

Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2558 (Steinorth) – As Introduced February 19, 2016

SUBJECT: Political Reform Act of 1974: San Bernardino County.

SUMMARY: Removes the January 1, 2018, sunset date from a provision of law that authorizes the Fair Political Practices Commission (FPPC) to enforce San Bernardino County's local campaign finance reform ordinance, as specified. Specifically, **this bill:**

- 1) Deletes January 1, 2018, sunset date from a provision of law that authorizes the FPPC, upon a 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 San Bernardino County's local campaign finance reform ordinance.
- 2) Makes legislative findings and declarations as to the necessity of a special statute for San Bernardino County due to the need to avoid an appearance of corruption in the County of San Bernardino's electoral process.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (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 and 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. Requires the San Bernardino County Board of Supervisors to consult with the FPPC prior to adopting and amending any local campaign finance reform ordinance that is subsequently enforced by the FPPC.
- 5) Authorizes the FPPC, pursuant to the aforementioned agreement, to investigate possible violations of the San Bernardino County campaign finance reform ordinance and bring administrative actions against persons who violate the ordinance, as specified.

- 6) Permits the San Bernardino County Board of Supervisors and the FPPC to enter into any agreements necessary and appropriate for the operation of these provisions, including agreements for reimbursement of state costs with county funds, as specified. Permits the San Bernardino County Board of Supervisors or the FPPC, at any time, by ordinance or resolution, to terminate any agreement for the FPPC to administer, implement, or enforce the local campaign finance reform ordinance or any provision thereof.
- 7) 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, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

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

By removing the 2018 sunset date from statute, AB 2558 will continue the existing, effective partnership between San Bernardino County and the FPPC for enforcement of local campaign finance ordinances. In 2012, the County established a campaign finance ordinance with contribution limits mirroring those applied to State Senate and Assembly candidates. However, appointing an ethics commission to enforce the ordinance could have created financial and conflict-of-interest challenges to the County, which had suffered various levels of corruption in its local governments over recent years.

Instead, AB 2146 (Cook, 2012) allowed the County to contract with the FPPC for enforcement of their local ordinance. The FPPC willingly took on responsibility for this enforcement in 2012. This partnership has been successful, cost-effective, and mutually beneficial to the two entities. AB 2558 seeks to continue this arrangement by removing the 2018 sunset date from statute.

- 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.

- 3) **FPPC's 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) **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.

- 5) **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.

6) **Arguments in Support:** In support, the Fair Political Practices Commission writes:

Commission staff has been working in partnership with the County to develop a report to submit to the Legislature this month, which will explain the status of the agreement, cost savings to the County, and other information required by the original statute. The Commission believes the partnership has been constructive and that the sunset date should be repealed so it can continue.

Since this bill will help protect the integrity of campaigns in San Bernardino County, and the relationship has been beneficial for both parties, the Commission supports AB 2558.

7) **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.

8) **Related Legislation:** AB 2070 (Harper), which is also being heard in this committee today, authorizes the FPPC, upon mutual agreement between the FPPC and the Board of Supervisors of the County of Orange, to administer and enforce a local campaign finance ordinance passed by the Orange County Board of Supervisors, as specified.

9) **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.

10) **Double Referral:** This bill is double-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

San Bernardino County (sponsor)
California State Association of Counties
Fair Political Practices Commission
Urban Counties of California

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094