

Date of Hearing: August 13, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 2 (Lieu & Yee) – As Amended: August 6, 2013

SENATE VOTE: 28-11

SUBJECT: Political Reform Act of 1974.

SUMMARY: Makes numerous significant changes to the Political Reform Act of 1974 (PRA). Specifically, this bill:

- 1) Reduces, from 30 days to 10 days, the amount of time that a primarily formed committee has from the date that a proposition it was formed to support or oppose receives a numerical designation, until the committee is required to include that numerical designation in any reference to the committee required by law.
- 2) Requires a slate mailer to include the Web site address, if any, of the slate mailer organization or committee that is sending the mailer.
- 3) Requires a slate mailer to include an "at sign" (@) next to any candidate or ballot measure that appears in the slate mailer if that appearance is paid for by a person other than the candidate or ballot measure. Makes corresponding changes to a notice that is required to be included in a slate mailer.
- 4) Provides that if a slate mailer is produced entirely in a language other than English, the required "Notice to Voters," as described below, shall be produced in that language. Provides that if a substantial portion of a slate mailer, as determined by the Fair Political Practices Commission (FPPC) by regulation, is in a language other than English, the "Notice to Voters" shall be printed both in that language and in English.
- 5) Requires a television or video broadcast advertisement that supports or opposes a candidate or solicits contributions for that purpose, and that is authorized by a candidate or agent of the candidate, to include a statement in which the candidate identifies himself or herself and states that the candidate has approved the message. Requires the candidate statement to be made using an unobscured, full-screen video of the candidate making the statement, or by using an unobscured, full-screen, and clearly identifiable photographic image of the candidate that is displayed during an audio voiceover of the candidate reading the statement.
- 6) Requires an audio broadcast advertisement that supports or opposes a candidate or solicits contributions for that purpose, and that is authorized by a candidate or agent of the candidate, to include an audio statement in which the candidate identifies himself or herself and states that the candidate has approved the message.
- 7) Increases the maximum fine for failing to comply with state laws governing disclosures and disclaimers in political advertisements from three times to six times the cost of the advertisement, including placement costs.

- 8) Prohibits a person from making a contribution to a committee on the condition or with the agreement that it will be contributed to any particular ballot measure committee unless the contribution is fully disclosed, as specified. Provides that any person who makes a contribution in violation of this provision, or in violation of an identical provision governing contributions to candidates, shall pay to the General Fund (GF) the amount of the contribution and shall pay a fine in the amount of 15 percent of the contribution to the Political Disclosure, Accountability, Transparency, and Access Fund (PDATA Fund).
- 9) Increases the maximum fine that can be levied when a person is convicted criminally for a violation of the PRA, from the greater of \$10,000 or three times the amount the person failed to report properly or unlawfully contributed, expended, gave, or received; to the greater of \$15,000 or five times the amount the person failed to report properly or unlawfully contributed, expended, gave, or received.
- 10) Increases the maximum fine that can be levied in a civil proceeding for the making or receipt of an illegal contribution, gift, or expenditure, from the greater of \$1,000 or three times the amount of the unlawful contribution, gift, or expenditure; to the greater of \$1,500 or five times the amount of the unlawful contribution, gift, or expenditure.
- 11) Increases the maximum fine that can be levied in a civil proceeding for a violation of the PRA where no specific penalty is provided, except as specified, from \$5,000 per violation to \$7,000 per violation.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires a committee that is primarily formed to support or oppose a ballot measure, within 30 days of the designation of the numerical order of propositions appearing on the ballot, to include one of the following statements in any reference to the committee that is required by law:
 - a) If the committee is supporting the measure, the statement "a committee for Proposition ____, "; or,
 - b) If the committee is opposing the measure, the statement "a committee against Proposition ____, ".
- 3) Defines a "slate mailer" as a mass mailing that supports or opposes a total of four or more candidates or ballot measures.
- 4) Prohibits a slate mailer organization or a committee primarily formed to support or oppose one or more ballot measures from sending a slate mailer unless it contains all of the following:
 - a) The name, street address, and city of the slate mailer organization or committee on the outside of each piece of slate mail and on at least one of the inserts included with each

piece of slate mail in no less than 8-point type;

- b) The following "Notice to Voters," in no less than 8-point type and in a color or print which contrasts with the background so as to be easily legible:

NOTICE TO VOTERS

THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization or committee primarily formed to support or oppose one or more ballot measures), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.

- c) An asterisk (*) to designate each candidate and each ballot measure that has paid to appear in the slate mailer in the same type size, style, color, and legibility as is used for the name of the candidate or the ballot measure name or number and position advocated, provided that the asterisk is not required to be larger than 10-point boldface type.
- d) The political party designation of a candidate appearing in the slate mailer, in no less than 9-point type, if the candidate is not running for non-partisan office and is a member of a political party differing from the political party with which the mailer appears by representation or indicia to represent.
- 5) Provides that any person who violates specified provisions of the PRA dealing with disclaimers and disclosures that are required to appear on advertisements is liable in a civil or administrative action brought by the FPPC or any person for a fine of up to three times the cost of the advertisement, including placement costs.
- 6) Prohibits a person from making any contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate, unless the contribution is fully disclosed as required.
- 7) Provides that any person who knowingly or willfully violates any provision of the PRA is guilty of a misdemeanor, and provides that in addition to other penalties provided by law, a fine of up to the greater of \$10,000 or three times the amount the person failed to report properly or unlawfully contributed, expended, gave, or received may be imposed upon conviction of each violation.
- 8) Provides that any person who receives a contribution, gift, or expenditure in violation of specified provisions of law is liable in a civil action brought by the civil prosecutor or by a person residing in the jurisdiction for an amount of up to \$1,000 or three times the amount of the unlawful contribution, gift, or expenditure, whichever is greater.
- 9) Provides that a person who violates any provision of the PRA, except as specified, for which no specific civil penalty is provided, shall be liable in a civil action brought by the FPPC, the district attorney, or the elected city attorney, as specified, for an amount up to \$5,000 per violation.

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

COMMENTS:

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

According to data collected by Common Cause, nearly half a billion dollars (approx. \$460 million) was spent in the 2011-12 election cycle between state candidates and statewide ballot measures. The aggregate amount spent by candidates, ballot measure committees, independent expenditures and other entities increases dramatically each election cycle, especially after the US Supreme Court decision in Citizens United v. Federal Elections Commission. Voters have reacted to these increases in spending by calling for more regulations on campaign finance and more transparency and disclosure behind who is spending money in politics.

The Sunshine in Campaigns Act provides the increased transparency and disclosure voters have demanded while, at the same time, simplifying disclosure requirements to allow better access and compliance with these important rules.

Increasing the penalties on violators is also an important part of the Sunshine in Campaigns Act because far too often we see campaigns treat the current fine levels as the cost of doing business and not a real deterrent to bad behavior.

The Sunshine for Campaigns Act also improves candidate accountability in broadcast advertisements, requiring candidates now “stand by their ad”, matching the long standing requirement on federal candidates.

There are many other new disclosure requirements in the Sunshine in Campaigns Act with the same common theme of balancing increased transparency with a new simplified and predictable process.

2) Slate Mailers: Under existing law, a slate mailer must have an asterisk next to a ballot measure or candidate that appears in the slate mailer if that candidate or ballot measure has paid to appear in the slate mailer, or if someone else pays for that appearance at the behest of the candidate or ballot measure. However, if someone other than the candidate or ballot measure committee pays the slate mailer organization to include a candidate or ballot measure committee in the slate mailer, and such a payment is not made at the behest of the candidate or ballot measure, no asterisk or other designation is included in the mailer. So, for instance, if a general purpose committee makes an independent expenditure by paying a slate mailer to include a candidate that the general purpose committee has endorsed, the slate mailer itself would have no indication that the slate mailer organization had been paid to include that candidate in the mailer.

This bill would require a slate mailer to include an "at sign" (@) next to a candidate or ballot measure if the appearance is paid for by a person other than the candidate or ballot measure. Appearances that are paid for and authorized by the candidate or the ballot measure would

continue to be designated with an asterisk. Additionally, this bill requires the disclaimers in slate mailers that are printed in languages other than English to be printed in the same language as the rest of the slate mailer.

In August 2010, then-chairman of the FPPC, Dan Schnur, established a 25-member Advisory Task Force charged with proposing regulatory and statutory changes to the PRA. The changes proposed by this bill to slate mailer requirements are similar to recommendations of that task force. The requirement for disclaimers to be printed in the same language as the text of the slate mailer has already been implemented through regulations adopted by the FPPC.

- 3) Earmarked Contributions and Proposed Amendment: Existing law prohibits a person from making a contribution to a committee that is earmarked for a particular candidate unless the contribution is fully disclosed in accordance with specified provisions of law. This bill proposes to expand that provision to apply to contributions that are earmarked for a particular ballot measure, which is consistent with other provisions of the PRA.

This bill additionally requires a person who makes an earmarked contribution that is not properly reported by the committee that receives the contribution to pay an amount equal to the amount of the contribution to the GF, and to pay an amount equal to 15 percent of the contribution into the PDATA Fund. In essence, this provision would penalize a contributor based upon a violation that was committed not by that contributor, but rather by the committee to which the contributor made a contribution. Committee staff recommends that this provision be amended so that the penalty is imposed on the committee that violated the law, rather than on the contributor that made the contribution.

- 4) Stand By Your Ad: Existing federal law requires a candidate for federal office to include a statement made by the candidate in any television and radio advertisement in support of his or her candidacy indicating that the candidate has approved the advertisement. This requirement—commonly known as the "stand by your ad" requirement—was added to federal law as part of the Bipartisan Campaign Reform Act of 2002, sometimes called "McCain-Feingold" for its Senate authors. Because the stand by your ad requirement is part of federal campaign laws, it applies only to candidates for federal office (President, Vice President, and members of Congress), and does not apply to candidates for state or local office. This bill would enact a similar "stand by your ad" requirement for advertisements paid for by candidates for state and local office in California.
- 5) PDATA Fund and Previous Legislation: SB 1001 (Yee), Chapter 506, Statutes of 2012, imposed a \$50 annual fee on specified committees that are required to file disclosure reports pursuant to the PRA and increased the fee on lobbying firms and lobbyist employers from \$25 to \$50 per year per lobbyist. The revenue generated by the bill is deposited into the newly-created PDATA Fund, and is available to be used for the online and electronic disclosure of reports filed pursuant to the PRA. It is estimated that these fees will result in approximately \$490,000 of new revenue yearly for the PDATA Fund.
- 6) Related Legislation: SB 3 (Yee & Lieu), which is also being heard in this committee today, increases the penalty imposed on a person or committee who files a statement or report required by the PRA after the deadline for that report from \$10 for each day after the deadline that the statement or report is filed to \$30 per day, among other provisions.

SB 26 (Correa) would require the text of disclaimer statements that are included on slate mailers to be larger and more prominently displayed. SB 26 failed passage in this committee on a 3-1 vote, but was granted reconsideration and is pending in this committee.

- 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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause (co-sponsor)
League of Women Voters of California (co-sponsor)
American Association of University Women
California Clean Money Campaign
Communications Workers of America AFL-CIO, CLC Local 9003
Fair Political Practices Commission
Friends Committee on Legislation of California
Los Angeles County Democratic Party

Opposition

None on file.

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