

Bill Analysis
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Bill Number: SB 439 (Negrete McLeod) as introduced February 16, 2011

SUMMARY

SB 439 prohibits any CalSTRS and CalPERS employee or board member from accepting gifts from any single source in any calendar year with a total value of more than \$50 and disqualifies any vendor or contractor that makes gifts in violation of the gift limit twice in a consecutive five year period from bidding on, and being awarded, any contract for a period of two years from the date of the conviction of the recipient of the second gift.

BOARD POSITION

Support, seeking amendments. The board has historically supported efforts to increase transparency and accountability in governing bodies. The provisions of this bill are consistent with efforts made by the board to enhance CalSTRS' accountability. However, the board would like the measure to apply the provisions of the bill, not only to CalSTRS and CalPERS, but to all of California's public pension and retirement systems.

PURPOSE OF THE BILL

This bill intends to increase transparency and to protect CalSTRS and CalPERS' investments from undue influence.

ANALYSIS

SB 439 amends the Political Reform Act to prohibit any member of the board or employee of CalSTRS from accepting gifts from any single source with a value of \$50 or more. Additionally, any vendor or contractor that makes gifts in excess of this limit to a board member or employee twice in a five-year period is prohibited from bidding on or being awarded any contract.

Below is a comparison of the existing Political Reform Act, the board's current policies and SB 439.

	Political Reform Act	Current Board Policy	SB 439
Application	Board members and designated employees	Board members and CalSTRS officers and employees	Board members and CalSTRS employees
Gift limit	\$420 per calendar year	Limit \$420 per calendar year. Receiving \$250 in a calendar year requires recusal by recipient	\$50
Penalty for Noncompliance	Financial penalty on recipient and potential criminal liability on giver and recipient	Vendors disqualified from future business for two years	Vendors cannot bid for two years after two violations in five years

As introduced, this bill can be seen as making three changes. First, for current Form 700 filers, the gift limit is now reduced to \$50 and would apply to anyone, not just reportable sources as provided for in the CalSTRS Conflict of Interest Code. Second, for all other staff, they are now subject to a gift limit of \$50 from any single source. It isn't clear from the bill, but presumably the gift exceptions in the Political Reform Act would also apply to the non-form 700 filing staff as well (e.g., gifts from your family are not reportable gifts or subject to the \$420 gift limit). Third, firms, vendors or contractors that violate the \$50 gift limit twice in a five year period will now be banned for two years from bidding on or being awarded a contract.

Depending on the outcome of the Board Governance Committee's review of the board's existing policies, the board's revised policy could ultimately be stricter than the provisions of this bill.

LEGISLATIVE HISTORY

Chapter 206, Statutes of 2010 (AB 2116—Evans) extended existing gift limitations and honoraria restrictions currently applicable to superior court judges and justices of the courts of appeal and the Supreme Court to also apply to subordinate judicial officers.

AB 2368—Blakeslee (2010, Died in Assembly Appropriations Committee) amended the Political Reform Act (PRA) to prohibit a lobbyist employer from making gifts of \$10 or more in a calendar month to a member of the Legislature.

AB 1412—Torrice (2009, Died on the Assembly Floor) eliminated the \$10 threshold for gifts from lobbyists and lobbying firms to members of the Legislature, and would prohibit gifts from lobbyist employers to members of the Legislature. This will significantly expand the number of entities to which a gift limit that is stricter than the general \$420 gift limit applies. While there are slightly more than 1,000 registered lobbyists in the state of California, and slightly fewer than 400 lobbying firms in the state, there are more

than 3,000 lobbyist employers in the state. As a result, it is anticipated that this bill would roughly triple the number of entities that are subject to a gift limit that is stricter than the general \$420 gift limit when those gifts are made to members of the Legislature.

PROGRAM BACKGROUND

A gift is defined in the Political Reform Act as anything of value that provides a personal benefit, either tangible or intangible, to a public official or candidate for which the donor has not received equal or greater consideration. Gifts frequently include money, food, transportation, accommodations, tickets and articles for household, office for recreational use. A gift also includes a rebate or discount in the cost of a product or service, unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Under specified circumstances, a gift made to an official's or candidate's spouse or children may also constitute a gift to the official or candidate. However, there are numerous exceptions for certain types of gifts, gifts totaling \$50 or more in a calendar year from a single source generally must be reported.

The Political Reform Act prohibits an elected state or local official, candidates for elective state office and other state officials as specified in statute from accepting gifts from any single source in any calendar year with a total value of \$420, which is the limit for the 2011 calendar year. CalSTRS, in accordance with current law, has developed and complies with its own conflict of interest regulations, which details disclosure categories and what each one is required to report. The conflict of interest code applies to those officials and employees who file statement of economic interests (Form 700) and are required to comply with the limit and to report income and gifts as outlined by the regulations.

In addition, CalSTRS has adopted a Statement of Incompatible Activities which provides, in pertinent part: All staff members in CalSTRS shall, during hours of duty as State employees, devote full time, attention, and efforts to their State office or employment. No employment, activity, or enterprise shall be engaged in by any officer or employee of CalSTRS that might result in or create the appearance of any of the following:

Receiving or accepting, directly or indirectly, any gift, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value, from anyone who is doing or is seeking to do business of any kind with the State or whose activities are regulated or controlled in any way by the State, under circumstances from which it reasonably could be inferred that the gift was intended to influence him/her in his/her official duties or was intended as a reward for any official action on his/her part.

Furthermore, the Teachers' Retirement Board has a policy related to the disclosure of campaign contributions, charitable contributions, and gifts; recusal requirement; and ban on specified gifts, which prohibits any party who engages in business with CalSTRS for gain from providing gifts to board members, or CalSTRS officers or employees exceeding the gift limit, as outlined by the Political Reform Act. The policy further allows

for the disqualification from future business with CalSTRS for a period of two years following a determination by the board that a violation of this policy has occurred. This policy and Form 600H are attached to CalSTRS contracts. CalSTRS requires each contracting entity and each of its authorized/key personnel to complete and file separate Form 600H with CalSTRS.

The Board Governance Committee will begin consideration of revising the board's existing gift policy at its April meeting.

OTHER STATES' INFORMATION

Over the years several retirement systems have revised their gift policies to make them more restrictive, with many of them opting for a no gifts policy. For example, in 2009, CalPERS adopted a policy prohibiting Form 700 filers from receiving gifts of any value from entities doing business with CalPERS, seeking to do business with CalPERS, regulated by CalPERS or registered lobbyists. Similarly, in 2004 the Ohio General Assembly enacted legislation that stated that

No person who is a member of the board of a state retirement system, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds shall solicit or accept, and no person shall give to that board member, officer, or employee, payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages.

This restriction applies to corporations and other business entities doing or seeking to do business with a retirement system and all of its officials, employees and agents. The Ohio School Employees Retirement System's General Counsel stated that although the new restrictive provision was a difficult adjustment initially, once all parties involved understood that no gifts were permitted, not even a beverage, it has been working very well. However, he did state that the policy has caused the retirement system's expenses to increase now that it has to pay for travels, meals and conferences, and sometimes they end up paying some conference related fees twice. In addition, if for some reason, a group of investment staff go to dinner with a client who pays for a meal, the meal must be invoiced and paid by the system. The General Counsel stated that although the stricter policy may cost the system more, the protection the policy provided against conflicts of interest for certain individuals and entities doing or seeking to do business with the retirement systems was worth the extra expense. In addition, he indicated that the restrictions on the corporations affected by the limit had no impact on their willingness to work with the retirement fund.

FISCAL IMPACT

Program Cost – None.

Administrative Costs/Savings – None.

SUPPORT/OPPOSITION

Support:

Office of the State Controller (Sponsor)
Service Employees International Union, Local 1000

Opposition:

None known.

ARGUMENTS

Pro:

Increases transparency and protect CalSTRS investments from undue influence.

Con:

May complicate interactions with CalSTRS staff that involve provision of meals.

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