

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2070 (Harper) – As Introduced February 17, 2016

SUBJECT: Political Reform Act of 1974: local enforcement. Urgency.

SUMMARY: Authorizes the Board of Supervisors of Orange County and the Fair Political Practices Commission (FPPC) to enter into an agreement that provides for the FPPC to administer and enforce a local campaign finance ordinance passed by the Board of Supervisors of Orange County, as specified. Specifically, **this bill:**

- 1) Provides that, upon mutual agreement between the FPPC and the Board of Supervisors of Orange County, the FPPC is authorized to assume primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance ordinance passed by the Board of Supervisors of Orange County. Provides that the FPPC, upon agreement, is authorized to be the civil prosecutor responsible for the civil enforcement of such an ordinance. Provides that as the civil prosecutor, the FPPC may do all of the following with respect to the local campaign finance ordinance:
 - a) Provide advice;
 - b) Investigate possible violations;
 - c) Bring administrative actions in accordance with the Political Reform Act (PRA) and the administrative adjudication provisions of the Administrative Procedure Act; and,
 - d) Bring civil actions.
- 2) Provides that the FPPC shall not be required to obtain authorization from the district attorney of the County of Orange to bring an administrative or civil action pursuant to the provisions of this bill.
- 3) Requires a local campaign finance ordinance of Orange County that is enforced by the FPPC to comply with the provisions of this bill.
- 4) Requires the Board of Supervisors of Orange County to consult with the FPPC prior to adopting and amending any local campaign finance ordinance that is subsequently enforced by the FPPC pursuant to this bill.
- 5) Permits the Board of Supervisors of Orange County and the FPPC to enter into any agreements necessary and appropriate to carry out the provisions of this bill, including agreements pertaining to any necessary reimbursement of state costs with county funds for costs incurred by the FPPC in administering, implementing, or enforcing a local campaign finance ordinance pursuant to the provisions of this bill.
- 6) Prohibits an agreement entered into pursuant to the provisions of this bill from containing any form of a cancellation fee, a liquidated damages provision, or other financial disincentive to the exercise of the right to terminate the agreement, except that the FPPC may require

Orange County to pay the FPPC for services rendered and any other expenditures reasonably made by the FPPC in anticipation of services to be rendered pursuant to the agreement in the event that the Board of Supervisors of Orange County terminates the agreement.

- 7) Permits the Board of Supervisors of Orange County or the FPPC, at any time, by ordinance or resolution, to terminate any agreement made pursuant to this bill for the FPPC to administer, implement, or enforce a local campaign finance ordinance or any provision thereof.
- 8) Requires the FPPC, if an agreement is entered into pursuant to this bill, to report to the Legislature regarding the performance of that agreement on or before January 1, 2019, and submit that report in compliance with existing law. Requires the FPPC to develop the report in consultation with the Board of Supervisors of Orange County. Requires the report to include, but not be limited to, all of the following:
 - a) The status of the agreement;
 - b) The estimated annual cost savings, if any, for Orange County;
 - c) A summary of relevant annual performance metrics, including measures of utilization, enforcement, and customer satisfaction;
 - d) Any public comments submitted to the FPPC or Orange County relative to the operation of the agreement; and,
 - e) Any legislative recommendations.
- 9) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.
- 10) Makes legislative findings and declarations as to the necessity of a special statute for Orange County to ensure the integrity of the electoral process while reducing corruption, and the appearance of corruption, in the County of Orange.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires a local government agency that adopts or amends a local campaign finance ordinance to file a copy of the ordinance with the FPPC.
- 3) Prohibits a local government agency from enacting a campaign finance ordinance that imposes 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.

- 4) Authorizes the FPPC, until January 1, 2018, upon mutual agreement between the FPPC and the San Bernardino County Board of Supervisors, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local San Bernardino County campaign finance reform ordinance, as specified.
- 5) Requires the FPPC to report to the Legislature with specified information on or before January 1, 2017, if the FPPC enters into such an agreement with the San Bernardino County Board of Supervisors.
- 6) Authorizes the FPPC, until January 1, 2020 and upon mutual agreement between the FPPC and the City Council of the City of Stockton, to assume primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance ordinance passed by the City Council of the City of Stockton, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

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

AB 2070 will enable Orange [County], upon approval by voters within the affected jurisdiction to contract with the [FPPC] for the administration and enforcement of local campaign finance laws.

The [PRA] allows local governments to adopt more stringent campaign finance laws for elections within their jurisdiction.

The FPPC has broad authority across the state to enforce the [PRA], but it does not assume primary responsibility for a local government's additional campaign finance laws.

Instead, the county board of supervisors or the city council must monitor local ordinances or create an Ethics Commission with this authority.

Implementing either of these options can be cost prohibitive for local governments.

This bill is modeled after legislation from 2012, which authorized the FPPC to contract with the County of San Bernardino to assume primary responsibility for the County's campaign finance laws.

AB 2070 extends these provisions to Orange County upon voter approval and authorizes the FPPC to become the civil prosecutor responsible for the civil enforcement of local campaign finance violations.

Contracting with the FPPC gives local governments the ability to bring in an experienced, independent, and impartial entity to investigate possible violations and bring administrative or civil action against violators.

- 2) **San Bernardino County:** In 2012, the Legislature passed and the Governor signed AB 2146 (Cook), Chapter 169, Statutes of 2012, which permitted San Bernardino County and the FPPC to enter into an agreement that provides for the FPPC to enforce the County's local campaign finance reform ordinance. Prior to this the FPPC did not enforce any local campaign finance ordinances. According to previous analyses, the County of San Bernardino, which had been the subject of several high-profile corruption cases, was in the process of developing a campaign finance ordinance. Rather than appoint an ethics commission, which could present financial as well as conflict of interest challenges, the County proposed to contract with the FPPC to enforce their local campaign finance ordinance. Moreover, the County determined that it was in the best interest of the County to retain the services of the FPPC to provide for the enforcement and interpretation of San Bernardino County's local campaign finance ordinance as the FPPC has special skills, knowledge, experience, and expertise in the area of enforcement and interpretation of campaign laws necessary to effectively advise, assist, litigate, and otherwise represent the County on such matters. As a result, the FPPC and San Bernardino County entered into a mutual agreement, from January 1, 2013 through December 31, 2014, for the FPPC to provide the County campaign enforcement and interpretation services for the impartial, effective administration, implementation, and enforcement of the San Bernardino's campaign finance reform ordinance. According to the FPPC, San Bernardino County and the FPPC have entered into a new two year mutual agreement from January 1, 2015 through December 31, 2016.

This bill is similar to the provisions of AB 2146 (Cook), however, there are a few differences. First, this bill expands the duties of the FPPC, as the civil prosecutor of Orange County's campaign finance ordinance, to provide advice and bring civil actions. Additionally, this bill provides that the FPPC shall not be required to obtain authorization from the district attorney of Orange County to bring an administrative or civil action. Finally, this bill does not contain a sunset and has an urgency clause that would make the bill go into effect immediately.

According to previous analyses, in November 2014, Orange County voters approved Measure E, which authorized the County to contract with the FPPC for the administration and enforcement of its local campaign finance ordinance, commonly referred to as TINCUP. Consequently, this bill is an attempt to fulfill the will of Orange County voters.

- 3) **FPPC and San Bernardino County Report:** As mentioned above, in 2012, AB 2146 (Cook) became law to permit San Bernardino County and the FPPC to enter into an agreement for the FPPC to enforce the County's local campaign finance reform ordinance. Among other provisions, AB 2146 also required the FPPC, if it entered into an agreement with the San Bernardino County Board of Supervisors, to report to the Legislature with specified information on or before January 1, 2017. Current law requires the report to include, but not be limited to, the status of the agreement, the estimated annual cost savings, if any, for the County of San Bernardino, a summary of relevant annual performance metrics, as specified, any public comments submitted relative to the operation of the agreement, and any legislative recommendations.

The FPPC submitted the report to the committee on March 24, 2016. According to the report, the FPPC served to administer, interpret and enforce the County's ordinance, focusing on four key areas – advising, informing, auditing, and enforcing. Key points detailing the FPPC's responsibilities include, but is not limited to, the following:

- Advising candidates for elected county offices and potential contributors in county elections regarding the county's local campaign finance reform ordinance;
- Proposing revisions to the original ordinance to help the ordinance more closely align with the PRA;
- Providing training and developing educational materials to assist candidates and campaign treasurers in the county;
- Conducting audits of 22 candidates and campaign committees;
- Resolving 23 cases involving committees, candidates, and donors involved in San Bernardino County elections (of those 23 cases, the FPPC prosecuted 9 cases resulting in fines, issued warning letters in 4 cases, and closed 10 cases with no violation found).

Additionally, County staff stated that the agreement between the FPPC and the San Bernardino County resulted in substantial savings when compared to the cost of other public ethics commissions and aided in enforcement proceedings by removing any semblance of conflict of interest. The report concluded by stating that the partnership between the FPPC and the San Bernardino County has been successful and both the FPPC and San Bernardino County support removing the sunset date from the statute.

- 4) **The City of Stockton:** Last year, the Legislature passed and the Governor signed AB 1083 (Eggman), Chapter 186, Statutes of 2015, which provides that upon mutual agreement between the FPPC and the City Council of the City of Stockton, the FPPC is authorized to assume primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance ordinance passed by the City Council of the City of Stockton, as specified. According to the FPPC, no contract has been entered into with the City Council of the City of Stockton to enforce a local campaign finance ordinance.
- 5) **Local Campaign Ordinances and the PRA:** Under existing law, local government agencies have the ability to adopt campaign ordinances that apply to elections within their jurisdictions, though the PRA imposes certain limited restrictions on those local ordinances. For instance, SB 726 (McCorquodale), Chapter 1456, Statutes of 1985, limited the ability of local jurisdictions to impose campaign filing requirements that differed from those in the PRA, permitting such requirements only when they applied solely to candidates and committees whose activity is restricted primarily to the jurisdiction in question. This provision sought to avoid the necessity of a candidate or committee active over a wider area being required to adhere to several different campaign filing schedules. Similarly, AB 1430 (Garrick), Chapter 708, Statutes of 2007, prohibited local governments from adopting rules governing member communications that are different than the rules that govern member communications at the state level.

Aside from these restrictions, however, local government agencies generally have a significant amount of latitude when developing local campaign finance ordinances that apply to elections in those agencies' jurisdictions. Any jurisdiction that adopts or amends a local campaign finance ordinance is required to file a copy of that ordinance with the FPPC, and the FPPC posts those ordinances on its website.

Several cities and counties have adopted campaign finance ordinances, some of which are very extensive. In some cases, those ordinances include campaign contribution limits, reporting and disclosure requirements that supplement the requirements of the PRA, temporal restrictions on when campaign funds may be raised, and voluntary public financing of local campaigns, among other provisions. In many cases, local campaign finance ordinances are enforced by the district attorney of the county or by the city attorney. In at least a few cases, however, local jurisdictions have set up independent boards or commissions to enforce the local campaign finance laws.

The FPPC does not currently enforce any local campaign finance ordinances other than San Bernardino County's. The FPPC can and does, however, bring enforcement actions in response to violations of the PRA that occur in campaigns for local office, even in cases where the local jurisdiction brings separate enforcement actions for violations of a local campaign finance ordinance.

- 6) **Criminal, Civil, and Administrative Enforcement of the PRA and Local Campaign Ordinances:** Violations of the PRA are subject to administrative, civil, and criminal penalties. Generally, the Attorney General (AG) and district attorneys have responsibility for enforcing the criminal provisions of the PRA, though any elected city attorney of a charter city also has the authority to act as the criminal prosecutor for violations of the PRA that occur within the city. The FPPC, the AG, district attorneys, and elected city attorneys of charter cities all have responsibility for enforcement of the civil penalties and remedies provided under the PRA, depending on the nature and location of the violation, while any member of the public also has the ability to file a civil action to enforce the civil provisions of the PRA, subject to certain restrictions. The FPPC has the sole authority to bring administrative proceedings for enforcement of the PRA. When the FPPC determines on the basis of such a proceeding that a violation of the PRA has occurred, it can impose monetary penalties of up to \$5,000 per violation, in addition to ordering the violator to cease and desist violation of the PRA and to file any reports, statements, or other documents or information required by the PRA.

In the case of local campaign ordinances, there is no single approach as to the types of penalties that are available for the violations of those ordinances. Many local ordinances provide for misdemeanor or civil penalties for violations, while some ordinances do not establish any penalties for violations. In some local jurisdictions that have independent boards or commissions to enforce the local campaign finance ordinances, those boards or commissions have the authority to bring administrative enforcement proceedings, similar to the authority the FPPC has under the PRA.

- 7) **Arguments in Opposition:** In opposition, the Orange County Employees Association (OCEA), writes:

OCEA takes issue with the county potentially contracting with the FPPC because they are concerned the county's finance law, known as TINCUP, would be invalidated because it's stricter than the state law.

We are unsure why this bill was introduced; we have been told that the Orange County [Board of Supervisors (BOS)] is not pushing for this legislation allowing the [FPPC] to investigate and enforce campaign finance laws in the region. In fact, they have placed Measure A on the June 2016 ballot asking for the establishment of an ethics commission as recommended by the Orange County Grand Jury. Establishing a local County commission would require changing a law approved by voters last year permitting the County to contract with the state [FPPC] for civil enforcement of county campaign laws with legislative approval. The ballot measure also would ask voters to approve a charter amendment giving the executive director of the proposed Orange County Campaign Finance and Ethics Commission the legal authority to subpoena the bank records of candidates for county offices...

While it may be true that the Orange County BOS approved moving forward with this issue in their 2015-16 legislative platform, the county's platform also called for them to "continue the discussion locally about ethics, including, but not limited to, local ethics oversight." The county did just that and agreed to place Measure A on the June 2016 ballot establishing an ethics commission – a decision OCEA whole-heartedly supports.

It seems to us that the Orange County Board of Supervisors has had a change of heart and agreed to pursue a different path than what was approved in the county platform over a year ago.

- 8) **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 proposition and require a two-thirds vote of each house of the Legislature.
- 9) **Related Legislation:** AB 2558 (Steinorth), removes the January 1, 2018 sunset date from a provisions of law that authorizes the FPPC to permanently enforce San Bernardino County's local campaign finance reform ordinance. AB 2558 was approved by this committee on a 7-0 vote, and is pending in the Assembly Appropriations Committee
- 10) **Previous Legislation:** AB 2146 (Cook), Chapter 169, Statutes of 2012, permitted San Bernardino County and the FPPC to enter into an agreement that provides for the FPPC to enforce the County's local campaign finance ordinance.

SB 1226 (Correa) of 2014, would have authorized any city or county to enter into an agreement with the FPPC to administer and enforce a local campaign finance ordinance. The bill was gutted and amended in the Assembly Appropriations Committee.

AB 910 (Harper) of 2015, would have authorized the FPPC to administer and enforce a local campaign finance ordinance for any city or county, upon mutual agreement between the

FPPC and the local agency, as specified. AB 910 was never heard in this committee.

AB 1083 (Eggman), Chapter 186, Statutes of 2015, permits the City Council of the City of Stockton and the FPPC to enter into an agreement that provides for the FPPC to enforce a local campaign finance ordinance passed by the City Council of the City of Stockton.

- 11) **Double Referral:** After this bill was referred to this committee, the Assembly Rules Committee instructed that it should be referred to the Assembly Local Government Committee upon approval by this committee. Accordingly, any motion to approve this bill should provide for the bill to be re-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Orange County Employees Association

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