

Date of Hearing: August 13, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 594 (Hill) – As Amended: August 7, 2013

SENATE VOTE: (vote not relevant)

SUBJECT: Use of public resources.

SUMMARY: Prohibits nonprofit organizations and their employees from using funds received from local agencies for campaign purposes, as specified. Requires a nonprofit organization that receives significant amounts of money from local agencies to maintain a separate bank account for campaign activities and to disclose the sources of the funds it receives for campaign activities, as specified. Specifically, this bill:

- 1) Makes it unlawful for a nonprofit organization to use or permit others to use public resources, including, but not limited to, public resources received in exchange for consideration, from any local agency for any campaign activity not authorized by law. Prohibits an officer, employee, or agent of a nonprofit organization from expending or authorizing the expenditure of any public resources from any local agency to support or oppose the approval or rejection of a ballot measure or the election or defeat of a candidate by the voters. Defines the following terms for the purposes of these provisions:
 - a) "Ballot measure" to mean a state or local initiative, referendum, or recall measure certified to appear on a regular or special election ballot.
 - b) "Campaign activity" to mean a payment that is used for communications that expressly advocate for the approval or rejection of a clearly identified ballot measure or the election or defeat of a clearly identified candidate by the voters, or that constitutes a campaign contribution.
 - c) "Candidate" to mean an individual who has qualified to have his or her name listed on the ballot, or who has qualified to have write-in votes on his or her behalf counted by elections officials, for nomination or election to an elective office at any regular or special primary or general election, including any officeholder who is the subject of a recall election.
 - d) "Expenditure" to mean a payment that is used for communications that expressly advocate the approval or rejection of a clearly identified ballot measure, or the election or defeat of a clearly identified candidate, by the voters or that constitutes a campaign contribution.
 - e) "Local agency" to mean a county, city (whether general law or chartered), city and county, town, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, other local public agency, or a public entity created pursuant to the Joint Exercise of Powers Act by one or more of these entities. Provides that the term "local agency" does not include a county superintendent of schools, a school

district, or a community college district.

- f) "Nonprofit organization" to mean an entity incorporated under the Nonprofit Corporation Law, or a nonprofit organization that qualifies for exempt status under Section 115 or 501(c), excluding Section 501(c)(3), of the Internal Revenue Code.
 - g) "Public resources" to mean any property or asset owned by a local agency, including, but not limited to, cash, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and local government compensated time that is provided to a nonprofit organization.
 - h) "Use" to mean a use of public resources from one or more local agencies that is substantial enough to result in a gain or advantage to the user or a loss to any local agency for which any monetary value may be estimated.
- 2) Provides that the prohibitions on the use of public resources described above do not prohibit the use of public resources for providing information to the public about the possible effects of any bond issuance or other ballot measure on state activities, operations, or policies, provided that the informational activities are otherwise authorized by the California Constitution or by the laws of this state, and that the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.
- 3) Provides that a nonprofit organization or person that intentionally or negligently violates the provisions of this bill prohibiting the use of public resources is liable for a civil penalty not to exceed \$1,000 for each day on which the violation occurs, plus three times the value of the unlawful use of public resources. Provides for the penalty to be assessed and recovered in a civil action brought by the Attorney General (AG), any district attorney, or any city attorney of a city having a population in excess of 750,000. Provides that if two or more nonprofit organizations or persons are responsible for a violation, they are jointly and severally liable for the penalty. Provides that if the action is brought by the AG, the moneys recovered shall be paid into the General Fund; if the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered; and if the action is brought by a city attorney, the moneys recovered shall be paid to the treasury of that city. Prohibits a civil action alleging a violation of this provision from being commenced more than four years after the date of the alleged violation.
- 4) Requires certain nonprofit organizations that receive more than 20% of their gross revenues from local agencies to deposit funds designated for campaign use into a separate account and to prepare quarterly reports disclosing their campaign activities, as follows:
- a) Defines "auditable nonprofit organization," for the purposes of this bill, as a nonprofit organization for which public resources from one or more local agencies account for more than 20% of the organization's annual gross revenue in the current fiscal year or either of the previous two fiscal years, including gross revenue from public resources received in exchange for consideration.
 - b) Defines "specific source or sources of funds," for the purposes of this bill, to mean any funds received by an auditable nonprofit organization that have been designated for

campaign activity use or any other funds received by the nonprofit organization, including, but not limited to, funds received in exchange for consideration, that are used, in whole or in part, within a two-year period from receipt for campaign activity.

- c) Requires an auditable nonprofit organization that engages in campaign activity, either directly or through the control of another entity, to deposit all specific source or sources of funds received into a separate bank account, and to pay for all campaign activity from that separate bank account.
- d) Requires an auditable nonprofit organization that engages in campaign activity at any point during a calendar quarter to disclose the following information within fifteen days after the end of the quarter:
 - i) The name and amount of each specific source or sources of funds used for campaign activity, provided that the aggregate amount of funds received since January 1 of the most recent odd year by the auditable nonprofit organization from that specific source or sources of funds is at least \$250;
 - ii) The name of the payee and amount of all payments aggregating \$250 or more made from the single bank account required pursuant to this bill; and,
 - iii) A description of each campaign activity.
- e) Requires an auditable nonprofit organization that engages in campaign activity at any point during a two-year period, beginning with an odd-numbered year and ending with the following even-numbered year, to disclose the following information within fifteen days after the end of the even-numbered year:
 - i) The name and amount of any specific source or sources of funds used for campaign activity, provided that the aggregate amount of funds received since January 1 of the most recent odd year by the auditable nonprofit organization from that specific source or sources of funds is at least \$250;
 - ii) The name of the payee and amount of all payments aggregating \$250 or more made from the single bank account required pursuant to this bill; and,
 - iii) A description of each campaign activity.
- f) Requires each auditable nonprofit organization that engages in campaign activity to display the information required to be disclosed by this bill on its Web site. Requires the information to be clearly described and identified on a separate Web page that is linked from the home page of the Web site.
- g) Requires the AG to conduct a biennial audit of each auditable nonprofit organization. Requires each auditable nonprofit organization to provide records to the AG that substantiate the information required to be disclosed under this bill. Requires the audit to determine whether the organization complied with the requirements of this bill. Requires the AG to issue a written audit report and transmit it to the district attorney for the county

in which the auditable nonprofit organization is domiciled.

- 5) Provides that if an audit by the AG of an auditable nonprofit organization determines that the organization has violated the provisions of this bill, the AG may impose a fine on the organization in an amount up to \$10,000 for each violation.

EXISTING LAW makes it unlawful for an elected state or local officer, appointee, employee, or consultant to use, or permit others to use, public resources for a campaign activity.

FISCAL EFFECT: Unknown

COMMENTS:

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

Disclosure and transparency are particularly crucial when public resources are involved. As public agencies continue to cut back on essential public services due to financial struggles, California taxpayers deserve to understand just how their tax dollars are being used. As such, there is a need to eliminate existing loopholes utilized by taxpayer-financed nonprofit organizations and curb their practice of “co-mingling” public and private resources and ultimately using the co-mingled funds for campaign activity. Under existing law, even when the funds used are from “non-public” funds, disclosure of the source of those funds is non-existent. Strengthening our laws in this regard will not only strengthen a taxpayer’s right to know and bolster the integrity of California’s taxpayer-financed nonprofit organizations, but also restore the public’s trust.

SB 594 remedies this by creating a more robust prohibition on the use of public resources for campaign activities. It provides an appropriate level of transparency and an enforcement mechanism, which are applicable to taxpayer-financed nonprofit organizations that spend non-public resources on political campaign activities.

This bill requires a nonprofit organization that receives at least 20% of its funds from taxpayer dollars to deposit into a separate bank account and disclose on its website, as well as to the Attorney General, the source(s) of non-public funds it receives and spends for campaign activity. This bill further requires the nonprofit organization to provide a description of the campaign activity and the identity and amount of payments made from the separate bank account for that campaign activity. SB 594 also clarifies that a non-profit organization cannot use, or permit the use of, the public resources it receives for campaign activities. Finally, the bill requires the Attorney General to perform audits and initiate enforcement actions for non-compliance or miss-use of public resources.

- 2) Does Existing Law Indirectly Permit Public Funds to be Used for Campaign Purposes? In background materials in support of this bill, the author indicates that there is “credible reason to believe” that nonprofit organizations are making campaign expenditures from accounts that are “financed in whole or in part by public dollars.” In particular, the author points to millions of dollars spent on ballot measure campaigns by the League of California Cities and

the California State Association of Counties (CSAC) in the past decade. The author notes that the League of California Cities and CSAC receive millions of dollars in promotion and marketing fees from the California Statewide Communities Development Authority (CSCDA), a Joint Powers Authority created by the League of California Cities and CSAC that provides tax-exempt bond financing. The author argues that because CSCDA is a public entity, and because the bonds it issues are tax exempt, any profits earned as a result of bond sales belong to the taxpayers, and should not be used for campaign purposes. The author further argues that it is impossible to determine whether these organizations are using public resources for campaign purposes impermissibly since these nonprofit organizations are not currently required to publicly disclose the source of revenue that is used for campaign purposes.

- 3) Public Resources Received in Exchange for Consideration: This bill imposes new restrictions on the use of funds that are received by a nonprofit organization from a local agency, as defined, even in the circumstances where the funds received by the nonprofit organization are received in exchange for consideration, prohibiting such funds from being used for campaign activities. While existing law includes strict prohibitions against the use of public resources for campaign activities, this bill proposes a fundamental change by restricting the purposes for which private resources can be used when those private resources were obtained from a public agency, under specified circumstances. While the author and supporters of this bill argue that these restrictions are important to ensure that public resources are not being inappropriately diverted toward political activities, as prohibited by existing law, placing legal restrictions on the use of private resources because those resources were public at one point in time may have other significant unanticipated consequences.
- 4) Use of Resources by an Organization vs. Use of Resources by Employees: Section 1 of this bill, which proposes to add Section 8314.1 to the Government Code, places restrictions on the use of public resources by nonprofit organizations. Section 3 of this bill, which proposes to add Section 54964.5 to the Government Code, places similar restrictions on the use of public resources by the *officers, employees, and agents* of nonprofit organizations. While the restrictions imposed by these two sections are similar, they are not identical, as there are many small differences between the terminologies used in the two sections.

Those differences could result in differing interpretations of two sections that are intended to address the same issue. If those two sections are interpreted differently, that could potentially create confusion and make it more difficult for nonprofit organizations and their officers, employees, and agents to comply with this bill. In light of that fact, the author and the committee may wish to consider amending this bill to consolidate Sections 1 & 3 of the bill into a single section that deals with the use of public resources by nonprofit organizations and their officers, employees, and agents.

- 5) Local Agencies and School Districts: The provisions of this bill relating to payments made by local agencies specifically exclude county superintendents of schools, school districts, and community college districts from the definition of the term "local agency." Materials provided by the author's office explain that these entities have been excluded because they "are already covered by restrictions contained in the Education Code." The provisions of the Education Code cited by those materials, however, are similar to existing restrictions that already apply to other local agencies, which are narrower in scope than the restrictions proposed by this bill. In light of that fact, to the extent that the committee is supportive of

the policies proposed by this bill, it may wish to consider whether those policies should similarly be made applicable to payments by county superintendents of schools, school districts, and community college districts.

- 6) Technical Amendments: To clarify the author's intent with this bill, committee staff recommends the following technical amendments:
- a) In multiple locations in the bill, the phrase "public resources received in exchange for consideration" should be changed to "public resources received by the nonprofit organization in exchange for consideration."
 - b) On page 4, line 10, the word "advocates" should be replaced by "advocate."
 - c) On page 6, lines 10 through 12, the words "beginning with the first quarter of each odd year through the fourth quarter of the following even year," should be deleted.
 - d) On page 6, lines 19 & 34, the word "corporation" should be replaced by "organization."
- 7) Arguments in Support: In support of this bill, California Professional Firefighters writes:

SB 594 creates a more robust prohibition on the use of public resources for political purposes by taxpayer-financed nonprofit organizations, as well as provides for an appropriate level of transparency and related enforcement mechanisms.

At a time when the state and local public agencies have been forced to cut back on essential public services, including critical public safety services due to tight budgets, it is in the public's best interest to ensure transparency and facilitate proper disclosure of how taxpayer dollars are being used.

Further, our organization and our local affiliate organizations are held to multiple levels of disclosure – both at the state and federal levels. The political action we engage in is subject to every manner of public disclosure – 100% disclosure of both union general fund dollars and PAC dollars. The rules should be the same for everyone, particularly for those relying on public subsidies.

Publically-funded nonprofit organizations have a duty to be above reproach given that taxpayers foot the vast majority of their operating expenses. These nonprofits, in many cases, provide many valuable public services and SB 594 doesn't seek to change the way these agencies operate in any way. Secrecy breeds distrust, disclosure bolsters credibility.

The courts have made it crystal clear that the public has a compelling interest in making sure their tax dollars aren't used for politics. SB 594 simply creates a means by which the public can be assured that their tax dollars aren't being spent on political campaigns and when these nonprofits engage in political activity, proper disclosure will tell the whole story that is otherwise obfuscated today.

- 8) Related Legislation: AB 621 (Wagner), which is pending in the Senate Governance and Finance Committee, would prohibit a local agency from entering into specified relationships with an individual or firm with respect to a new issue of bonds requiring voter approval if the individual or firm provides bond campaign services to the bond campaign. AB 621 was approved by this committee on a 7-0 vote.
- 9) Previous Legislation: AB 1992 (DeVore) of 2008, would have prohibited an organization or association that represented local agencies and that was funded in part by payments made by local agencies from using the organization's or association's resources, whether derived from public funds or not, for a campaign activity, or a personal or other purpose not authorized by law. AB 1992 failed passage in this committee on a 2-5 vote.
- 10) Double-Referral: This bill has been double-referred to the Assembly Judiciary Committee. Due to impending committee deadlines, if this bill is approved in this committee today, it would need to be heard in the Assembly Judiciary Committee later this week, absent a waiver of the Joint Rules. However, this bill cannot be amended in committee today and still be heard in the Assembly Judiciary Committee before this week's deadline for policy committees to hear and report bills. In light of this fact, if it is the committee's desire to approve this bill with amendments, committee staff recommends that this bill be passed out of committee with the author's commitment to take those amendments subsequent to passage by this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Clean Money Campaign
California Common Cause
California Labor Federation
California Professional Firefighters
State Building and Construction Trades Council, AFL-CIO

Opposition

None on file.

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