

Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Evan Low, Chair

AB 187 (Gloria) – As Amended March 14, 2017

SUBJECT: Political Reform Act of 1974: local ballot measure contribution and expenditure reporting.

SUMMARY: Requires a recipient campaign committee that makes contributions or independent expenditures of \$5,000 or more in support of or in opposition to the qualification of a single local initiative or referendum measure to file a campaign disclosure report, as specified, within 10 business days of making the contributions or expenditures. Specifically, **this bill:**

- 1) Requires a committee that receives contributions of \$2,000 or more in a calendar year (commonly referred to as a "recipient committee") to file a campaign disclosure report each time it makes contributions totaling or independent expenditures aggregating \$5,000 or more to support or oppose the qualification of a single local initiative or referendum measure.
- 2) Requires a report filed pursuant to this bill to comply with the following:
 - a) Be filed in the same manner as the filing of other campaign disclosure reports filed by the committee;
 - b) Be filed within 10 business days of reaching the aggregate dollar threshold; and,
 - c) Include all of the following information:
 - i) The full name, street address, and identification number of the committee;
 - ii) The name or subject of the ballot measure;
 - iii) The date, amount, and a description of the goods and services for which the contribution or expenditure was made, and in the case of a contribution, the name, address, and identification number of the committee to which the contribution was made; and,
 - iv) The following information for each person from which the committee has received contributions or loans totaling \$100 or more from the previous January 1 until the date of the contribution or expenditure made by the committee, if this information was not required to be disclosed on a previously filed campaign disclosure report:
 - (1) The person's full name;
 - (2) The person's street address;

- (3) The person's occupation;
- (4) The name of the person's employer, or if self-employed, the name of the business;
and,
- (5) The date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate of the loan.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Defines the term "committee," for the purposes of the PRA, to include any person or combination of persons who receives contributions totaling \$2,000 or more in a calendar year. Entities that are committees by virtue of having received contributions of \$2,000 or more in a calendar year are commonly referred to as "recipient committees."
- 3) Defines the term "late contribution," for the purposes of the PRA, to include a contribution aggregating \$1,000 or more that is made to or received by a committee formed or existing primarily to support or oppose a measure during the 90-day period preceding the date of the election, or on the date of the election, at which the measure is to be voted on. Defines the term "late independent expenditure," for the purposes of the PRA, to include an independent expenditure aggregating \$1,000 or more that is made for or against a specific measure involved in an election during the 90-day period preceding the date of the election or on the date of the election. Generally requires a committee that makes a late contribution or late independent expenditure to publicly report that contribution or expenditure within 24 hours of the time that it is made.
- 4) Permits a local government agency to enact an ordinance or other law regulating campaign contributions and expenditures in that agency's jurisdiction. Prohibits such an ordinance or law from imposing campaign reporting requirements that are additional to or different from those set forth in the PRA for elections held in its jurisdiction unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification or passage of a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:1) **Purpose of the Bill:** According to the author:

AB 187 increases transparency in local elections and helps voters to understand who is funding local measures. The bill requires state general purpose committees to file disclosures within 10 days of spending \$5,000 or more to support or oppose the qualification of a local initiative or referendum ballot measure.

AB 187 adds a layer of voter protection to ensure cases like the one in San Diego do not continue to happen.

2) **Ballot Measure Funding Disclosure:** California law contains various deadlines and filing requirements for disclosing contributions and expenditures made to support or oppose ballot measures. These filing requirements generally are designed to require campaign disclosures to occur in a timelier fashion as it gets closer to the election at which the measure will appear on the ballot. For example, ballot measure committees generally are required to file campaign disclosure reports on a semi-annual or a quarterly basis until the ballot measure is approved for the ballot. Once the measure is approved to appear on the ballot, a committee making contributions or expenditures in connection with that measure may be required to file preelection reports, depending on the type of committee and the amount of activity by that committee. During the last 90 days before an election at which a measure will appear on the ballot, committees making contributions or independent expenditures of \$1,000 or more to support or oppose the measure generally must disclose that contribution or expenditure within 24 hours of making it.

For committees that are making expenditures or contributions in connection with *state* ballot measures, there are certain instances in which state law requires more frequent disclosures of such contributions and expenditures even before the measure has qualified for the ballot. For example, under certain circumstances, a committee that makes a contribution or an independent expenditure of \$5,000 or more to support or oppose the qualification of a single state ballot measure can be required to file a disclosure report within 10 business days of making the contribution or expenditure. This requirement was designed to ensure that voters had information about the groups or individuals that were funding efforts to qualify a measure for the ballot at the time that petitions were being circulated.

For local initiative and referendum measures, however, unless a regular campaign reporting period coincides with the time that the petitions to qualify the measure are being circulated, there is no guarantee that there would be meaningful disclosure of the groups and individuals who were funding the effort to qualify the measure for the ballot until after the measure had already qualified. As noted above, local government agencies can enact policies regulating campaign contributions and expenditures in the agency's jurisdiction, but agencies are limited in their ability to make those policies applicable to campaign committees that are also active outside the jurisdiction.

- 3) **San Diego Minimum Wage Referendum:** In background information provided to the committee, the author's office points to a 2014 referendum of a minimum wage ordinance that was adopted by the San Diego City Council as an example that demonstrates the need for this bill. The minimum wage ordinance was approved in mid-August 2014 when the city council overrode a veto by the city's mayor. Opponents of the minimum wage ordinance pursued a referendum against it, and were successful in collecting a sufficient number of valid signatures to qualify that referendum for the ballot.

Under the San Diego Municipal Code, any petition for a referendum of a local ordinance must be submitted within 30 calendar days after the date of final passage of the act. As a result, the deadline for submitting petitions to qualify a referendum against the minimum wage ordinance fell in mid-September 2014.

As detailed above, under state law, committees that are supporting or opposing a *local* ballot measure generally must file campaign reports on a quarterly or a semi-annual basis. While certain campaign activity may need to be reported more frequently during the last 90 days before the election at which the measure will appear on the ballot, those more frequent campaign reports generally are not triggered during the period of time when signatures are being collected to *qualify* a local measure for the ballot.

The campaign committee that supported the referendum against the minimum wage ordinance in San Diego was formed and received its first contribution in the middle of July 2014, around the time that the City Council was considering the passage of the minimum wage ordinance. As a result, the first campaign disclosure report that the committee was required to file was a quarterly statement covering campaign activity from the time the committee was formed through the end of September 2014. That report was not required to be filed until *after* the deadline for submitting petitions to qualify the referendum against the minimum wage ordinance. Consequently, during the period of time that circulators were collecting signatures to qualify the referendum against the minimum wage ordinance, there was no public disclosure of the contributors to the committee that was funding that referendum effort.

The city of San Diego subsequently adopted a local campaign ordinance that requires campaign committees that are supporting or opposing a local initiative or referendum petition drive to more promptly disclose contributions and independent expenditures that are received or made during the signature-gathering period. Had this campaign ordinance been in effect during the signature-gathering effort for the referendum on the minimum wage ordinance, the committee that was supporting that effort would have been required to disclose the contributions it received during that signature-gathering period, even absent any changes in state law.

Notwithstanding the fact that changes in the local campaign disclosure ordinance would have been sufficient to ensure timely disclosure in connection with the effort to qualify the referendum on the minimum wage ordinance for the ballot, the Executive Director of the San Diego Ethics Commission nonetheless recommended that the City of San Diego pursue amendments to state reporting requirements because the city's new reporting requirements would not apply to "any county or state (or other city) committees that decide to participate

in a City petition drive." While it is true that county or state committees could make contributions or independent expenditures in connection with a local ballot measure that would not be subject to San Diego's new campaign disclosure ordinance, extensive involvement by a county or state committee could result in that committee being reclassified as a city committee that would be subject to the San Diego ordinance. Furthermore, due to existing rules that govern the reporting of earmarked contributions, a donor to an effort to qualify a local ballot measure would not be able to avoid disclosure under San Diego's ordinance simply by using a county or state committee as an intermediary for making that contribution. In light of these facts, the degree to which county and state committees are likely to participate in a San Diego City petition drive without triggering the more timely disclosure required by the San Diego campaign disclosure ordinance is unclear.

Nonetheless, this bill would ensure that committees that are *not* subject to local campaign ordinances like the one adopted by San Diego must file campaign disclosure reports within 10 business days of making contributions or independent expenditures of \$5,000 or more in support of or in opposition to the qualification of a single local initiative or referendum measure, thereby making it less likely that campaign spending intended to support or oppose the qualification of a local ballot measure would go undisclosed until after the measure qualified for the ballot.

- 4) **Clarifying & Technical Amendments:** Committee staff recommends a number of technical and clarifying amendments to ensure that the bill correctly reflects the author's intent with respect to the filing location of reports that are required by this bill, adequately describes the information required to be filed in those reports, and avoids creating duplicative reporting requirements. In order to accomplish these goals, committee staff recommends that the text appearing between page 3, line 33 of the bill and page 4, line 27 of the bill, be amended as follows:

(b) In addition to any other report required by this title, a committee pursuant to subdivision (a) of Section 82013 shall file a report each time it makes contributions **totally totaling** five thousand dollars (\$5,000) or more or independent expenditures aggregating five thousand dollars (\$5,000) or more to support or oppose the qualification of a single local initiative or referendum ballot measure. ~~The report shall be filed in the same manner as the filing of campaign statements pursuant to this article.~~ *A committee that is required to file a report under this subdivision shall file the report in the places where it would be required to file campaign statements under this article as if it were formed or existing primarily to support or oppose the local initiative or referendum ballot measure.* The report shall be filed within 10 business days of reaching the aggregate dollar threshold and shall contain all of the following:

- (1) The full name, street address, and identification number of the committee.
- (2) The name or subject of the measure.
- (3) *In the case of an independent expenditure, the* ~~The~~ date, amount, and a description of the goods or services for which the ~~contribution or~~ expenditure was ~~made, and in~~ *made.* ~~In~~ the case of a contribution, *the date and amount of the contribution, and* the name, address, and identification number of the committee *to which the contribution was made.* In addition, the report shall include the information required by paragraphs (1) to (5), inclusive, of subdivision (f) of Section 84211 regarding contributions or loans received from a person

described in that subdivision, covering the period from the day after the closing date of the last campaign report filed to the date of the contribution or expenditure, or if the committee has not previously filed a campaign statement, covering the period from the previous January 1 to the date of the contribution or expenditure. The information described in paragraphs (1) to (5), inclusive, of subdivision (f) of Section 84211 that is required to be reported pursuant to this subdivision is not required to be reported in more than one report provided for in this subdivision for each contribution or loan received from a person described in subdivision (f) of Section 84211.

(c) Reports required by this section are not required to be filed by a committee primarily formed to support or oppose the qualification or passage of a state ballot measure, *or the qualification of a local initiative or referendum ballot measure*, for expenditures made on behalf of the ballot measure or measures for which it is formed.

5) **Arguments in Support:** In support of this bill, the San Diego Housing Federation writes:

The PRA requires general purpose committees to disclose to the Secretary of State when they spend \$5,000 or more to support or oppose the qualification or passage of *statewide* ballot measures. Unfortunately, no similar rule applies to those committees that fund efforts for a local initiative or referendum ballot measure. The result of this can be that voters are not made aware of special interests that fund local measures.

AB 187 requires general purpose committees to disclose contributions and independent expenditures aggregating \$5,000 or more to support or oppose the qualification or passage of a local initiative or referendum ballot measure. It will empower voters by allowing them to know who is funding the support or opposition of a local initiative or referendum.

6) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

San Diego Housing Federation

Opposition

None on file.

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