

AMENDED IN SENATE AUGUST 30, 2019
AMENDED IN SENATE JULY 11, 2019
AMENDED IN SENATE JUNE 27, 2019
AMENDED IN SENATE JUNE 17, 2019
AMENDED IN ASSEMBLY MARCH 19, 2019
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1404

Introduced by Assembly Member Santiago

February 22, 2019

An act to add Part 12 (commencing with Section 10850) to Division 2 of Title 1 of the Corporations Code, relating to nonprofits.

LEGISLATIVE COUNSEL'S DIGEST

AB 1404, as amended, Santiago. Nonprofit sponsors: reporting obligations.

Existing law, the Nonprofit Corporation Law, regulates the organization and operation of nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations, including, but not limited to, health care service plans. That law requires a nonprofit public benefit corporation to furnish annually to its members a report that includes the assets and liabilities of the corporation, revenue or receipts of the corporation, and the expenses or disbursements of the corporation.

This bill would require a nonprofit sponsor to make *specified* annual disclosures ~~to the Secretary of State~~ *publicly available by posting those disclosures on the nonprofit sponsor's public internet website in the*

same location where it posts copies of its annual report. The bill would require these disclosures to be made at the conclusion of each taxable year for which the nonprofit sponsor files an Internal Revenue Service Form 990. The bill would require these disclosures to include information about the total amount of deferred compensation allocated by the nonprofit sponsor, the amount and type of compensation paid to or allocated on behalf of each listed person, as defined, receiving deferred compensation allocated by the nonprofit sponsor, whether taxes were paid on the deferred compensation, and the applicable agreement or legal document governing the deferred compensation. The bill would require this information to be reported in pay scales, as prescribed. The bill would define a “nonprofit sponsor” to mean a nonprofit corporation that operates or controls a health facility, operates or controls a facility that provides similar health care to a health facility, or contracts to provide or arrange for the provision of medical services. The bill would require the Secretary of State to make these disclosures available and open to the public for inspection. nonprofit sponsor to make the disclosures within 30 days of the conclusion of the nonprofit sponsor’s taxable year.

This bill would require a nonprofit sponsor to certify that the information it ~~provides to the Secretary of State~~ *discloses* is true and correct. By requiring the certification of information, this bill would expand the existing crime of perjury and 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Part 12 (commencing with Section 10850) is
- 2 added to Division 2 of Title 1 of the Corporations Code, to read:

1 PART 12. REPORTING OBLIGATIONS REGARDING
2 DEFERRED COMPENSATION ALLOCATED BY NONPROFIT
3 SPONSORS TO ~~FOR PROFIT~~ *FOR-PROFIT* RECIPIENTS
4

5 10850. This part applies to nonprofit sponsors that allocate
6 deferred compensation to any listed person at a recipient for profit.

7 10851. For the purposes of this part:

8 (a) “Allocate” means to hold, reserve, designate, provide, ~~use~~
9 *use*, or intend to use assets, whether or not the assets are held in
10 trust, legally segregated, or restricted.

11 (b) “Deferred compensation” means a pension, profit-sharing,
12 share bonus, share purchase, share option, savings, thrift, and other
13 retirement, incentive, and benefit plans, trusts, insurance, or any
14 other form of deferred compensation or retirement benefits for any
15 listed person, for whom the compensation is described in audited
16 financials, bond documents, Internal Revenue Service Form 990s,
17 or other official disclosures as exempt from the Employee
18 Retirement Income Security Act of 1974 ~~(29 U.S.C. Sec. 1001~~
19 *et seq.*), as amended (ERISA), such as by indicating that the
20 benefits or arrangements are “not subject to ERISA” or
21 “non-ERISA.”

22 (c) “Listed person” means an individual or entity that is a current
23 or former officer, director, employer, or trustee of a recipient for
24 profit, or an individual who is or was employed by, contracted
25 with, or a partner in any recipient for profit, provided the individual
26 has over two hundred fifty thousand dollars (\$250,000) in
27 reportable compensation.

28 (d) “Nonprofit sponsor” means a nonprofit corporation that is
29 defined in Section 5046 and does one of the following:

30 (1) Operates or controls a health facility, as defined in Section
31 1250 of the Health and Safety Code.

32 (2) Operates or controls a facility that provides similar health
33 care to a health facility, as defined in Section 1250 of the Health
34 and Safety Code.

35 (3) Contracts to provide or arrange for the provision of medical
36 services.

37 (e) “Recipient for profit” means any for-profit entity that
38 employs, contracts with, comprises a partnership of, or otherwise
39 uses the services of any listed person for which the nonprofit
40 sponsor allocates deferred compensation.

1 (f) “Reportable compensation” means compensation from
2 recipient for-profits and related or affiliated entities, including,
3 but not limited to, base compensation, bonus and incentive
4 compensation, and other nontaxable benefits, as reported on any
5 of the following:

6 (1) Internal Revenue Service Form W-2, Box 1 or 5, whichever
7 amount is greater, or Box 11.

8 (2) Internal Revenue Service Form 1099-MISC, Boxes 6 and
9 7.

10 (3) Internal Revenue Service Form 1065, Schedule K-1, Box
11 14.

12 10852. (a) Notwithstanding, and in addition to, any other law,
13 a nonprofit sponsor subject to this part under Section 10850 shall
14 make the following annual disclosures ~~to the Secretary of State~~
15 *publicly available by posting on the nonprofit sponsor’s public*
16 *internet website in the same location where it posts copies of its*
17 *annual report. These disclosures shall be made at the conclusion*
18 *of each taxable year for which the nonprofit sponsor files an*
19 *Internal Revenue Service Form ~~990~~: 990. These disclosures shall*
20 *include all of the following:*

21 (1) The total amount of deferred compensation allocated by the
22 nonprofit sponsor.

23 (2) (A) For each listed person receiving deferred compensation
24 allocated by a nonprofit sponsor, the total amount and type of the
25 compensation paid to or allocated on behalf of each listed person,
26 and reportable compensation, including base compensation, bonus
27 and incentive compensation, other reportable compensation, and
28 other nontaxable benefits.

29 (B) The information under subparagraph (A) shall be reported
30 in pay scales showing the number of listed persons in each scale,
31 without names or titles identified. The first scale shall include
32 listed persons earning two hundred fifty thousand dollars
33 (\$250,000) to five hundred thousand dollars (\$500,000) in base
34 compensation. Each subsequent pay scale shall increase by two
35 hundred fifty thousand dollars (\$250,000) until the
36 one-million-dollar (\$1,000,000) pay scale. Each pay scale after
37 the one-million-dollar (\$1,000,000) pay scale shall increase by
38 five hundred thousand dollars (\$500,000).

39 (C) For purposes of this paragraph, “pay scale” has the same
40 definition as in Section 432.3 of the Labor Code.

1 (3) Whether taxes were paid on the deferred compensation.

2 (4) The applicable plan document, summary plan description,
3 trust agreement, and any other agreement or legal document
4 governing the deferred compensation.

5 (b) The nonprofit sponsor subject to this part shall make the
6 disclosures required pursuant to this section within 30 days of the
7 conclusion of the nonprofit sponsor's taxable year, ~~on a form~~
8 ~~prescribed by the Secretary of State.~~ *year.*

9 ~~(e) The Secretary of State shall make all disclosures required~~
10 ~~pursuant to this section available and open to the public for~~
11 ~~inspection. The Secretary of State shall provide access to all~~
12 ~~information contained in this statement by means of an online~~
13 ~~database.~~

14 ~~(d)~~

15 (c) A nonprofit sponsor subject to this part shall certify that the
16 information it ~~provides~~ *discloses* pursuant to this section is true
17 and correct. ~~A claim may not be made against the state for~~
18 ~~inaccurate information contained in statements filed under this~~
19 ~~section with the Secretary of State.~~

20 SEC. 2. The provisions of this part are severable. If any
21 provision of this part or its application is held invalid, that
22 invalidity shall not affect other provisions or applications that can
23 be given effect without the invalid provision or application.

24 SEC. 3. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.