

Date of Hearing: March 26, 2025

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
AB 775 (Fong) – As Introduced February 18, 2025

SUBJECT: Behested payments: reporting.

SUMMARY: Requires behested payment disclosure reports to be filed using an electronic filing system developed by the Fair Political Practices Commission (FPPC), except as specified. Modifies the deadline for reporting behested payments. Specifically, **this bill:**

- 1) Requires an elected officer or a member of the Public Utilities Commission (PUC) who is required to file a report disclosing a payment made at the behest of that officer or member that is made principally for a legislative, governmental, or charitable purpose, to file that report using the FPPC's electronic filing system for behested payments. Permits elected local government officers, notwithstanding this provision, to file behested payment reports directly with their local filing officer instead if all behested payment reports filed by that local government's elected officers are posted publicly on the local government's website.
- 2) Changes the deadline for filing behested payment reports such that reportable behested payments must be reported within 30 days following the end of the calendar quarter in which the payment was made, instead of being reported within 30 days following the date on which the payment was made as is required under existing law.
- 3) Provides that once an initial behested payment report has been filed by an elected officer or member of the PUC, subsequent behested payments from the same source in the same calendar year are required to be reported only when those subsequent payments add up to \$1,000 or more.
- 4) Codifies FPPC regulations that do the following:
 - a) Require an elected officer or PUC member, when filing a behested payment report, to include the following information to the extent that the information is known to the filer of the report:
 - i) If the payee is a nonprofit organization, a brief description of any relationship of the nonprofit organization to the elected officer, member of the PUC, or a member of their immediate family or member of their campaign or officeholder staff, as specified.
 - ii) A brief description of any proceeding before the agency of the elected officer or member of the PUC at the time of a reported payment or within the 12 months before the reported payment in which the payor is the named party or subject of the decision, as specified.

- b) Allow an elected officer or PUC member to specify estimated payment amounts and dates on behested payment reports, instead of the actual amounts and dates, if certain conditions are met.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA). (Government Code §§83100, 83111)
- 2) Requires an elected officer or PUC member to disclose specified information about a payment made by a third party for a charitable, legislative, or governmental purpose if the payment is made at the behest of the officer or PUC member, as specified. Requires these types of payments, commonly known as “behested payments,” to be reported within 30 days following the date on which payments made by a single source add up to \$5,000 or more in a calendar year. Requires this report to be filed with the elected officer's or member's agency. (Government Code §§82004.5, 82041.3, 84224)
- 3) Requires state agencies, including the PUC, to forward a copy of any behested payment report filed with the agency to the FPPC within 30 days after receipt of the report. Requires local agencies to forward a copy of any behested payment report filed with the agency to the officer with whom elected officers of the agency file their campaign statements within 30 days after receipt of the report. (Government Code §84224)
- 4) Requires a behested payment report to include the following information, to the extent that it is known by the elected officer or member of the PUC filing the report:
 - a) If the payee is a nonprofit organization, a brief description of any relationship of the nonprofit to the elected officer, member of the PUC, or a member of their immediate family, or member of their campaign or officeholder staff. Requires the brief description to include the following information about any individual listed:
 - i) Any decision-making capacity within the organization, such as a board member or executive officer position.
 - ii) Salaried employment at the organization.
 - iii) Status as a founding member of the organization.
 - iv) A position on an honorary or advisory board of the organization.
 - b) A brief description of any proceeding before the agency of the elected officer or PUC member at the time of a reported payment or within the 12 months before the reported payment in which the payor is the named party or subject of the decision.
 - i) Provides that a “proceeding,” for purposes of this provision, includes decisions on a contract, license, permit, or other entitlement and matters of nongeneral legislation, but does not include decisions on general legislation.

- ii) Provides that a proceeding is considered before the agency of the elected officer or PUC member if it has been placed on the agency's formal agenda, or if the official has knowledge that the matter has been submitted to the agency for decision and the official may make, participate in making, or otherwise use their official position to influence the agency's decision on the matter. (2 Cal. Code Regs. §18424)
- 5) Provides that a good faith estimate of a behested payment amount, payment date, or both will satisfy behested payment reporting requirements if each of the following conditions are met:
- a) The elected officer or PUC member practiced reasonable efforts to obtain the information but was unable to ascertain it prior to the reporting deadline, as specified.
 - b) The behested payment report specifies that the payment information is an estimated amount or date and states the reason why the exact information is not provided.
 - c) An amended report with corrected information is filed within 10 days of the elected officer or PUC member receiving the payment information from the payee. (2 Cal. Code Regs. §18424.1)
- 6) Requires the FPPC, not later than 10 days after receipt of a behested payment report, to post that report on the internet. (2 Cal. Code Regs. §18313.5)

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

COMMENTS:

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

Transparency and public access are vital to good governance. However, to ensure all state and local elected officials are acting ethically and to improve transparency, we must provide reasonable timeframes for due diligence and compliance. By updating the process and deadline for filing behested payment reports, AB 775 will provide more flexibility for state and local officials to ensure compliance, while also increasing transparency on both the state and local level.

- 2) **Behested Payments Background:** In 1996, the FPPC amended its regulatory definition of the term "contribution" to include any payment made "at the behest" of a candidate, regardless of whether that payment was for a political purpose. As a result, payments made by a third party at the request or direction of an elected officer were required to be reported as campaign contributions, even if those payments were made for governmental or charitable purposes.

The change in regulations by the FPPC, along with a number of advice letters issued by the FPPC interpreting the new definition of "contribution," limited the ability of elected officers to co-sponsor governmental and charitable events. In one advice letter, the FPPC concluded that a member of the Legislature would be deemed to have accepted a campaign contribution

if, at the member's behest, a third party paid for the airfare and lodging for witnesses to testify at a legislative hearing.

In response to the FPPC's modified definition of "contribution," the Legislature enacted SB 124 (Karnette), Chapter 450, Statutes of 1997, which provided that a payment made at the behest of a candidate for purposes unrelated to the candidate's candidacy for elective office is not a contribution. SB 124 specifically provided that a payment made at the behest of a candidate principally for a legislative, governmental, or charitable purpose is not considered a contribution or a gift. However, SB 124 also required that such payments made at the behest of a candidate who is also an elected officer, when aggregating \$5,000 or more in a calendar year from a single source, be reported to the elected officer's agency. The elected officer must report such a payment within 30 days.

Examples of payments made at the behest of an elected officer that have to be reported under this provision of law include charitable donations made in response to a solicitation sent out by an elected officer or donations of supplies and refreshments made by a third party for a health fair that was sponsored by an elected officer.

- 3) **Reporting of Behested Payments:** As detailed above, current law requires an elected officer or PUC member to file a report disclosing behested payments within 30 days of reaching a \$5,000 aggregate amount of payments by a single source in a calendar year. The official submits the report to their agency which then forwards a copy within 30 days either to the FPPC (for state agencies) or to a local filing officer (for local agencies). Pursuant to a regulation adopted in 2010, the FPPC posts behested payment reports online within 10 days of receipt. As a result, under existing law, a timely-filed behested payment report filed by an elected state officer or PUC member generally will be posted online within 70 days after the \$5,000 reporting threshold is met. Reports filed by local elected officers may or may not be posted online, depending on the policies of the relevant local agencies.

This bill changes the deadline for filing behested payment reports. Reports would be due within 30 days of the end of the calendar quarter in which the reportable payments are made. While this change might initially seem to delay the public availability of these reports, other aspects of this bill will actually speed up their public release in some cases.

Specifically, this bill requires state officials to file behested payment reports directly with the FPPC, rather than with the official's agency. This change eliminates the current 30-day period for state agencies to forward behested payment reports to the FPPC. For local officials, this bill similarly eliminates a 30-day period for local agencies to forward behested payment reports to the local filing officer responsible for making those reports publicly available. Currently, some agencies use that 30-day period to review reports filed by public officials for completeness and accuracy before those reports are made publicly available. With the elimination of that 30-day period, public agencies may need to update internal policies if they want to continue to review reports for completeness and accuracy before public release.

Additionally, by requiring that all state behested payment reports be filed using the FPPC's electronic system, this bill eliminates delays caused by manual data entry of reports by FPPC

staff. While the FPPC has up to 10 days to post reports online, FPPC staff indicates that most reports submitted electronically are posted online on the same day or the following business day.

As a result, behested payments that are made in the latter part of a calendar quarter likely will be made publicly available sooner under this bill than under current law. Even in cases where the new filing deadlines may result in reports being posted slightly later, any delays are expected to be minimal. Furthermore, having reports filed on a regular quarterly schedule will make it more predictable for the public and media to know when new reports are available. Finally, by ensuring that all behested payment reports are posted online, this bill will enhance transparency and public access to those reports.

- 4) **FPPC Behested Payment Reporting Regulations:** In 2021, the FPPC adopted regulations that imposed additional disclosure requirements for behested payment reports in two circumstances: where the official at whose behest the payment was made has a specified relationship with a nonprofit organization that is the recipient of the payment, and where the entity making the behested payment is involved in a proceeding before the official's agency at the time the behested payment is made or within the past 12 months. According to an FPPC staff memo prepared in connection with those proposed regulations, these reporting requirements were targeted at "relationships that raise concerns about the payment transaction, self-interest of the official and the possibility of undue influence or access for the payee or payor as a result of the payment." At the same time, the FPPC also adopted a regulation permitting officials to use a "good faith estimate" on a behested payment report when the official makes reasonable efforts but is unable to obtain the exact payment amounts or dates within the time period for filing the behested payment report. This bill would codify both of those FPPC regulations.
- 5) **Proposed Amendments:** Committee staff recommends the following amendments to this bill:
 - a) **Local Posting Deadline:** As detailed above, while this bill generally would require behested payment reports to be filed electronically with the FPPC, it would allow behested payment reports from local officers to be filed locally if the local jurisdiction posts those reports online. The existing version of this bill, however, does not impose a deadline for those reports to be posted. To ensure that the purpose of this bill to improve transparency through the online posting of all behested payment reports is not frustrated by a lengthy delay in posting those reports, committee staff recommends that this bill be amended to require local jurisdictions to post behested payment reports within 10 days of receipt. This timeline is consistent with the existing timeline that the FPPC set for itself to post behested payment reports that it receives.
 - b) **Filing Confirmation from Electronic Filing System:** In light of the fact that this bill will require behested payment reports to be filed with the FPPC's electronic filing system in many circumstances, committee staff recommends that the system be required to provide a filer with confirmation of filing as soon as a behested payment report is filed, so that filers have the assurance and proof that their report was timely filed.

- c) **Clarifying Amendments:** Committee staff additionally recommends the following clarifying amendments to avoid potential ambiguities about the application of the provisions of this bill:

Amend the language on page 3, lines 3-8 of the bill as follows:

84224. (a) A behested payment described in subdivision (f) shall be reported within 30 days following the end of the calendar quarter in which **the aggregate amount of all such payments made at the behest of the elected officer or member of the Public Utilities Commission from the same source in that calendar year equals or exceeds five thousand dollars (\$5,000).** ~~the payment was made, if the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made.~~

Amend the language on page 5, lines 3-8 of the bill as follows:

(a) If the payee is a nonprofit organization, a brief description of any **relationship of the following relationships that of the nonprofit organization to** the elected officer, member of the Public Utilities Commission, or a member of their immediate family, or member of their campaign or officeholder ~~staff. The brief description shall include the following information about any individual listed above:~~ **staff has with the nonprofit organization:**

- 6) **Arguments in Support:** The sponsor of this bill, the FPPC, writes in support:

AB 775 would require behested payment reports to be filed electronically with the FPPC, while also keeping a local filing option so long as the reports are made publicly available online. This will improve transparency by making the reports significantly easier to find and access.

The bill would also alter the deadline for filing behested payment reports. Behested payments that meet the threshold would be required to be reported within 30 days following the end of the calendar quarter in which that threshold was met. This change removes uncertain deadlines and creates a set schedule for behested payment reports, similar to the semi-annual and pre-election campaign finance reporting schedules. This will enable watchdogs, the public, the media, and enforcement to proactively review filings on a schedule, ultimately resulting in better tracking and transparency.

- 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

Fair Political Practices Commission (sponsor)

Opposition

None on file.

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