Date of Hearing: April 26, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 2146 (Cook) – As Amended: April 16, 2012

SUBJECT: Political Reform Act of 1974: local campaign reform: County of San Bernardino.

SUMMARY: Permits San Bernardino County and the Fair Political Practices Commission (FPPC) to enter into an agreement that provides for the FPPC to enforce a local campaign finance ordinance enacted by the county. Specifically, this bill:

1) Provides that, upon mutual agreement between the FPPC and the Board of Supervisors of San Bernardino County, the FPPC is authorized to assume primary responsibility for the administration and enforcement of a local campaign finance ordinance passed by the Board of Supervisors. Provides that the FPPC is authorized to be the civil prosecutor responsible for the civil enforcement of such an ordinance. Provides that as the civil prosecutor, the FPPC may do both of the following:

   a) Investigate possible violations of the ordinance; and,

   b) Bring administrative actions in accordance with the Political Reform Act (PRA) and the administrative adjudication provisions of the Administrative Procedure Act.

2) Requires any local campaign finance ordinance for San Bernardino County that is enforced by the FPPC to comply with the PRA.

3) Requires the Board of Supervisors of San Bernardino County to consult with the FPPC prior to adopting and amending any local campaign finance ordinance that will be enforced by the FPPC.

4) Permits the Board of Supervisors of San Bernardino County and the FPPC to enter into any agreements necessary and appropriate to carry out the provisions of this bill, including agreements pertaining to any necessary reimbursement of state costs by the county for the costs incurred in enforcing the county's campaign finance ordinance.

5) Permits the Board of Supervisors of San Bernardino County or the FPPC to terminate, at any time, an agreement made pursuant to this bill for the FPPC to enforce the county's campaign finance ordinance.

6) Makes legislative findings and declarations as to the necessity of a special statute for San Bernardino County due to the need to avoid an appearance of corruption in the county's electoral process.

EXISTING LAW:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.

2) Requires a local government agency that adopts or amends a local campaign finance ordinance to file a copy of the ordinance with the FPPC.

3) Prohibits a local government agency from enacting a campaign finance ordinance that imposes campaign reporting requirements that are additional to or different from those set forth in the PRA for elections held in its jurisdiction unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification or passage of a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.

4) Provides that nothing in the PRA shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with a specified provision of the PRA dealing with "member communications."

5) Provides that payments made for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure, which are referred to as "member communications," are not contributions or expenditures, if those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements.

6) Makes violations of the PRA subject to administrative, civil, and criminal penalties.

FISCAL EFFECT: Unknown

COMMENTS:

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

> Many counties and cities across California have enacted campaign finance rules to create a level playing field for candidates and to stem the influence of “big money” in local politics. As a result, locally appointed ethics commissions often enforce campaign finance rules adopted by local governments. The County of San Bernardino, which has been the subject of several high-profile corruption cases, is in the process of developing a campaign finance ordinance that would establish contribution limits that mirror those applied to State Senate and Assembly candidates. Rather than appointing an ethics commission, which could present financial as well as conflict-of-interest challenges, the County proposes to contract with the Fair Political Practices Commission (FPPC) to enforce the rules.

AB 2146 would authorize the County of San Bernardino to contract with the FPPC to enforce San Bernardino County's local campaign finance ordinance. This would only occur after a mutual agreement between the FPPC and the San Bernardino County Board of Supervisors has been reached.

Contracting with the FPPC is an ideal solution for several reasons. Counties that have ethics commissions or other formal entities spend as much as $3.5 million annually to police ethical behavior. Contracting with the FPPC is a cost effective alternative to an ethics commission and a prudent use of taxpayer resources. Additionally, contracting with the FPPC provides oversight by an impartial and independent third party and eliminates potential conflict of interest that could arise from the creation of an internal agency by the Board of Supervisors.

2) Local Campaign Ordinances and the PRA: Under existing law, local government agencies have the ability to adopt campaign ordinances that apply to elections within their jurisdictions, though the PRA imposes certain limited restrictions on those local ordinances. For instance, SB 726 (McCorquodale), Chapter 1456, Statutes of 1985, limited the ability of local jurisdictions to impose campaign filing requirements that differed from those in the PRA, permitting such requirements only when they applied solely to candidates and committees whose activity is restricted primarily to the jurisdiction in question. This provision sought to avoid the necessity of a candidate or committee active over a wider area being required to adhere to several different campaign filing schedules. Similarly, AB 1430 (Garrick), Chapter 708, Statutes of 2007, prohibits local governments from adopting rules governing member communications that are different than the rules that govern member communications at the state level.

Aside from these restrictions, however, local government agencies generally have a significant amount of latitude when developing local campaign finance ordinances that apply to elections in those agencies' jurisdictions. Any jurisdiction that adopts or amends a local campaign finance ordinance is required to file a copy of that ordinance with the FPPC, and the FPPC has begun posting those ordinances on its website. The FPPC's website currently includes campaign finance ordinances from 17 different counties and from 130 different cities.

San Bernardino County currently has a local campaign finance ordinance, though it is very limited in scope. Specifically, the ordinance merely establishes a voluntary campaign expenditure limit for candidates for local office. It does not provide any incentive for candidates to adopt that voluntary limit, nor does it establish penalties for candidates who agree to abide by the voluntary limits but subsequently make campaign expenditures in excess of those limits.

Other cities and counties have adopted campaign finance ordinances that are much more extensive. In some cases, those ordinances include campaign contribution limits, reporting and disclosure requirements that supplement the requirements of the PRA, temporal restrictions on when campaign funds may be raised, and voluntary public financing of local campaigns, among other provisions. In many cases, local campaign finance ordinances are enforced by the district attorney of the county or by the city attorney. In at least a few cases, however, local jurisdictions have set up independent boards or commissions to enforce the local campaign finance laws.

The FPPC does not currently enforce any local campaign finance ordinances as it would for San Bernardino if this bill were adopted. The FPPC can and does, however, bring enforcement actions in response to violations of the PRA that occur in campaigns for local office, even in cases where the local jurisdiction brings separate enforcement actions for violations of a local campaign finance ordinance.

3) Criminal, Civil, and Administrative Enforcement of the PRA and Local Campaign Ordinances: As noted above, violations of the PRA are subject to administrative, civil, and criminal penalties. Generally, the Attorney General (AG) and district attorneys have responsibility for enforcing the criminal provisions of the PRA, though any elected city attorney of a charter city also has the authority to act as the criminal prosecutor for violations of the PRA that occur within the city. The FPPC, the AG, district attorneys, and elected city attorneys of charter cities all have responsibility for enforcement of the civil penalties and remedies provided under the PRA, depending on the nature and location of the violation, while any member of the public also has the ability to file a civil action to enforce the civil provisions of the PRA, subject to certain restrictions. The FPPC has the sole authority to bring administrative proceedings for enforcement of the PRA. When the FPPC determines on the basis of such a proceeding that a violation of the PRA has occurred, it can impose monetary penalties of up to $5,000 per violation, in addition to ordering the violator to cease and desist violation of the PRA and to file any reports, statements, or other documents or information required by the PRA.

   In the case of local campaign ordinances, there is no single approach as to the types of penalties that are available for the violations of those ordinances. Many local ordinances provide for misdemeanor or civil penalties for violations, while some ordinances (including the current ordinance for San Bernardino County) do not establish any penalties for violations. In some local jurisdictions that have independent boards or commissions to enforce the local campaign finance ordinances, those boards or commissions have the authority to bring administrative enforcement proceedings, similar to the authority the FPPC has under the PRA.

4) Public Access to the Enforcement Activities: The FPPC's headquarters are located in Sacramento, approximately 400 miles from the county seat for San Bernardino County. Although campaign disclosure reports presumably would continue to be filed with the San Bernardino County registrar of voters even if this bill is passed, therefore ensuring that public access is available locally to such documents, the committee may wish to consider whether having the FPPC administer and enforce a campaign finance ordinance for the County will limit public access by county residents to the enforcement process for that ordinance. The FPPC typically conducts its meetings at its headquarters in Sacramento. If this bill is enacted, and the FPPC assumes responsibility for administering and enforcing San Bernardino's campaign ordinance, does the FPPC plan to hold hearings in San Bernardino County when considering enforcement actions brought under the county's ordinance? Will the FPPC open an office in San Bernardino County, either on a full-time or part-time basis? If the answer to one or both of these questions is "no," the committee may wish to inquire of the author, the sponsor, and of the FPPC, of the steps that they plan to take to ensure that San Bernardino residents have access to the formal decision making process for administrative

enforcement actions brought under the county's campaign finance ordinance.

5) Could an Expansion of This Bill Harm Enforcement of the PRA? One of the provisions of this bill permits any agreement reached by the FPPC and San Bernardino County to include agreements pertaining to any necessary reimbursement of state costs by the county for the costs incurred in enforcing the county's campaign finance ordinance. Presumably, the FPPC will not enter into an agreement with San Bernardino County unless the FPPC is comfortable that it will be reimbursed for its costs incurred in enforcing the county's ordinance. If that is the case, the addition of this responsibility to the FPPC's workload should not negatively impact the FPPC's ability to effectively enforce the PRA.

   However, to the extent that this bill is expanded to allow the FPPC to enforce ordinances in other jurisdictions, or to the extent that this bill sets a precedent that results in other jurisdictions seeking Legislative authority to permit such arrangements, the committee may wish to consider whether such an expansion of the FPPC's workload could negatively impact the ongoing enforcement of the PRA. Because there is no guarantee that local campaign finance ordinances will be consistent with the general framework of the PRA, each additional local ordinance that the FPPC is asked to enforce could add complexity to the FPPC's work. While the added complexity of a single ordinance and a single jurisdiction likely can be handled by the FPPC without much difficulty, if this or subsequent bills allowed for the FPPC to enter into similar arrangements with other jurisdictions, the added complexity of tracking and enforcing multiple (potentially inconsistent) ordinances in multiple jurisdictions could harm the FPPC's ability to focus on its primary responsibility of enforcing the PRA.

6) Double-Referral and Amendments: This bill is scheduled to be heard in the Assembly Committee on Local Government on April 25, 2012, and will be heard in this committee on April 26, 2012, only if this bill is first approved by the Local Government Committee. The action taken by the Local Government Committee on this bill, if any, was unavailable at the time this analysis was prepared.

   In its committee analysis, the Local Government Committee suggested various amendments to this bill, which the author of the bill has agreed to accept. Due to an impending legislative deadline for the consideration of fiscal bills by policy committees, however, those amendments cannot be taken in the Local Government Committee if this bill is to be heard in this committee prior to the relevant deadline. As a result, those amendments will need to be taken in this committee. Those amendments do the following:

   a) Prohibit any agreement entered into by San Bernardino County and the FPPC from including cancellation fees, liquidated damages, or other such disincentives to cancellation, while recognizing that the County would still be obligated to pay for services rendered or other expenditures reasonably made by the FPPC in anticipation of services to be rendered.

   b) Add a January 1, 2018, sunset date to the bill in order to allow the parties to negotiate an agreement and implement it over two election cycles to see how such an arrangement works.

c) Require the FPPC to report to the Legislature on the operation of the program, including its performance on measures of economic efficiency, enforcement, and customer satisfaction, not later than January 1, 2017 (one year prior to the sunset date).

7) Arguments in Support: The sponsor of this bill, the County of San Bernardino, writes:

The following are reasons why the FPPC would be more effective and efficient than creating another government bureaucracy to enforce local campaign finance rules in the County of San Bernardino:

- **Cost effective—**Counties that have ethics commissions or other formal entities spend upward of $3.5 million or more annually to police ethical behavior. Contracting with the FPPC is a cost effective alternative to an ethics commission and a prudent use of taxpayer's resources.

- **Eliminates conflict of interest—**Contracting with the FPPC represents oversight inclusion of an impartial and independent third party and eliminates potential conflict of interest that could arise from the creation of an internal agency by the Board of Supervisors.

- **Proven track record—**The FPPC has enforced California's campaign finance laws at the state and local level for 37 years, and thus the FPPC has the track record necessary to provide effective oversight of the County's campaign finance rules. Since 1975, the FPPC Enforcement Division has prosecuted more than 2,400 cases, and the Commission has imposed more than $20 million in fines based on Enforcement actions.

8) 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

County of San Bernardino (sponsor)
California State Association of Counties
Fair Political Practices Commission
Urban Counties Caucus

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094