation of State, County & Municipal Employees, AFL-CIO (Sponsor)
Association of California Water Agencies
California State Teachers' Retirement System
Fair Political Practices Commission

Opposition: Department of Finance

ARGUMENTS

Pro:

- Enhances current law and CalSTRS policy regarding disclosure of officials and designated employees activities who manage public investments.
- Further limits opportunities for “pay-for-play” practices and conflict of interest activities.
- Increases transparency and accountability within pension systems and the financial industry

Con:

- Increased role of government in business activities.

LEGISLATIVE STAFF CONTACT

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