

Date of Hearing: May 3, 2010

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Mike Eng, Chair
AB 2281 (Miller) – As Introduced: February 18, 2010

SUBJECT: Corporate disclosures.

SUMMARY: Makes changes to disclosures made by publicly traded corporations in the annual statement each company is required to file with the Secretary of State (SOS). Specifically, this bill:

- 1) Provides that publicly traded corporations would be deemed to have satisfied various reporting requirement if the corporation includes certain information disclosed pursuant to federal securities laws.
- 2) Provides guidance to publicly traded corporations as to what type of fees and descriptions of related services must be disclosed by a corporation.
- 3) Clarifies that publicly traded corporations should disclose the amount of compensation and the number of any shares issued, options for shares granted, and similar equity-based compensation separately.
- 4) Clarifies when and how certain loans to directors must be disclosed by publicly traded corporations.
- 5) Requires publicly traded corporations to disclose any material legal proceedings.
- 6) Changes "compensation" to "total compensation."
- 7) Makes other technical, clarifying and conforming changes.

EXISTING FEDERAL LAW establishes the Securities Exchange Act of 1934 and the Securities and Exchange Commission which imposes a federal framework on publicly traded corporations related to disclosure obligations.

EXISTING STATE LAW

- 1) Requires publicly traded corporations doing business in California to file an annual statement with the SOS disclosing information concerning the corporation's officers and directors, auditor, compensation, prior bankruptcies and legal proceedings. [Corporations Code Sections 1502.1 and 2117.1]
- 2) Defines "publicly traded corporation" as a corporation that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the OTC Bulletin Board, or on the electronic service operated by Pink OTC Markets Inc.

FISCAL EFFECT: None

COMMENTS:

Under current law, publicly traded corporations are required to file annually within 150 days after the end of its fiscal year, a statement, on a form prescribed by the SOS. AB 2281 cross references federal securities laws with the hope of providing more consistent and accurate disclosures.

NEED FOR THE BILL: According to the sponsor, The Corporations Committee of the Business Law Section of the State Bar of California, due to the lack of guidelines, instructions, rules, regulations and cases, no clear pattern of consistent practice has emerged in how corporations satisfy their disclosure obligations under existing law. Unlike California law, the federal framework includes a signification amount of rules, regulations, guidance, instructions and cases that can be used to assist corporations in complying with the disclosure obligations imposed by such framework. Due to the guidelines developed around the federal framework, a pattern of consistent practice has emerged for how corporations can satisfy their disclosure obligations.

In addition, according to the sponsor, the existing disclosure requirements also lack sufficient detail for corporations to determine how to comply with them. Consequently, companies attempting to comply with California's annual disclosure requirements lack the guidance necessary to comply and produce the proper disclosures.

AB 2281 seeks to amend the specific disclosure requirements with the intention of making the requirements more clear, promote increased consistency and comprehensiveness of disclosures and reduce inconsistencies between California and Federal disclosure requirements for substantially similar information. While this bill may provide more clarity for publicly traded corporations, it may decrease oversight in California.

According to the opposition, Secretary of State, Debra Bowen, AB 2281 will reduce disclosure and make information less accessible to the public. The bill replaces California's broader disclosure standards with a narrower disclosure mandated by federal laws. Furthermore, it ties all future disclosures to the federal requirements, putting the U.S. Congress, not the California State Legislature, in charge of determining what information is disclosed to investors and other members of the public.

Previous legislation concerning disclosures made by publicly traded corporations was enacted in 2004, the intent of this legislation was to provide for the timely an accurate disclosure of information to the public regarding key relationships and activities of public corporations doing business in California and to provide such critical items of information in one centralized location where the information could be located quickly and efficiently and in a manner that is readily searchable and understandable by the average consumer or investor.

CONCERNS: AB 2158 may be burdensome on the SOS by requiring them to create new and additional disclosure forms. While the bill is deemed non-fiscal, this may be a costly task. The SOS currently receives and makes annual disclosure statements filed by corporations which are made available to the public.

POLICY QUESTIONS: By conforming California law to be more similar to federal law, would California actually require less disclosure if this measure is enacted?

Does this measure take it one step further by ultimately allowing publicly traded corporations in California to only file at the federal level?

PREVIOUS LEGISLATION: AB 1000 ((Dutra) Chapter 819, Statutes of 2004) Made various changes to the requirements for corporate statements that must be filed annually with the SOS.

REGISTERED SUPPORT / OPPOSITION:

Support

Business Law Section, State Bar of California (Sponsor)

Opposition

Secretary of State, Debra Bowen

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