

Date of Hearing: August 13, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 27 (Correa) – As Amended: August 7, 2013

SENATE VOTE: 28-8

SUBJECT: Political Reform Act of 1974.

SUMMARY: Establishes conditions under which a multipurpose organization (MPO) is required to disclose the names of its donors when making campaign contributions or expenditures in the state. Specifically, this bill:

- 1) Requires MPOs that make contributions or expenditures in California campaigns to file campaign disclosure reports pursuant to the following:
 - a) Defines an MPO, for the purposes of this bill, as an organization described in Sections 501(c)(3) through 501(c)(10), inclusive, of the Internal Revenue Code and that is exempt from taxation under Section 501(a) of the Internal Revenue Code, a federal or out-of-state political organization, a trade association, a professional association, a civic organization, a religious organization, a fraternal society, an educational institution, or any other association or group of persons acting in concert, that is operating for purposes other than making contributions or expenditures. Provides that business entities, individuals, and federal candidates' authorized committees that are registered and filing reports in accordance with federal law are not MPOs.
 - b) Provides that an MPO is a recipient committee, for the purposes of the Political Reform Act (PRA), only under one or more of the following circumstances:
 - i) The MPO is a political committee registered with the Federal Elections Commission (FEC), except a federal candidate's authorized committee that is registered and filing reports in accordance with federal law, or a political committee registered with another state, and the MPO makes contributions or expenditures in this state in an amount equal to or greater than the amount of contributions that a committee must receive in order to qualify as a recipient committee;
 - ii) The MPO solicits and receives payments from donors for the purpose of making contributions or expenditures in an amount equal to or greater than the amount of contributions that a committee must receive in order to qualify as a recipient committee;
 - iii) The MPO accepts payments from donors subject to a condition, agreement, or understanding with the donor that all or a portion of the payments may be used for making contributions or expenditures in an amount equal to or greater than the amount of contributions that a committee must receive in order to qualify as a recipient committee;

- iv) The MPO has existing funds from a donor and a subsequent agreement or understanding is reached with the donor that all or a portion of the funds may be used for making contributions or expenditures in an amount equal to or greater than the amount of contributions that a committee must receive in order to qualify as a recipient committee; or,
- v) The MPO makes contributions or expenditures totaling more than \$50,000 in the preceding 12 months, or more than \$100,000 in any consecutive four calendar year period.
 - (1) Provides that an MPO does not qualify as a recipient committee under this provision if the MPO makes contributions and expenditures using only available nondonor funds. Requires a MPO that makes contributions or expenditures using nondonor funds to identify the source or sources of the funds used for the contribution or expenditure on its major donor or independent expenditure report. Provides that, for the purposes of this provision, “nondonor funds” means investment income, including capital gains, or income earned from providing goods, services, or facilities, whether related or unrelated to the MPO’s program, sale of assets, or other receipts that are not derived from donations.
- c) Requires an MPO that qualifies as a recipient committee pursuant to this bill to comply with the registration and reporting requirements that apply to recipient committees under the PRA, subject to the following:
 - i) If the MPO is a political committee registered with the FEC, as specified, or with another state:
 - (1) The committee is not required to itemize contributions and expenditures that are made to influence federal or out-of-state elections; and,
 - (2) If the committee is registered with the FEC, it is not required to provide detailed information about contributors of \$100 or more, but instead must provide information about the MPO's identification number and organization name, as registered with the FEC.
 - ii) If the MPO solicits donations for the purposes of making contributions or expenditures in California, or has or reaches an understanding or agreement with donors that the donations may be used for making contributions or expenditures in California:
 - (1) The committee is required to provide detailed information about donors of \$100 or more where those donations were solicited for the purposes of making contributions or expenditures in California, or where there was an understanding or agreement that the donations may be used for making contributions or expenditures in California;
 - (2) The total amount of contributions received that are disclosed by the MPO on its campaign disclosure reports must equal the total amount of contributions and

expenditures made by the MPO in California; and,

- (3) To the extent that the total amount of contributions disclosed pursuant to (1) above is not sufficient to account for the total amount of contributions and expenditures made by the MPO during the reporting period, the MPO must disclose the identities of other donors of \$1,000 or more, using a last-in, first-out accounting method, until the MPO has disclosed a total amount of contributions received to equal the total amount of contributions and expenditures made by the MPO in California.
- iii) If the MPO makes contributions or expenditures totaling more than \$50,000 in the preceding 12 months or more than \$100,000 in any consecutive four calendar year period:
- (1) The committee is required to provide detailed information about donors of \$100 or more where those donations were solicited for the purposes of making contributions or expenditures in California, or where there was an understanding or agreement that the donations may be used for making contributions or expenditures in California;
 - (2) The total amount of contributions received that are disclosed by the MPO on its campaign disclosure reports must equal the total amount of contributions and expenditures made by the MPO in California;
 - (3) To the extent that the total amount of contributions disclosed pursuant to (1) above is not sufficient to account for the total amount of contributions and expenditures made by the MPO during the reporting period, the MPO must disclose the identities of donors of \$1,000 or more, using a last-in, first-out accounting method, until the MPO has disclosed a total amount of contributions received to equal the total amount of contributions and expenditures made by the MPO in California;
 - (4) The MPO is not required to report contributions or expenditures made by the MPO, or to disclose donors for contributions and expenditures made by the MPO, in a prior calendar year in which the MPO did not qualify as a committee; and,
 - (5) The MPO's status as a committee automatically terminates at the end of the calendar year, and the MPO is not required to file a semiannual campaign disclosure report covering activity through the end of the year unless the MPO has additional contributions or expenditures that it is required to report and which have not yet been disclosed.
- d) Provides that an MPO is not required to disclose the identity of a donor on any campaign report when using the last-in, first-out accounting method if the donor conditions his or her donation in a manner that prohibits the MPO from using the donation for contributions or expenditures, or if the donation is a grant from a private foundation that does not constitute a taxable expenditure pursuant to specified provisions of federal law.

- e) Provides that an MPO that does not qualify as a recipient committee may qualify as an independent expenditure committee or a major donor committee if it meets the relevant thresholds for qualifying as those types of committees, as specified.
 - f) Provides that a sponsor of a sponsored committee that is subject to the MPO reporting requirements in this bill and that makes contributions or expenditures from the sponsor's treasury funds may report those contributions or expenditures either on the campaign statements of the sponsored committee or on the sponsor's own campaign statements.
 - g) Provides that an MPO that is the sponsor of a committee, as specified, that is a membership organization, and that makes all of its contributions and expenditures from funds derived from dues, assessments, fees, and similar payments that do not exceed \$10,000 per calendar year from a single source, may report its contributions and expenditures on its sponsored committee's campaign statement pursuant to the following:
 - i) Requires the sponsored committee to report all contributions and expenditures made from the sponsor's treasury funds on statements and reports filed by the committee. Requires the sponsor to use a last-in, first-out accounting method, and to disclose detailed information about any person who pays dues, assessments, fees, or other similar payments of \$1,000 or more to the sponsor's treasury funds in a calendar year and to disclose all contributions and expenditures made, as specified, on the sponsored committee's campaign statements;
 - ii) Requires the sponsored committee to report all other contributions and expenditures in support of the committee by the sponsor, its intermediate units, and the members of those intermediate units. Provides that a sponsoring organization makes contributions and expenditures in support of its sponsored committee when it provides the committee with money from treasury funds, with the exception of establishment or administrative costs. Provides that with respect to dues, assessments, fees, and similar payments channeled through the sponsor or an intermediate unit to a sponsored committee, the original source of the dues, assessments, fees, and similar payments is the contributor; and,
 - iii) Requires a responsible officer of the sponsor, as well as the treasurer of the sponsored committee, to verify the committee's campaign statement, as specified.
 - h) Provides that if an MPO is a contributor to another MPO that is a recipient committee pursuant to this bill, and if the MPO making the contribution receives contributions that would qualify it for reporting requirements under the provisions of this bill, then the MPO making the contribution must also comply with the reporting requirements in this bill.
- 2) Requires a candidate or committee, when notifying a contributor of \$5,000 or more that the contributor may be required to file campaign reports, to include a reference to the filing requirements for MPOs under this bill. Requires a candidate or committee that receives a contribution of \$10,000 or more from any person during any period in which late contribution reports are required to be filed, as specified, to provide information to the contributor about his or her potential obligation to file campaign reports within one week,

instead of within two weeks.

- 3) Requires any campaign disclosure report or statement that is filed by an independent expenditure committee or a major donor committee to be signed and verified by a responsible officer of the committee.
- 4) Requires a committee that is primarily formed to support or oppose a state ballot measure or a state candidate, and that raises \$1 million or more for an election, to maintain an accurate list of the committee's top 10 contributors, as specified by regulations adopted by the Fair Political Practices Commission (FPPC). Requires a current list of the top 10 contributors to be provided to the FPPC for disclosure on the FPPC's Web site, as specified.
 - a) Requires the list of top 10 contributors to identify the names of the 10 persons who have made the largest cumulative contributions to the committee, the total amount of each person's contributions, the city and state of the person, the person's committee identification number, if any, and any other information deemed necessary by the FPPC. Permits the FPPC to require by regulation that any of the top 10 contributors that is a recipient committee, as specified, to identify the top 10 contributors to that contributing committee.
 - b) Requires a committee primarily formed to support or oppose a state ballot measure to count the cumulative amount of contributions received by the committee from a person for the period beginning 12 months prior to the date that the committee made its first expenditure to qualify, support, or oppose the measure, and ending with the current date.
 - c) Requires a committee primarily formed to support or oppose a state candidate to count the cumulative amount of contributions received by the committee from a person for the primary and general elections combined.
 - d) Provides that a person who makes contributions to a committee in a cumulative amount of less than \$10,000 shall not be identified or disclosed as a top 10 contributor pursuant to these provisions.
 - e) Requires the FPPC to adopt regulations to govern the manner in which it will display the top 10 contributor lists, and requires the FPPC to provide the top 10 contributor lists to the Secretary of State (SOS) upon request in order to allow the SOS to post the contributor list on the SOS's Web site.
 - f) Requires a committee to provide an updated top 10 contributor list to the FPPC whenever a new person qualifies as a top 10 contributor, a person who is an existing top 10 contributor makes additional contributions to the committee, or a change occurs that alters the relative ranking order of the top 10 contributors.
 - g) Requires the top 10 contributors to be listed in descending order based upon the amount of cumulative contributions made to the committee.
 - h) Requires the FPPC to post or update the top 10 contributor list within five business days, except during the last 16 days before the election, when it must post or update the list

within 48 hours.

- i) Requires a committee to use reasonable efforts to identify and state the actual individuals or corporations that are the true source of the contributions made to the committee when listing the top 10 contributors.
- 5) Requires the FPPC to compile, maintain, and display on its Web site a current list of the top 10 contributors supporting and opposing each state ballot measure, as specified by FPPC regulations.
- 6) Requires the state ballot pamphlet to contain a written explanation of the top 10 contributor lists described above, including a description of the Internet Web sites where the lists are available to the public.
- 7) Makes various findings and declarations about the political activities of MPOs, and the importance of clarifying how campaign disclosure requirements apply to MPOs.
- 8) Makes corresponding changes.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires MPOs 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.
- 3) Requires a candidate or committee that receives contributions of \$5,000 or more from any person to notify that person within two weeks of receipt of the contributions that he or she may be required to file campaign reports. Provides that this notification need not be sent to any contributor who has an identification number assigned by the SOS.

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

COMMENTS:

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

Everyone is aware of the now-infamous \$11 million contribution from an Arizona non-profit organization to a committee that was opposing Proposition 30 and supporting Proposition 32 last November.

After a court battle with the FPPC, this nonprofit group revealed that it was not the true source of the \$11 million contribution but merely an intermediary. They

disclosed that the actual source of the \$11 million was another nonprofit organization who had received it from yet another nonprofit organization.

The true, original source of this campaign money is still unknown to the public and the matter is still the subject of an ongoing FPPC investigation.

In light of this, I introduced SB 27 which is a simple measure that will accomplish two important goals.

First, it will enact a series of tests and presumptions in the law so that campaign funds can no longer be laundered through nonprofit corporations without them disclosing the true source of the money.

Second, it will require ballot measure committees that raise one million dollars or more to give the FPPC a current list of the committee's top ten contributors of ten thousand dollars or more. The FPPC and the committee will be required to post the list on their Internet web sites.

- 2) Multipurpose Organizations, Campaign Disclosure, & the "One Bite" Rule: Many MPOs receive donations or other payments (e.g., membership dues) for purposes other than making campaign contributions and expenditures in California. These MPOs nevertheless may, at times, use some of these funds to make contributions or expenditures to support or oppose California state or local candidates or ballot measures.

Under existing law, when an MPO makes contributions or independent expenditures of specified amounts in connection with an election in California, that MPO must file a report disclosing that it made the contributions or independent expenditures. In some cases, the MPO 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 MPO. One of the key rules in determining whether a MPO 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 (c) 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 an MPO is required to reveal the name of a donor 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, an MPO is not necessarily required to disclose any information about its donors unless it 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 MPO takes its first "bite" by making contributions or expenditures of \$1,000 or more, its donors 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 an MPO has not taken its "one bite at the apple," it nonetheless may be required to disclose the names of 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 an MPO 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 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 MPO 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 MPO'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 MPOs 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 campaign disclosure by specifying circumstances in which an MPO is required to disclose its donors when it makes contributions or expenditures. Some of these provisions are similar to regulations adopted by the FPPC. For instance, this bill provides that a donor to an MPO must be disclosed when that MPO makes contributions or expenditures if the donation was received in response to a solicitation in which the MPO indicated that the money would be used to make contributions or expenditures, or if there was an agreement or understanding between the MPO and the donor that the money would be used for those purposes.

This bill also establishes, however, a new situation in which an MPO would be required to disclose the identities of donors when that MPO makes contributions or expenditures. Under this provision, if an MPO makes contributions or expenditures of \$50,000 or more in a 12 month period, or \$100,000 or more in a four year period, the MPO would be required to account for the source of the money that was used to make those contributions or expenditures, even if the MPO had not yet taken its "one bite at the apple." To the extent that the MPO used only nondonor funds to make the contributions or expenditures, as specified, the MPO would not be required to disclose the identities of any of its donors. Furthermore, an MPO would not be required to disclose the identity of any donor who specified that his or her donation was not to be used for political purposes. An MPO could be required, however, to disclose the identities of certain donors who had given \$1,000 or more to the MPO, pursuant to a formula under which the donors that are identified would be those whose donations were received closest in time prior to the contribution or expenditure being made by the MPO.

- 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 "one 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. This matter is the subject of an ongoing FPPC investigation.

Certain provisions of this bill are designed to ensure that even if a campaign contribution or expenditure moves through multiple MPOs, as in the case described above, the true source of the money used to make the contribution or expenditure is required to be disclosed.

4) Arguments in Support: The sponsor of this bill, the FPPC, writes in support:

The amendments proposed by this bill will result in more timely and accurate disclosure of the identity of the actual source of funds being spent on California elections, rather than just the name of a multipurpose organization which often provides little, and sometimes misleading, information about the interest behind the expenditure. This bill is important because it would increase accountability for those who attempt to avoid disclosure of their identities by channeling funds used to influence California elections through other committees or nonprofits...

The Supreme Court has repeatedly held that the identity of the source of funds spent on elections provides valuable information to voters, and the [FPPC] believes that timely pre-election disclosure of such information increases its value to voters when it matters most.

5) Related Legislation: AB 45 (Dickinson), which is pending in the Senate Elections & Constitutional Amendments Committee, revises the disclosure rules that apply to MPOs that make contributions and expenditures in California elections, among other provisions. AB 45 was approved by this committee on a 5-2 vote, and was approved by the Assembly on a 54-22 vote.

AB 914 (Gordon), which is pending in the Senate Appropriations Committee, 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. AB 914 was approved by this committee on a 5-2 vote,

and was approved by the Assembly on a 55-18 vote.

- 6) 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

Fair Political Practices Commission (sponsor)
California Clean Money Campaign
California Common Cause
Communication Workers of America AFL-CIO, CLC Local 9003
League of Women Voters of California

Opposition

None on file.

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