Date of Hearing: January 9, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 860 (Jones and Mansoor) – As Amended: March 31, 2011

SUBJECT: Political Reform Act of 1974: political contributions.

SUMMARY: Prohibits payroll deductions from being made if the money deducted will be used for political purposes. Prohibits corporations, labor unions, and government contractors from making campaign contributions in certain circumstances. Specifically, this bill:

1) Makes various findings and declarations.

2) Prohibits a corporation, labor union, or public employee labor union from making a contribution to any candidate, candidate controlled committee, or to any other committee, individual, organization, agency, or association, including a political party committee, if those funds will be used to make contributions to any candidate or candidate controlled committee.

3) Prohibits a government contractor, or a committee sponsored by a government contractor, from making a contribution to any elected officer, committee controlled by an elected officer, or to any other committee, individual, organization, agency, or association, including a political party committee, if those funds will be used to make contributions to any elected officer or committee controlled by any elected officer, if that elected officer makes, participates in making, or in any way attempts to use his or her official position to influence the decision to grant, let, or award a public contract to the government contractor.

4) Prohibits a corporation, labor union, public employee labor union, government contractor, or government employer from deducting from an employee's wages, earnings, or compensation any amount of money to be used for political purposes. Provides that this prohibition does not apply to deductions for retirement benefits, health, life, death, or disability insurance, or other similar benefit, nor to a voluntary deduction for the benefit of a charitable organization organized under Section 501(c)(3) of Title 26 of the United States Code.

5) Provides that an employee is not prohibited from making voluntary contributions in any manner other than a payroll deduction to a sponsored committee of his or her employer, labor union, or public employee labor union, if the contributions are made with the employee's written consent, which shall be effective for no more than one year after it is submitted.

6) Defines the following terms, for the purposes of this bill:

   a) "Corporation" to mean a corporation organized under the laws of California, any other state, the District of Columbia, or under an act of Congress;

   b) "Government contractor" to mean a person who contracts with a government employer to provide goods, real property, or services, including the services of employees represented by a public employee labor union during the term of the contract;

c) "Government employer" to mean the State of California and any of its political subdivisions;

d) "Labor union" to mean any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of negotiating with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

e) "Political purposes" to mean to influence or attempt to influence the action of voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or received by or made at the behest of a candidate, a controlled committee, a committee of a political party, including a state central committee, and county central committee, or an organization formed or existing primarily for political purposes, including a political action committee established by any membership organization, labor union, public employee labor union, or corporation; and,

f) "Public employee labor union" to mean a labor union in which the employees participating in the labor union are employees of a government employer.

7) Provides that if any part of this bill is found to be invalid or unconstitutional, the remaining parts shall remain in effect.

8) States that this bill is not intended to interfere with any existing contract or collective bargaining agreement, and provides that no new or amended contract or collective bargaining agreement shall be valid if it violates the provisions of this bill.

9) Requires this bill to be liberally construed to further its purposes, and provides that in any legal action brought by an employee or union member to enforce the provisions of this bill, the burden shall be on the employer or labor union to prove compliance with this bill's provisions.

EXISTING LAW:

1) Prohibits an employer from withholding or deducting any amount from an employee's wages except when authorized to do so by federal or state law or when expressly authorized by the employee or a collective bargaining agreement or wage agreement.

2) Gives public and private employees the right to organize into unions and take collective action to bargain over wages, hours, benefits and other working conditions. Gives individuals the right to refuse to join or participate in the activities of a union, but generally provides that employees who are not members of a union but are part of a group of employees who are represented by a union may be required to pay a "fair share fee" to cover the non-members' share of the costs of bargaining and representation services.

3) Prohibits a union from spending funds from dues-paying non-union employees on activities unrelated to collective bargaining and representation services, including for political purposes, when those employees object to such expenditures.

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

COMMENTS:

1) Purpose of the Bill: According to the author, "This is a unique opportunity to defend working Californians against all special interests. If a political candidate or organization needs financial contributions, then they should be direct and ask for them; they should not be acquiring them through an employer, whether government or corporate. When money is withheld from an employee's paycheck and subsequently earmarked for political purposes, an environment is created that is ripe for corruption."

2) Employees Can Opt Out of Paying Union Dues for Political Purposes: State and federal law offers broad protections to employees so that they can organize into unions and take collective action to improve their wages, hours, benefits and other working conditions. The federal National Labor Relations Act (NLRA) is the primary source of such protection for most private sector employees. There are also a limited number of provisions of the California Labor Code related to private sector labor relations. California law also sets forth similar rights for agricultural workers and most public sector employees, which are excluded from the NLRA.

   Under current California law, employers make a variety of payroll deductions from their employees' wages, including deductions for Social Security, income taxes, medical plans and charitable contributions. The Labor Code requires employers to notify employees at the time of payment of wages regarding the amount of compensation and any deductions therefrom.

   Many employees in California are represented by labor organizations and pay union dues or similar fees for representation to the union. Under many collective bargaining agreements, such dues or fees are automatically deducted by the employer from employee wages and forwarded directly to the labor organization.

   This bill would prohibit corporations and government employers, among others, from deducting money to be used for political purposes from an employee's wages, a provision that appears aimed directly at the use of union dues for political purposes.

   Section 8(a)(3) of the NLRA allows employers and unions to enter into union-security agreements requiring all employees in a particular bargaining unit to become "members" after a 30-day period following hire. However, in a 1963 decision, the Supreme Court held that the term "member" requires only the payment of periodic dues and fees as opposed to full membership in the union. NLRB v. General Motors Corporation, 373 U.S. 734 (1963). Since the court noted that "the membership that is required has been whittled down to its financial core," individuals choosing that approach are often referred to as "financial core members."

   Therefore, under current law, no employee is required to become a member of a union in order to maintain a job, but all employees subject to a union security clause can be required to pay union dues and fees to defray the costs of representation.

   In Communication Workers of America v. Beck, 487 U.S. 735 (1988), the United States

Supreme Court held that the section of the NLRA that allows employers and unions to enter into union security agreements does not "permit a union, over the objections of dues-paying nonmember employees, to expend funds so collected [pursuant to a union security clause] on activities unrelated to collective bargaining, contract administration or grievance adjustment." Thus, federal labor law does not permit a union to spend funds from dues-paying non-union employees on certain activities unrelated to collective bargaining when those employees object to such expenditures. At issue in Beck was the specific use of dues for political purposes.

In Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991), the Supreme Court articulated a test for determining whether a particular expenditure of union funds may be charged to nonmember employees. Chargeable uses must (1) be germane to collective bargaining activities, (2) be justified by governmental interest in the maintenance of labor peace and the prevention of "free riders" who benefit from the union's collective bargaining activities without contributing to the costs of such activities, and (3) not add significantly to the burdening of free speech rights.

Under Beck and subsequent cases, a union has several general obligations to ensure that employee's Beck rights are protected. First, the union must provide notice to nonmember employees of their Beck rights. Second, the union must refrain from charging objectors for nonrepresentational expenses. Finally, the union must provide objectors with a financial disclosure and establish procedures for objectors to challenge the accuracy of the union's disclosure.

Therefore, applicable federal labor law establishes a mechanism whereby employees covered under union security agreements can become "financial core" nonmembers and therefore avoid having to pay that portion of their dues or fees for purposes unrelated to collective bargaining.

3) Citizens United v. FEC and Independent Expenditures: In January 2010, the United States Supreme Court issued its ruling in Citizens United v. Federal Election Commission (2010) 130 S.Ct. 876, a case involving a nonprofit corporation (Citizens United) that sought to run television commercials promoting a film it produced that was critical of then-Senator and presidential candidate Hillary Clinton. Because federal law prohibited corporations and unions from using their general treasury funds to make expenditures for "electioneering communications" or for communications that expressly advocated the election or defeat of a candidate, Citizens United was concerned that the television commercials promoting its film could subject the corporation to criminal and civil penalties. In its decision, the Supreme Court struck down the 63-year old law that prohibited corporations and unions from using their general treasury funds to make independent expenditures in federal elections, finding that the law unconstitutionally abridged the freedom of speech.

While this bill prohibits corporations and labor unions from making contributions to candidates in the state, it does not limit the ability of corporations or labor unions to make independent expenditures. In fact, in light of the Citizens United ruling described above, it seems unlikely that such a restriction on independent expenditures would be deemed to be constitutional. Because this bill doesn't restrict independent expenditures, it seems unlikely that it will have much of an impact on political spending by corporations. Because labor unions often rely on payroll deductions to collect union dues, however, and because this bill

prohibits any amount deducted from an employee's wages for being used for political purposes, this bill could noticeably reduce the amount of money that labor unions have available to make expenditures for political purposes.

One of the effects of this bill, if approved, may be to further shift campaign spending away from spending by candidates and toward independent expenditures done by outside entities. A study done by this committee in 2006 and a subsequent report from the Fair Political Practices Commission (FPPC) found that since campaign contribution limits went into effect in California with the passage of Proposition 34 at the November 2000 statewide general election, the amount of campaign spending done through independent expenditures increased by more than 6,000 percent in Legislative elections, and more than 5,500 percent in statewide elections. In hotly contested campaigns for seats in the Legislature, it is not uncommon for spending through independent expenditures to exceed the total amount of spending by all candidates in the race. A large majority of spending on independent expenditures was made by corporations, unions, or coalitions comprised primarily of corporations and/or unions.

4) Similar Initiative: This bill is substantially similar to an initiative measure that has qualified to appear on the ballot at the November 6, 2012 statewide general election.

5) Arguments in Support: Associated Builders and Contractors of California (ABC California), takes a "support if amended" position on this bill, expressing concern about the portion of the bill that prohibits corporate contributions to candidates. In support of the other portions of the bill, ABC California writes:

> ABC California believes that every public and private sector union member should have the right to say yes or no to whether or not they wish to provide their union with money that is specifically intended to be used for political purpose, as proposed by AB 860. Importantly, nothing in the bill prohibits union members from voluntarily agreeing to submit extra dollars for political action to the union or from making political contributions on their own.

6) Arguments in Opposition: The California State Council of the Service Employees International Union writes, in opposition to this bill:

> Although this bill includes prohibitions for corporations, it does so under the guise of parity. This is disingenuous as corporations do not participate in the electoral process through employee payroll deduction methods as labor unions do, and are able to bundle or comingle financial resources using methods that are increasingly difficult to trace. This bill is directly aimed at the use of union financial resources for political purposes.
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> In addition, this bill creates an imbalance in favor of corporations over working class families and labor unions in electing officials by silencing the voice of California's working-class and labor union members in electing officials who represent their interests.

7) Propositions 75 & 226: Proposition 75, which was on the ballot at the November 2005 statewide special election, would have prohibited the use by public employee labor organizations of public employee dues or fees for political contributions except with the prior consent of individual public employees each year on a specified written form. Proposition 75 was defeated by the voters by a 46.5% to 53.5% margin.

Proposition 226, which was on the ballot at the June 1998 statewide primary election, would have required all employers and labor organizations to obtain employee's or member's permission annually on a prescribed form before withholding wages or using union dues or fees for political contributions. Proposition 226 was defeated by the voters by a 46.8% to 53.2% margin.

Unlike these prior measures, which would have required employers and labor organizations to get written consent from an individual prior to making a payroll deduction to be used for political purposes, this bill prohibits any payroll deduction from being used for political purposes, even if an individual authorizes such deductions in writing.

8) Related Legislation: AB 1179 (Mansoor), which is pending in the Assembly Labor & Employment Committee, would prohibit a labor organization from making expenditures for political activities unless the organization establishes a separate fund from which to make those expenditures, and complies with various restrictions, including a prohibition against the use of union dues for political activities.

9) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974, which created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the Political Reform Act (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

Associated Builders and Contractors of California (if amended)

Opposition

California Correctional Peace Officers Association
California Faculty Association
California State Council of the Service Employees International Union
California Statewide Law Enforcement Association
Service Employees International Union, Local 1000

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