

Date of Hearing: August 13, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 3 (Yee & Lieu) – As Amended: August 6, 2013

SENATE VOTE: 30-6

SUBJECT: Political Reform Act of 1974.

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

- 1) Changes the terms "late contribution" and "late independent expenditure" to "election-cycle contribution" and "election-cycle independent expenditure," respectively.
- 2) Requires a person who serves as a treasurer for one or more committees to complete an online training course, designed and administered by the Fair Political Practices Commission (FPPC), before being designated as a treasurer for a committee or not later than 20 business days after that designation.
 - a) Requires the training course to address the statutes and regulations governing the financing of campaigns, and the duties and responsibilities of a treasurer under the PRA.
 - b) Provides that each applicant shall be required to certify, under penalty of perjury, his or her identity by means of an identifier determined by the FPPC, as part of the training course.
 - c) Permits the FPPC to charge a fee of up to \$50 for each applicant for training.
 - d) Requires a treasurer to participate in training every two years.
 - e) Requires the FPPC to maintain a list of treasurers who have completed training on its Web site.
 - f) Requires the FPPC, prior to developing the online training course, to coordinate with one or more other state agencies or departments, including, but not limited to the Department of Technology, to identify any existing online training and certification courses that may be converted and utilized for the purposes of this bill.
 - g) Requires the FPPC to complete the development of the online training course no later than December 31, 2014.
 - h) Provides that treasurers shall be subject to the online training requirements created by this bill 30 days after the FPPC has certified a training course, but no sooner than January 1, 2015.

- i) Provides that a treasurer who is required to complete the online training course shall be fined no more than \$1,000 if he or she fails to complete that course.
- 3) Declares the intent of the Legislature that the Secretary of State (SOS) develop a statewide electronic filing system that provides for the following:
 - a) Electronic filing of committee organization statements;
 - b) Electronic filing of lobbyist, lobbying firm, and lobbyist employer registrations;
 - c) Electronic filing of campaign statements by all state committees, without regard to the amounts of contributions and expenditures;
 - d) Electronic filing of periodic reports filed by lobbyists, lobbying firms, and lobbyist employers.
 - e) Electronic filing of reports by all major donors at the state level when specified thresholds are met;
 - f) A statewide, Internet-accessible system that provides for search capabilities that are data driven and user-friendly for all members of the public; and,
 - g) A system that provides for lobbying and committee data to be made regularly available to the public in raw, machine-readable data format.
 - 4) Requires the SOS, not later than December 31, 2014, to develop a feasibility study report (FSR) that will outline the technology requirements and the costs of the statewide electronic filing system described above. Requires the SOS to consult and coordinate with other state agencies that he or she deems appropriate including the FPPC with respect to data transitioning. Requires the FSR to include an examination of the feasibility of establishing a statewide electronic filing system that permits state-required committee disclosure forms and reports to be imported into the statewide database, according to data standards established by the SOS, from each local jurisdiction that has its own electronic filing system.
 - 5) 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. Increases the maximum amount of such penalties from the cumulative amount stated on the late statement or report or \$100, whichever is greater, to 150 percent of the cumulative amount stated in the late statement or report or \$1,000, whichever is greater. Provides that if the SOS is the filing officer, he or she shall deposit two-thirds of any funds received pursuant to this provision into the Political Disclosure, Accountability, Transparency, and Access Fund (PDATA Fund), and the remainder into the General Fund.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires a committee, as specified, to file a "late independent expenditure report" within 24 hours of making any independent expenditure of \$1,000 or more in the last 90 days prior to an election.
- 3) Requires a committee, as specified, to file a "late contribution report" within 24 hours of receiving any contribution of \$1,000 or more in the last 90 days prior to an election.
- 4) Requires every committee to have a treasurer. Prohibits an expenditure from being made by or on behalf of a committee without the authorization of the treasurer or that of his or her designated agents. Requires the statement of organization for a campaign committee to include the full name, street address, and telephone number (if any), of the campaign's treasurer.
- 5) Requires the SOS, in consultation with the FPPC, to provide an online and electronic filing system for use by specified state candidates, committees, lobbyists, lobbying firms, and lobbyist employers. This online reporting and disclosure system is commonly referred to as the Cal-Access system. Requires the SOS to make all the data filed using the system available on the Internet for public viewing in an easily understood format and to provide a means whereby entities that are required to file statements or reports online or electronically with the SOS pursuant to the PRA, can submit those required filings free of charge.
- 6) Provides that if a person files a copy of a statement or report after any deadline imposed by the PRA, he or she shall, in addition to any other relevant penalties or remedies, be liable in the amount of \$10 per day until the statement is filed, as specified. Provides that this late filing penalty shall not exceed the cumulative amount stated in the late statement or report, or \$100, whichever is greater.

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

COMMENTS:

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

In winter of 2011, the Secretary of State's online campaign finance and lobbying disclosure website (also known as Cal-ACCESS) crashed for nearly a month. During that time regulated parties sought other means of filing legally required disclosure forms; the media and government watchdogs were forced to wait until the system was restored in order to conveniently access the system to do important accountability work. Luckily, this crash occurred during a quiet time in state politics and during a non-election year. However, this incident only supported the ongoing commentary among independent watchdogs, candidates, consultants, lobbyists and media publications that the decade-old design of Cal-ACCESS is outdated and does not meet the 21st century data standards or

demands of today.

In 2012, Common Cause sponsored legislation authored by Senator Yee that created a dedicated funding source for a new online disclosure system through registration fees gathered from lobbyists and political committees. Senate Bill 1001 created the Political Disclosure, Accountability, Transparency, and Access Fund for the purpose of paying for maintenance and an eventual upgrade to the Cal-ACCESS system.

Senate Bill 3 is the second half of the Sunshine in Campaigns Act (including SB 2). SB 3 is also a continuation of the work done in Senate Bill 1001 with its major provisions that require the Secretary of State to conduct a feasibility study on the design and development of a new online disclosure system that meets today's information technology standards, including online and electronic filing capabilities.

SB 3 also makes important changes to what the state designates as "late" contributions or independent expenditures. This change will amend the term "late" with the term "election-cycle" which is less confusing to voters and regulated individuals and closer to what the FPPC designates these transactions in regulations.

Finally, SB 3 will require campaign committee treasurers to complete an online certification course, designed and administered by the Fair Political Practices Commission.

- 2) Author's Amendment: According to the author's staff, the most recent set of amendments contained a drafting error. Those amendments required one-third of the total amount of money collected by the SOS under this bill for late filing penalties to be deposited into the PDATA Fund, but it was the author's intent that two-thirds of the late filing penalties—the entire increase from \$10 a day to \$30 per day that is proposed by this bill—to be deposited in the PDATA fund. This analysis reflects this proposed author's amendment.
- 3) Cal-Access Status: Created in 1999, Cal-Access is a database and filing system the SOS has used to make much of the lobbying and campaign finance information available online at no cost to users. In November 2011, the Cal-Access system went down, and the system was unavailable for most of the month of December. In response to a letter from the chair of this committee, the SOS provided the following information about the status of the Cal-Access system and the challenges to replacing that system with a new (and more robust) campaign and lobbying disclosure database:

Cal-Access is a suite of applications developed in 13 different programming languages which, until [recently], ran the system on a server cluster and associated components...that are more than 12 years old, using an uncommon version of the Unix operating system...While the [SOS] has the funding to maintain the existing hardware and software, finding parts and qualified people to do the maintenance on such outdated equipment has been increasingly difficult....

The Cal-Access system went down November 30, was restored December 7, went

down December 9, and was restored again on December 30. The causes of the outages were layered and complex, and no quick fix was available....

The recovery efforts that [SOS] staff and contractors pursued in December should stabilize Cal-Access and enable it to continue running, but the system can never be made stronger or patched with new features. Any attempt to upgrade or modernize Cal-Access could be as risky, time-consuming, and expensive as developing and deploying a new system. Even the December work to restore Internet availability of Cal-Access will not last forever. It is highly likely that Cal-Access will require more robust servers in the next three to four years simply to continue providing access to the ever-growing volume of information.

The cost of an entirely new system and the speed with which it can be deployed will depend on many factors and ultimately can only be borne out through the state's IT procurement process, which history has shown to be lengthy and expensive. Before the Cal-Access outage began on November 30, my office was looking at existing commercial off-the-shelf (COTS) products, as well as systems used by other states to prepare a feasibility study report (FSR) – the project blueprint that is the required precursor for an IT project and subject to approval by state control agencies. Any consideration of an FSR, along with the subsequent legislative and gubernatorial review of any budget change proposal to conduct a procurement, would take into account the replacement of Cal-Access in the context of the two major IT procurements – VoteCal and California Business Connect – that my office is currently conducting.

- 4) Treasurer Training and Possible Amendment: 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. One of the changes recommended by the task force was to require online training of campaign treasurers, to better ensure that they are aware of basic reporting rules and legal prohibitions. This bill would require all persons who are serving as campaign treasurers to undergo training at least every two years, and permits the FPPC to charge up to \$50 to each person who takes the training. This training requirement would apply to everyone who serves as a treasurer for a committee that is organized under the PRA, regardless of whether the committee is a state or local committee, and regardless of the amount of campaign activity by the committee. A treasurer who failed to complete the training within the required time period would be subject to a fine of up to \$1,000.

While the requirement to undergo training—and to pay the fee associated with that training—is likely to be a small burden to committees with high levels of campaign activity, and to individuals who regularly serve as professional campaign treasurers, the training requirement and fee could be a much more significant burden for committees with relatively low levels of campaign activity that rely on volunteers to serve as campaign treasurers, and it may make it more difficult for those committees to find people who are willing to serve as campaign treasurers. On the other hand, volunteer campaign treasurers without much experience serving as treasurers may have less familiarity with the PRA generally, and thus may be more likely to benefit from the training.

The committee may wish to consider whether the training requirement in this bill, when

combined with the potentially significant penalties for failure to complete the training in the required time period, is overly burdensome, or whether those burdens are justified to ensure greater awareness of the state's campaign reporting rules and legal prohibitions. To reduce the potential that the training requirement and high fines could make it harder for smaller committees to find treasurers, the committee may wish to consider lowering the penalty for failing to complete the training in the required time period from \$1,000 to \$500.

- 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.

This bill seeks to provide an additional source of funding to the PDATA fund by requiring the increase in late filing penalties collected by the SOS pursuant to this bill to be deposited in that fund.

- 6) Related Legislation: SB 2 (Lieu & Yee), which is also being heard in this committee today, increases the maximum fines that can be levied for certain violations of the PRA, 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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause (co-sponsor)
League of Women Voters of California (co-sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
California Clean Money Campaign
California Forward Action Fund
Communications Workers of America AFL-CIO, CLC Local 9003
Friends Committee on Legislation of California
Secretary of State Debra Bowen

Opposition

None on file.

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