

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 914 (Gordon) – As Amended: April 15, 2013

SUBJECT: Political Reform Act of 1974: campaign disclosures.

SUMMARY: Requires specified nonprofit organizations that make campaign contributions, expenditures, or independent expenditures in California elections to file reports disclosing the donors to the nonprofit organization, as specified. Specifically, this bill:

- 1) Requires a nonprofit organization that makes combined contributions, expenditures, and independent expenditures in California aggregating \$50,000 or more during the entity's fiscal year, to file a Nonprofit and Multipurpose Organization Disclosure Statement (NMODS), as specified.
- 2) Requires the Fair Political Practices Commission (FPPC) to develop the NMODS form. Provides that the form shall provide for disclosure of the following information:
 - a) The aggregate amount of contributions, expenditures, and independent expenditures made during the reporting period;
 - b) The amount of expenses attributable to contributions, expenditures, and independent expenditures as a percentage of the entity's total expenses that are made during the reporting period;
 - c) If the entity's combined amount of contributions, expenditures, and independent expenditures exceeds 10 percent of the entity's total expenses during the reporting period, each of the following with respect to contributions, expenditures, and independent expenditures made during the period:
 - i) The amount of any funds, or the fair market value of any services or assets, that are provided in relation to a contribution, expenditure, or independent expenditure;
 - ii) The amount or fair market value of liabilities incurred in relation to a contribution, expenditure, or independent expenditure;
 - iii) The date that the funds, services, or assets were provided or the liabilities were incurred;
 - iv) The name and address of the recipient of the contribution, expenditure, or independent expenditure;
 - v) A description of the contribution, expenditure, or independent expenditure and its purpose, including whether it was made in support of or opposition to a candidate, political party, ballot measure, or other question put before the voters in an election;

and,

- vi) Information related to each donor who made donations in an aggregate amount of \$10,000 or more to the entity during the reporting period, including the name and address of the donor; the name of the employer of the donor, if available; and the date and amount of each donation from that donor during the reporting period.
- 3) Requires the NMODS form to be filed as follows:
 - a) In the case of a charitable corporation, unincorporated association, or trustee that is required to file reports with the Attorney General (AG) pursuant to specified provisions of law, as an attachment to that periodic report for any year in which the entity meets the \$50,000 threshold for combined aggregate contributions, expenditures, and independent expenditures during a fiscal year. Requires the AG to make the disclosure statement available to the public as provided.
 - b) In the case of a nonprofit corporation, as defined in Section 501(c) of the Internal Revenue Code, that is not required to file periodic written reports with the AG pursuant to specified provisions of law, with the FPPC at a time to be determined by the FPPC for any year in which the entity meets the \$50,000 threshold for combined aggregate contributions, expenditures, and independent expenditures during a fiscal year. Requires the FPPC to make the disclosure statement available to the public as provided.
 - 4) Provides that an entity is not required to disclose any information on a NMODS form if that information has previously been disclosed on a campaign statement or report filed pursuant to the Political Reform Act (PRA).
 - 5) Provides that if an entity that is required to file a NMODS form maintains one or more segregated bank accounts for the purpose of making election-related contributions, expenditures, or independent expenditures, and those accounts represent the exclusive source of the entity's election-related contributions, expenditures, and independent expenditures, the entity is only required to report information with respect to donations deposited into the segregated election-related accounts.
 - 6) Permits an entity that is subject to the reporting requirements of this bill, or any donor to such an entity, to petition to maintain the confidentiality of donor information that is disclosed on the statement no later than 45 days prior to the date on which the NMODS form must be filed. Requires that petition to be made with the governmental body (either the AG or the FPPC) with which the entity is required to file its NMODS form. Requires the AG or the FPPC, as appropriate, to treat such information as confidential if the petitioner demonstrates by clear and convincing evidence that either of the following is true:
 - a) The public disclosure of donor information will cause undue harm, threats, harassment, or reprisals to the donor; or
 - b) The donor did not know or have reason to know that his or her donation would be used to make a contribution, expenditure, or independent expenditure in this state.

- 7) Requires the AG or the FPPC, as appropriate, when it grants a petition to maintain the confidentiality of donor information disclosed on an NMODS form pursuant to this bill, to redact the donor and donation information from any documents that are made available to the public. Requires the AG or the FPPC, as appropriate, to inform a petitioner, in writing, whether a petition to maintain the confidentiality of donor and donation information has been granted or denied. Requires the grant or denial determination to including a statement of findings and conclusions, and the reasons or basis for the determination.
- 8) Requires an entity that files a NMODS form with the AG to file a copy of that form with the FPPC at the same time. Provides that if the entity or a donor to the entity petitions the AG to maintain the confidentiality of donor and donation information, the entity is not required to file a copy of the disclosure statement with the FPPC until the AG has informed the petitioner whether the petition has been granted or denied.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires certain entities, including charitable corporations, unincorporated associations, and trustees, to file periodic written reports with the AG, under oath, setting forth information as to the nature of assets held for charitable purposes and the administration thereof by the corporation, unincorporated association, or trustee.
- 3) Requires multipurpose organizations to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such funds to make campaign contributions or expenditures, or when such organizations have previously made contributions or independent expenditures from their general treasuries of \$1,000 or more during the calendar year, or the previous four years, in California.

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

COMMENTS:

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

AB 914 would provide for additional disclosure by a nonprofit organization that makes campaign contributions, expenditures, or independent expenditures in California. This would better enable voters to know who, if not the candidate or ballot measure committee, is paying for campaigns. By requiring this disclosure, the bill enhances transparency in the electoral process as well as detection and deterrence of Political Reform Act violations. The bill also includes important protections so as to maintain anonymity of donors if their donations are restricted to purposes unrelated to elections, as well as to shield donors to qualifying nonprofits from public disclosure if it would cause undue harm, threats, harassment, or reprisal.

- 2) Multipurpose Organizations, Campaign Disclosure, & the "One Bite" Rule: Under existing law, when a multipurpose organization makes contributions or independent expenditures of specified amounts in connection with an election in California, that organization must file a report disclosing that it made the contributions or independent expenditures. In some cases, the organization is required to report only the fact that it made a contribution or independent expenditure, while in other cases, the report must also disclose certain donors to the organization. One of the key rules in determining whether or not a multipurpose organization is required to disclose its donors when it makes contributions or independent expenditures in connection with California elections is commonly referred to as the "one bite at the apple" rule. This rule is particularly relevant to entities that are organized under Section 501 of the Internal Revenue Code, since those entities typically are not otherwise required to publicly disclose their donors.

The "one bite" rule is intended to ensure that a multipurpose organization is required to reveal the name of a donor to that organization only if the donor knew, or had reason to know, that his or her donation could be used for political purposes in California. Under the "one bite" rule, a multipurpose organization is not necessarily required to disclose any information about donors to that organization unless that organization has previously made expenditures or contributions of at least \$1,000 during the calendar year, or at any time in the prior four calendar years. Once a multipurpose organization takes its first "bite" by making contributions or expenditures of \$1,000 or more, donors to that organization are presumed to know that the organization is involved in making contributions or expenditures in connection with California elections, and thus are presumed to know that their donations may be used for political purposes.

Even if a multipurpose organization has not taken its "one bite at the apple," that organization nonetheless may still be required to disclose the names of its donors when it makes a contribution or expenditure if those donors knew or had reason to know that their donations would be used for political purposes. For instance, if a multipurpose organization sent a solicitation for donations, and that solicitation specified that the donations were being sought for the purpose of making contributions or expenditures in a California election, individuals who donated to the organization in response to that solicitation would know that their donations would be used for political purposes, and as a result their names may be subject to disclosure notwithstanding the fact that the organization did not previously take its "one bite at the apple." However, it can be difficult to enforce this reporting requirement, since an enforcement agency needs to have access to the organization's solicitations or other communications with donors in order to determine whether those donors had reason to know that their donations would be used for political purposes.

Without adequate enforcement of these reporting requirements, there is a concern that individuals who wish to conceal their involvement in making contributions or expenditures in connection with California elections can do so by moving their money through multipurpose organizations that have not yet taken their "one bite at the apple." This frustrates one of the key purposes of the PRA: to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that the voters may be fully informed and improper practices may be inhibited.

This bill is intended to address some of the challenges with ensuring thorough and

appropriate disclosure of campaign contributions and expenditures made by multipurpose organizations by requiring such organizations that have significant involvement in California campaigns to file periodic reports disclosing the contributions and expenditures they make. To help ensure that multipurpose organizations are not being used to conceal the true source of contributions or expenditures, this bill requires reports filed by organizations that spend more than a nominal amount of their budgets on making such contributions and expenditures to include detailed information about the larger donors to the organization. Detailed information about donors could be withheld only if the multipurpose organization or a donor to that organization can demonstrate either that the donor did not know or have reason to know that his or her donation would be used for political purposes, or that the disclosure of donor information would cause undue harm, threats, harassments, or reprisals to the donor.

- 3) \$11 Million Donation: This bill appears to be a response, at least in part, to an \$11 million campaign contribution made to the Small Business Action Committee PAC (SBAC PAC) three weeks prior to the November 2012 statewide general election.

The SBAC PAC, which was a primarily formed committee that was opposing Proposition 30 and supporting Proposition 32 at the time the contribution was received, reported that the \$11 million contribution was made by Americans for Responsible Leadership (ARL), an Arizona-based non-profit organization. ARL initially refused to disclose the names of its donors, arguing that it was not required to do so under California law because it had not "solicited earmarked contributions for any particular project" and because "[n]o contributors to ARL at any time specified where any of their donations 'must go.'" ARL had not made contributions or independent expenditures in California in the four years preceding the \$11 million contribution, so it had not taken its "first bite," as described above.

After receiving a complaint regarding the \$11 million contribution, the FPPC requested to review certain records held by ARL to ensure compliance with state campaign disclosure laws, and subsequently commenced a discretionary audit of ARL. When ARL did not produce records as requested by the FPPC, the FPPC sued ARL in Sacramento Superior Court seeking an order to compel ARL to produce those records. The Court ultimately granted the FPPC's request for an order for ARL to produce the requested records. After an unsuccessful appeal, ARL and the FPPC reached a settlement in which ARL revealed that it was not the true source of the \$11 million contribution, but instead was an intermediary for that contribution. ARL disclosed that the actual source of the \$11 million was another nonprofit organization, Americans for Job Security (AJS), which made a contribution to a second intermediary (and another nonprofit organization), the Center to Protect Patient Rights (CPPR). CPPR, in turn, made the contribution to ARL. AJS has not disclosed its donors.

- 4) Existing Charitable Organization Regulation and Reporting Requirements: Under existing law, pursuant to the Uniform Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act), the AG has supervisory and enforcement powers over certain charitable corporations, trustees, commercial fundraisers, fundraising counsel, and commercial coventurers who solicit or hold property for charitable purposes. The Act requires a commercial fundraiser to register with the AG's Registry of Charitable Trusts, and to file an annual financial report of funds solicited on behalf of each charitable purpose or organization. Charitable corporations and trustees subject to the Act additionally are

required to register and file periodic written reports with the AG. The AG is authorized to refuse to register, or revoke or suspend the registration of, a charitable organization or trustee, commercial fundraiser, fundraising counsel, or coventurer upon finding that the person has been violating the law.

For charitable entities that are subject to the Act, and thus who already file certain disclosure reports with the AG, the filing requirements imposed by this bill would be combined with the entities' existing filings that are made with the AG. In order to ensure that this bill captures all multipurpose organizations that make a significant amount of campaign contributions or expenditures in California, however, this bill also establishes a new reporting requirement for multipurpose organizations that are not subject to the Act. Those entities would file their disclosure reports required by this bill with the FPPC.

5) Arguments in Support: According to the sponsor of this bill, the FPPC:

This bill would provide the public with much needed disclosure that in some cases can be nonexistent. Since the Supreme Court decided *Citizens United* in 2010, there has been an unprecedented amount of campaign activity conducted by nonprofit organizations. Many of these organizations receive large sums of money from individuals and corporations and, under Federal law, are not required to disclose their donors....This legislation would simply require nonprofits to know who their donors are and to disclose who is actually funding their campaign activities. This basic disclosure also would provide the public and other government agencies with valuable information regarding the amount of campaign activity conducted by the nonprofit in relation to its activities as whole.

6) Related Legislation: AB 45 (Dickinson), which is also being heard in this committee today, and SB 27 (Correa), which is pending in the Senate Elections & Constitutional Amendments Committee, both revise the disclosure rules that apply to multipurpose organizations that make contributions and expenditures in California elections, among other provisions.

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 initiative and require a two-thirds vote of both houses of the Legislature.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Opposition

Fair Political Practices Commission (sponsor)

None on file.