

Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2318 (Low) – As Amended March 28, 2016

SUBJECT: Political Reform Act of 1974: Fair Political Practices Commission: enforcement: use of public resources.

SUMMARY: Gives the Fair Political Practices Commission (FPPC) jurisdiction over specified state laws that restrict nonprofit organizations from using certain resources for campaign purposes and that require specified nonprofit organizations to disclose the sources of funds used for campaign activity. Specifically, **this bill:**

- 1) Allows the FPPC to enforce a state law that prohibits a nonprofit organization, as defined, or an officer, employee, or agent of such an organization, from using public resources that are received from any local agency, as specified, for any campaign activity not authorized by law. Provides that enforcement by the FPPC pursuant to this provision may be brought as a civil action or through an administrative action. Prohibits more than one judgment on the merits from being reached with respect to any violation of state law limiting the use of public resources received from local agencies for campaign activity. Recodifies this law so that it is part of the Political Reform Act (PRA).
- 2) Allows the FPPC to enforce a state law that requires a nonprofit organization that receives more than 20 percent of its revenues from one or more local agencies to use a separate bank account for all campaign activity and to publicly report any campaign activity, including disclosing the sources of funds used for campaign activity, if certain thresholds are met. Transfers the responsibility for administering this law from the Franchise Tax Board (FTB) to the FPPC. Conforms this law to another law within the PRA that regulates political spending by specified nonprofit organizations. Recodifies this law so that it is part of the PRA.
 - a) Changes the types of nonprofit organizations that are subject to this law such that it is applicable to multipurpose organizations (MPOs) that are subject to another provision of the PRA that establishes the conditions under which MPOs that make campaign contributions or expenditures are required to disclose the names of their donors. The primary effect of this change is that it would require nonprofits that are organized under Section 501(c)(3) of the Internal Revenue Code to comply with this law, while exempting nonprofits that are organized under Sections 501(c)(11) through 501(c)(29) of the Internal Revenue Code from the law.
 - b) Conforms the standards and procedures that are used to determine the specific sources of funds that a nonprofit organization must publicly disclose on its reports with the standards and procedures that are used when MPOs report their donors under the PRA.
 - c) Increases the amount of funding that a nonprofit organization can receive from a single source, from \$250 to \$1,000, before the nonprofit may be required to disclose the identity of that source on reports filed pursuant to this law.

- d) Transfers the following responsibilities under this law from the FTB to the FPPC:
 - i) Receiving reports filed by nonprofit organizations pursuant to this law;
 - ii) Deciding whether to require an audit of reports filed by nonprofit organizations pursuant to this law; and,
 - iii) Determining, as part of an audit or at the conclusion of an audit, whether a nonprofit organization has complied with specified provisions of state law.
- 3) Makes minor, technical, and corresponding changes.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Makes it unlawful for an elected state or local officer, appointee, employee, or consultant to use, or permit others to use, public resources for a campaign activity.
- 3) Makes it unlawful for a nonprofit organization or an officer, employee, or agent of a nonprofit organization to use or permit others to use public resources that are from any local agency for any campaign activity not authorized by law, as specified.
 - a) Defines "public resources," for the purposes of this restriction, to include funds received by a nonprofit organization which have been generated from any activities related to conduit bond financing by conduit financing providers, as specified. Provides that these funds are public resources even if they are received in exchange for consideration.
 - b) Provides that an unauthorized use of public resources pursuant to this provision is punishable by civil penalties of up to \$1,000 for each day on which a violation occurs, plus three times the value of the unlawful use of public resources, as specified.
- 4) Requires a "reporting nonprofit organization," defined as a nonprofit organization for which public resources from local agencies (including funds generated from activities related to conduit bond financing) account for more than 20% of the organization's gross revenues in the current fiscal year or either of the previous two fiscal years, to deposit funds designated for campaign use into a separate account and to prepare periodic reports disclosing their campaign activities.
 - a) Provides that the term nonprofit organization, for the purposes of these requirements, means any entity incorporated under the Nonprofit Corporation Law or a nonprofit organization that qualifies for exempt status under Section 115 or 501(c) of the Internal Revenue Code, except for organizations that qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
 - b) Requires a reporting nonprofit organization to disclose the following information if it engages in campaign activity of \$50,000 or more related to statewide candidates or ballot

measures, or \$2,500 or more related to local candidates or ballot measures at any point during a calendar quarter; or if it engages in campaign activity of \$100,000 or more related to statewide candidates or ballot measures, or \$10,000 or more related to local candidates or ballot measures, at any point during a two-year period, as specified:

- i) The name and amount of the sources of funds used for campaign activity, provided that the aggregate amount of funds received since January 1 of the most recent odd year by the nonprofit organization from that specific source or sources of funds is at least \$250;
 - ii) The name of the payee and amount of all payments aggregating \$250 or more made from the single bank account it is required to use to pay for campaign activity; and,
 - iii) A description of each campaign activity.
- c) Requires each reporting nonprofit organization that engages in campaign activity to display the information required to be disclosed pursuant to b) on its Web site and provide that information to the FTB, as specified.
 - d) Permits the FTB to audit a reporting nonprofit organization that provides records to the FTB pursuant b), and requires the FTB to audit any reporting nonprofit organization that engages in campaign activity in excess of \$500,000 in a calendar year. Requires a nonprofit organization that is being audited to provide records to the FTB that substantiate the information required to be disclosed.
 - e) Provides that if an audit by the FTB of a nonprofit organization determines that the organization violated specified state laws, the Attorney General (AG) or the district attorney for the county in which the organization is domiciled may impose a civil fine on the organization in an amount up to \$10,000 for each violation.
- 5) Establishes conditions under which an MPO that makes campaign contributions or expenditures is required to disclose names of its donors. Defines an MPO, for the purposes of this provision, as an organization described in Sections 501(c)(3) through (10) of the Internal Revenue Code that is exempt from taxation under Section 501(a) of the Internal Revenue Code; a federal or out-of-state political organization, as specified; a trade or professional association; a civic or religious organization; a fraternal society; an educational institution; or any other association or group of persons acting in concert; that is operating for purposes other than making contributions or expenditures.
 - 6) Permits the FPPC to impose administrative penalties in situations where it determines that a violation of the PRA has occurred. Permits the FPPC, through this administrative enforcement procedure, to require the person who violated the PRA to do any of the following:
 - a) Cease and desist violation of the PRA;

- b) File any reports, statements, or other documents or information required by the PRA; and,
- c) Pay a monetary penalty of up to \$5,000 per violation, payable to the General Fund of the state.

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

COMMENTS:

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

AB 2318 modifies the definition of a reporting nonprofit organization and shifts the current enforcement authority from the [FTB] to the California [FPPC].

This bill improves upon the existing accountability and transparency provisions by providing enforcement authority to the FPPC. The FPPC is the appropriate oversight body to promote and foster the public's trust in our state's political system. As such, AB 2318 is necessary to streamline the disclosure and reporting rules, while also synchronizing their reporting threshold requirements in an effort to reduce redundancy and maximize transparency.

- 2) **Previous Legislation & Conflicting Reporting Requirements for Nonprofits:** SB 594 (Hill), Chapter 773, Statutes of 2013, was enacted in response to concerns that public resources were being used indirectly for campaign purposes. In particular, the author of SB 594 indicated that the bill was necessary because there was "credible reason to believe" that nonprofit organizations were making campaign expenditures from accounts that were "financed in whole or in part by public dollars." Specifically, the author of SB 594 expressed concern about the possibility that revenues from a Joint Powers Authority (JPA) that provides tax-exempt bond financing were being used for campaign purposes. The author of SB 594 argued that because the JPA is a public entity, and because the bonds it issues are tax exempt, any profits earned as a result of bond sales belong to the taxpayers, and should not be used for campaign purposes.

SB 594 contained three key provisions. First, even though California law already contained strict prohibitions against the use of public resources for campaign activity, SB 594 expanded those provisions by providing that funds received by a nonprofit organization that were generated from activities related to conduit bond financing were considered public resources "whether or not those funds [were] received by the nonprofit in exchange for consideration for goods or services." Accordingly, SB 594 prohibited funds generated from conduit bond financing from being used for campaign purposes. This bill gives the FPPC the authority to enforce that provision and codifies it within the PRA, but otherwise generally does not change the restriction on the use of resources derived from conduit bond financing.

SB 594 also contained two provisions that were targeted at nonprofit organizations that receive more than 20 percent of their revenues from local agencies. One provision required those organizations—to the extent that they engage in campaign activity—to have a separate bank account for all campaign activities. The other provision required the nonprofit

organizations to publicly report their campaign activities and the sources of their campaign funds if certain thresholds were met.

Subsequent to the passage of SB 594, SB 27 (Correa), Chapter 16, Statutes of 2014, established conditions under which an MPO that makes campaign contributions or expenditures is required to disclose names of its donors. SB 27 was enacted in response to situations where nonprofit organizations made significant campaign contributions and expenditures, but were not required to disclose the source of their donors. Although SB 594 and SB 27 were intended to address two different situations, both bills regulate political activity by certain nonprofit organizations and, as a result, nonprofit organizations can be required to comply with the requirements of both bills under certain circumstances.

This bill changes the reporting requirements of SB 594 so that the same rules and standards generally apply as to reports filed pursuant to SB 27. By establishing greater consistency in the reporting rules for nonprofit organizations, this bill should help streamline compliance and enforcement of these two laws. Additionally, this bill moves the reporting and separate bank account rules from SB 594 into the PRA and gives the FPPC the authority to enforce and the responsibility to administer those rules.

According to the FTB, since SB 594 went into effect on January 1, 2014, only two nonprofit organizations have filed reports in accordance with that bill, though it appears that those reports may have been filed in error, since neither organization reached the reporting thresholds. As a result, the FTB has not conducted any audits pursuant to SB 594. The low number of reports filed pursuant to SB 594 does not necessarily mean that nonprofit organizations are failing to comply with the provisions of the law, but instead may reflect the very narrow circumstances under which an organization is required to file a report, as detailed above.

- 3) **Arguments in Support:** The sponsor of this bill, California Professional Firefighters, writes in support:

In 2013, the Legislature enacted several important reforms related to the prohibition on the use of public funds for campaign activities, as well as additional accountability and transparency measures applicable to specified reporting nonprofit organizations. Most importantly, those reforms clarified that a nonprofit organization is prohibited from using, or permitting another to use, public resources received from a local agency for campaign activity and included in the definition of “public resources” any property or asset owned by a local agency and funds received by a nonprofit organization, which have been generated from any activities related to conduit bond financing by those entities.

AB 2318 improves upon these existing accountability and transparency provisions by providing enforcement authority to the [FPPC], as well as makes conforming changes to the reporting thresholds in order to provide consistency with more recent enactments related to “multipurpose organizations.”...

Recent election cycles have spawned an explosion in the number of “advocacy”

organizations organized as nonprofits in order to circumvent reporting and transparency rules and the Legislature and Governor have responded by imposing clear and consistent reporting requirements and meaningful oversight. AB 2318 simply continues that goal with respect to the use of public resources....

The FPPC is the appropriate oversight body to promote and foster the public's trust in our state's political system. It is also a diligent prosecutorial arm for pursuing serious violations of California's campaign finance law. As such, AB 2318 is necessary to streamline the disclosure and reporting rules applicable to the organizations subject to the bill's provisions, while also synchronizing their reporting threshold requirements in an effort to reduce redundancy and maximize transparency.

- 4) **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.
- 5) **Double Referral:** This bill has been double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters (sponsor) (prior version)
California Labor Federation (prior version)

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094