

Date of Hearing: June 14, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 226 (Hertzberg) – As Amended April 4, 2017

SENATE VOTE: 34-3

SUBJECT: Political Reform Act of 1974: slate mailers.

SUMMARY: Increases the minimum size and specifies the format and location of a disclosure that is required to appear on a slate mailer that identifies itself as representing a public safety organization in a manner that generally requires such disclosure to be more prominent.

Specifically, **this bill:**

- 1) Requires, when a slate mailer is required pursuant to existing law to include a disclosure of the number of members of the law enforcement, firefighting, emergency medical, or other public safety organization that the slate mailer identifies itself as representing, that the disclosure comply with all of the following:
 - a) That the disclosure reads "This organization represents ____ public safety personnel," with the blank space filled in with the number of public safety personnel members the organization represents; or that the disclosure reads "This organization does not represent any public safety personnel," if the organization does not represent public safety personnel members.
 - b) That the disclosure be in a format that satisfies all of the following:
 - i) Printed in a roman type that is no less than 14-point font;
 - ii) Located on the outside of the slate mailer or mass mailing within one-quarter of an inch of the recipient's name and address; and,
 - iii) Contained in a box with an outline that has a line weight of at least 3.25 points, with the background color of the box a contrasting color to the background of the slate mailer or mass mailing, the outline of the box in a contrasting color to both the background color of the mailing and the background color of the box, and the color of the text of the disclosure in a contrasting color to the background color of the box.
- 2) Defines the term "member," for the purposes of the requirement that specified slate mailers include a disclosure of the number of members of the law enforcement, firefighting, emergency medical, or other public safety organization that the slate mailer identifies itself as representing, to mean either of the following:
 - a) A person who, pursuant to a specific provision of an organization's articles or bylaws, may vote directly or indirectly for the election of a director or officer or for the disposition of all or substantially all of the assets of the organization in a merger or dissolution; or,

- b) A person designated as a member in the articles or bylaws of an organization that is tax exempt under Section 501 (c) of the Internal Revenue Code and who has the right to vote to change the organization's articles or bylaws and has paid dues to the organization.

Provides, for the purposes of this definition of the term "member," that members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

- 3) Makes technical and clarifying changes.
- 4) Contains a severability clause.

EXISTING LAW:

- 1) Defines a "slate mailer" as a mass mailing that supports or opposes a total of four or more candidates or ballot measures.
- 2) Defines a "slate mailer organization" as a person who is involved in the production of one or more slate mailers, exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers, and receives or is promised payments totaling \$500 or more in a calendar year for the production of one or more slate mailers. Provides that none of the following are slate mailer organizations:
 - a) A candidate or officeholder or the controlled committee of a candidate or officeholder;
 - b) An official committee of any political party;
 - c) A legislative caucus committee; or,
 - d) A committee primarily formed to support or oppose a candidate, officeholder, or ballot measure.
- 3) Requires a slate mailer organization that sends a slate mailer or other mass mailing that identifies itself or its source material as representing a nongovernmental organization with a name that includes the term "peace officer," "reserve officer," "deputy," "deputy sheriff," "sheriff," "police," "highway patrol," "California Highway Patrol," "law enforcement," "firefighter," "fire marshal," "paramedic," "emergency medical technician," "public safety," or any other term that would reasonably be understood to imply that the organization is composed of, or affiliated with, law enforcement, firefighting, emergency medical, or other public safety personnel, to disclose the total number of members in the organization identified in the slate mailer or mass mailing. Requires this disclosure to be included on the outside of each piece of mail and on at least one of the inserts in no less than 12-point roman type, in a color or print that contrasts with the background so as to be easily legible.
- 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) A notice, in no less than 8-point type, that consists of the following statement:

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.
 - d) The political party affiliation 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) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

Senate Bill 226 strengthens existing disclosure requirements governing the use of public safety logos and public safety messaging by slate mailer organizations for political purposes. The bill ensures that voters can easily identify the disclosures on political mailers and can understand what kind of public safety organization is promoting or supporting the issues contained in the mail piece.

- 2) **Previous Legislation and Litigation:** In 2012, the Legislature passed and the Governor signed SB 488 (Correa), Chapter 865, Statutes of 2012, which requires a slate mailer that represents the position of a public safety organization to include information about the total number of members in the organization identified in the slate mailer, among other provisions.

SB 488 was intended to address concerns about slate mailers that purported to represent the position of public safety organizations even though the entity sending the slate mailers had no connection to or affiliation with public safety organizations. Supporters of SB 488 argued that these slate mailers, by giving voters a misleading impression that they represented the position of public safety personnel, could undermine trust in public safety organizations.

Shortly after the passage of SB 488, Landslide Communications, Inc., a slate mailer organization, filed a lawsuit in the United States District Court for the Eastern District of California challenging the provisions of SB 488. Among other arguments, the plaintiffs alleged that SB 488 unconstitutionally infringed upon their right to freedom of speech under the First Amendment; specifically, the plaintiffs argued that having to disclose the total number of members in the organization identified in the slate mailer created a distorted message and would have a stigmatizing effect on the public safety oriented organizations that distribute slate mail. Additionally, the plaintiffs alleged that by listing the number of members in the sponsoring organization, they were being forced to include messages that they do not wish to include. After hearing arguments on the parties' cross-motions for summary judgment, the district court rejected the plaintiffs' challenge to SB 488 and granted the defendants' motion for summary judgment. (*Landslide Communications, Inc. v. State of California*, 2013 U.S. Dist. LEXIS 180811, (E.D. Cal. Dec. 27, 2013)).

For those slate mailers that are required to include a disclosure of the total number of members in the organization identified in the slate mailer, SB 488 requires the disclosure to appear in no less than 12-point roman type, in a color or print that contrasts with the background as to be easily legible. For illustration purposes, the following is printed in a 12-point Times New Roman type font which would comply with current law:

The organization sending this slate mailer does not have any members.

As background for this bill, the sponsor provided a copy of a slate mailer sent in connection with the November 2016 statewide general election. That slate mailer, which was prominently identified as the California Public Safety Newsletter and Voter Guide, and contained images of police, firefighters, and insignia similar to those used by firefighting and police agencies, included a disclosure consistent with SB 488 that the organization "is a non-membership slate mailer organization and therefore does not have any members." That disclosure was included in the header at the top of the inside of the slate mailer, and was printed in a smaller type size than the other text in the header. To address concerns that existing law may permit the disclosure required by SB 488 to be printed in a manner that allows for it to be easily overlooked, this bill would require the disclosure to use specified wording, increase the minimum size of the disclosure to 14-point roman type font, and require the disclosure statement to appear in a box near the mailing address of the recipient of the slate mailer. The following disclosure statement uses the specific language that would be required by this bill, is written in 14-point Times New Roman type font, and is placed in a box similar to the one that would be required by this bill:

This organization does not represent any public safety personnel.

- 3) **Postal Regulations and Suggested Amendment:** Under the provisions of this bill, the disclosure of the number of public safety personnel that an organization represents is required to be located within one-quarter of an inch of the recipient's name and address. However, United States Postal Service (USPS) mailing guidelines (Publication 177) require the delivery address block on mail to be clearly separated from any extraneous text and graphics. USPS requires a minimum clear area of three-eighths of an inch, and recommends at least one-half inch of clear area in each direction around the address block. In order to conform the requirements of this bill to USPS mailing guidelines, committee staff recommends amending this bill to require the disclosure of the number of public safety personnel to be located within one-half of an inch of the recipient's name and address.
- 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

California Professional Firefighters (sponsor)
Peace Officers Research Association of California

Opposition

None on file.

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