

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Evan Low, Chair

AB 867 (Cooley) – As Introduced February 16, 2017

SUBJECT: Political Reform Act of 1974: contributions.

SUMMARY: Recasts various provisions of the Political Reform Act (PRA) that are located within the definition of the term "contribution" such that other terms and substantive reporting requirements are relocated to their own sections of the PRA. Specifically, **this bill:**

- 1) Creates definitions for the terms "behested payment," "election-related activities," and "made at the behest of" that are generally consistent with concepts and requirements that are currently located within the definition of the term "contribution" that is found in the PRA.
- 2) Moves the requirement that public reports be filed in connection with certain specified payments that are made at the behest of elected officials or members of the Public Utilities Commission (PUC) from the definition of the term "contribution" that is found in the PRA to an area of the PRA that generally deals with campaign disclosure reporting requirements.
- 3) Makes various findings and declarations, including the following:
 - a) The definition of the term "contribution" in the PRA has been amended several times since voters enacted the PRA in 1974, and the incremental revisions to that definition have made the section increasingly convoluted, unreadable, and difficult to navigate.
 - b) The definition of the term "contribution" in the PRA now includes definitions of other terms as well as substantive reporting requirements, all of which should be relocated to independent code sections in appropriate areas of the PRA.
 - c) The organizational changes made by this bill are intended to be technical and clarifying in nature.
- 4) Makes corresponding and technical changes.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Provides that a payment made at the behest of a candidate is a contribution unless at least one of the following criteria are satisfied:
 - a) Full and adequate consideration is received from the candidate; or
 - b) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to the candidate's candidacy for elective office. Provides that the following

types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

- i) A payment made principally for personal purposes, in which case it may be considered a gift under the PRA, as specified;
 - ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or,
 - iii) A payment that is made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution.
- 3) Requires a candidate who is an elected officer, or a person who is a member of the PUC, to report a payment made at the behest of that officer or member, made principally for legislative, governmental, or charitable purposes, within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year. Provides that such a report is not required to be filed with respect to payments made by state, local, or federal governmental agencies that are made principally for legislative or governmental purposes. Requires this report to be filed with the elected officer's or member's agency and to contain all of the following:
- a) The name and address of the payor;
 - b) The amount of the payment;
 - c) The date or dates that the payment or payments were made;
 - d) The name and address of the payee;
 - e) A brief description of the goods or services provided or purchased, if any; and,
 - f) A description of the specific purpose or event for which the payment or payments were made.

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

COMMENTS:

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

Since its inception in 1974, the Political Reform Act (the "Act") has regulated campaign contributions made to state and local candidates and elected officers. Over that period, the Act's definition of "contribution" in Government Code Section 82015 has been amended numerous times, making that section and its provisions increasingly difficult to understand. Among these amendments was one in 1997, in which the Legislature amended Section 82015 to remove from the definition of "contribution" what have come to be known as "behested payments,"

which are essentially payments made "at the behest" of a state or local elected officer or member of the Public Utilities Commission for a legislative, governmental, or charitable purpose and unrelated to campaign activities. These amendments required these officers, if certain dollar thresholds were met, to file separate "behested payment reports."

The purpose of this bill is to help clarify and streamline the Act's definition of "contribution" by moving the "behested payment" reporting requirement and related definitions out of the definition of "contribution" and into new, separate sections in the Act. The bill adheres as closely as possible to the current language in the Act and, as stated in subdivision (d) of Section 1 of the bill, the changes are "intended to be technical and clarifying" only and not to create new requirements or remove existing ones.

- 2) **Behested Payments and Previous Legislation:** In 1996, the FPPC amended its regulatory definition of the term "contribution" to include any payment made "at the behest" of a candidate, regardless of whether that payment was for a political purpose. As a result, payments made by a third party at the request or direction of an elected officer were required to be reported as campaign contributions, even if those payments were made for governmental or charitable purposes. The change in regulations by the FPPC, along with a number of advice letters issued by the FPPC interpreting the new definition of "contribution," limited the ability of elected officers to co-sponsor governmental and charitable events. In one advice letter, the FPPC concluded that a member of the Legislature would be deemed to have accepted a campaign contribution if, at his behest, a third party paid for the airfare and lodging for witnesses to testify at a legislative hearing. In response to the FPPC's modified definition of "contribution," the Legislature enacted SB 124 (Karnette), Chapter 450, Statutes of 1997, which provided that a payment made at the behest of a candidate for purposes unrelated to the candidate's candidacy for elective office is not a contribution. SB 124 specifically provided that a payment made at the behest of a candidate principally for a legislative, governmental, or charitable purpose is not considered a contribution or a gift. However, SB 124 also required that such payments made at the behest of a candidate who is also an elected officer, when aggregating \$5,000 or more in a calendar year from a single source, be reported to the elected officer's agency. The elected officer must report such a payment within 30 days. Examples of payments made at the behest of an elected officer that have to be reported under this provision of law include charitable donations made in response to a solicitation sent out by an elected officer or donations of supplies and refreshments made by a third party for a health fair that was sponsored by an elected officer.

Because SB 124 was enacted in response to the FPPC's modified regulatory definition of the term "contribution," the rules governing behested payments—including the requirement that certain behested payments be publicly reported—are found within the provision of state statute that defines the term "contribution." Other reporting requirements that are found in the PRA, however, generally are located in other areas of the PRA depending on the type of activity that is required to be reported. This bill moves the behested payment reporting requirements out of the definition of the term contribution, and instead places those requirements in the part of the PRA that generally deals with campaign disclosure reporting requirements. Additionally, this bill provides specific definitions for terms related to

behested payments and the reporting of such payments, in lieu of having the scope of behested payment reporting requirements more indirectly defined within the definition of the term "contribution."

- 3) **Payments Made by Governmental Entities and Suggested Amendment:** AB 1544 (Cooley), Chapter 756, Statutes of 2015, provided that a payment made by a state, local, or federal governmental agency that is made principally for legislative or governmental purposes does not need to be reported as a behested payment. Prior to the enactment of AB 1544, there was ambiguity within the behested payment reporting requirements about whether payments made by governmental agencies needed to be reported. In certain circumstances, the FPPC concluded that such payments *did* trigger the behested payment reporting requirements. In providing that these types of payments from governmental agencies did not need to be reported under the behested payments law, the text of AB 1544 noted that "government expenditures are subject to a myriad of laws designed to protect the public interest and promote transparency, including laws relating to open meetings, the appropriate use of public resources, conflicts of interests, and disbursement practices."

As detailed above, payments made for legislative, governmental, or charitable purposes potentially trigger the behested payment reporting requirements. While AB 1544 addressed payments made by governmental agencies of the first two types—that is, payments made for legislative or governmental purposes—it did not expressly address payments made for charitable purposes. Because of restrictions on the type of expenditures that governmental agencies can make, it is unclear whether a governmental agency could legally make a payment that is not principally for legislative or governmental purposes. Nonetheless, *if* a governmental agency made a payment at the behest of an elected official that was principally for charitable purposes, and that payment was *not* principally for legislative or governmental purposes, the payment *could* trigger behested payment reporting under existing law. The current version of this bill, however, provides that *any* payment made by a state, local, or federal governmental agency is not subject to the behested payment reporting requirements.

Information provided by the author's office, and included in the findings and declarations contained in this bill, provide that the changes made by this bill are intended to be technical and clarifying in nature. In order to ensure that this bill does not inadvertently eliminate the requirement that certain payments be reported as behested payments—however unlikely those payments may be—committee staff recommends the following amendment on page 10, lines 27-28 of this bill, which the author has agreed to accept:

(2) ~~The~~ *In the case of a payment made principally for a legislative or governmental purpose, the payment is made by a person other than a state, local, or federal governmental agency.*

- 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.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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