

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 1239 (Hertzberg) – As Amended June 19, 2018

SENATE VOTE: 37-0

SUBJECT: Political Reform Act of 1974: campaign disclosures.

SUMMARY: Makes numerous substantive and technical changes related to the procedures associated with filing campaign and lobbying reports through the state's new online campaign and lobbying activity disclosure system, also known as the Cal-Access replacement system. Specifically, **this bill:**

- 1) Requires reports and statements that are filed online or electronically pursuant to the Political Reform Act (PRA) to include a secure electronic signature in accordance with an existing provision of the Civil Code, as specified. Provides that filings authorized to be made on a filer's behalf, as specified, are presumed filed under penalty of perjury by the filer.
- 2) Requires any statement of organization filed by a committee or slate mailer organization to be filed online or electronically with the Secretary of State (SOS).
- 3) Eliminates existing monetary thresholds for determining which entities are required to file PRA disclosure reports online or electronically, and instead requires all of the following entities that are required to file PRA disclosure statements or reports with the SOS to file those reports online or electronically, regardless of the monetary amount of reportable activity:
 - a) Candidates, committees, and other persons who are required to file specified statements, reports, or other documents in connection with a state elective office or state measure;
 - b) State general purpose committees and small contributor committees;
 - c) Slate mailer organizations that produce one or more slate mailers supporting or opposing candidates or measures voted on in a state election, or in more than one county; and,
 - d) Lobbyists, lobbying firms, lobbyist employers, and other entities that are required to file specified statements, reports, or other documents in connection with payments made to influence legislative or administrative action, as specified.
- 4) Requires the SOS to maintain a list of the top 10 contributors to committees primarily formed to support or oppose state ballot measures and independent expenditure committees supporting or opposing state candidates that raised at least \$1 million as part of the Cal-Access replacement system, instead of requiring each such committee to prepare a list of its top 10 contributors and submit it to the Fair Political Practices Commission (FPPC) to be posted on the FPPC's website, as specified. Repeals a requirement that reasonable efforts be used to identify the true sources of contributions made to a committee when preparing the list of the committee's top 10 contributors, and instead requires such lists to be based on

information disclosed in the filer's campaign statements and reports.

- 5) Requires campaign disclosure reports to include the date that each expenditure of \$100 or more was made. Requires disclosure reports filed by slate mailer organizations to include the date that each disbursement of \$100 or more was made.
- 6) Requires certain entities and individuals to include email addresses in specified filings.
- 7) Permits the nonresidential address of a campaign committee to be made available on the Internet, notwithstanding a provision of law that otherwise generally prohibits street address information in campaign disclosure reports from being made available on the Internet.
- 8) Requires the new online filing and disclosure system developed by the SOS to permit a filer to enter a contribution or independent expenditure transaction once and have that transaction appear on all required disclosure reports. Permits the new online filing and disclosure system developed by the SOS to contain required fields where information must be entered in order to submit a report or statement using that system, as specified.
- 9) Eliminates the requirement to file paper copies that are duplicative of state-related campaign and lobbying reports required to be filed online or electronically.
- 10) Requires data that is filed electronically with the SOS to be publicly displayed on the Internet as soon as possible after receipt.
- 11) Permits the submission by email of disclosure reports and statements that are filed pursuant to the PRA and that are permitted to be submitted by fax pursuant to existing law.
- 12) Updates various provisions of law to reflect and permit the electronic transmission and storage of disclosure reports and statements that are filed pursuant to the PRA.
- 13) Delays, from January 15 to April 30 of each year, the deadline for specified committees to pay a required annual \$50 fee to the SOS.
- 14) Requires lobbyist registration fees to be paid online at the time a lobbyist certification is submitted to the SOS in order for the lobbyist's registration to be active.
- 15) Repeals an obsolete provision of law that required the SOS to forward copies of campaign disclosure reports received from federal candidates to specified county officials.
- 16) Permits the SOS to make minor technical modifications or corrections to data being migrated from the existing Cal-Access system to the replacement system in order to facilitate the inclusion of that data in the new system.
- 17) Eliminates an existing requirement for the SOS to publish a printed directory of registered lobbyists, lobbying firms, and lobbyist employers, and instead requires the SOS to maintain that information on the Internet.
- 18) Makes technical, conforming, and corresponding changes.

- 19) Provides for this bill to become effective once the SOS certifies that the Cal-Access replacement system is available for public use, as specified.

EXISTING LAW:

- 1) Requires, pursuant to the PRA, that elected officials, candidates for elective office, and committees formed to support or oppose candidates for public office or ballot measures, slate mailer organizations, and other specified entities, file campaign statements and reports disclosing contributions, expenditures, and other related matters.
- 2) Provides for the filing of campaign statements and reports by various means, including personal delivery, guaranteed overnight delivery, facsimile transmission, and online transmission.
- 3) Requires the SOS, in consultation with the FPPC, to provide online and electronic filing processes for use by specified political committees, lobbyists, lobbying firms, and lobbyist employers pursuant to the PRA. This online reporting and disclosure system is commonly referred to as the Cal-Access system.
- 4) Requires the SOS, in consultation with the FPPC, to develop an online filing and disclosure system to replace the existing Cal-Access system no later than February 1, 2019, but permits the SOS to extend this date to a date no later than December 31, 2019, as specified.
- 5) Requires the Cal-Access replacement system to enable a user to comply with all the disclosure requirements of the PRA and to include a data-driven means or method that allows filers to submit required filings free of charge in a manner that facilitates public searches of the data, as specified.
- 6) Requires lobbyists, lobbyist employers, and lobbying firms to register, as specified, with the SOS and requires them to file periodic lobbying disclosure reports online or electronically if the total amount of any category of reportable payments, expenses, contributions, gifts or other items is \$2,500 or more in a calendar quarter, as specified.
- 7) Requires specified candidates and committees who are required to file campaign reports in connection with a state elective office or state measure to file those reports online or electronically if the cumulative amount of contributions received, expenditures made, loans made or received is \$25,000 or more, as specified.
- 8) Requires slate mailer organizations to file disclosure reports online or electronically with the SOS if the organization has cumulative reportable payments received or made of \$25,000 or more for the purposes of producing slate mailers, as specified.
- 9) Requires each campaign committee that is required to file a statement of organization to pay the SOS a fee of \$50 by January 15 of each year until the committee is terminated.
- 10) Requires the SOS to produce a printed version of a directory of lobbyists, lobbying firms, and lobbyist employers.

- 11) Requires the FPPC to post on its website lists of the top 10 contributors to committees primarily formed to support or oppose state ballot measures and independent expenditure committees supporting or opposing state candidates that raised at least \$1 million.
- 12) Provides, pursuant to the Civil Code, in a transaction where the law requires that a statement be signed under penalty of perjury, that the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

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

COMMENTS:

- 1) **Purpose of the Bill:** According to the author, "In 2016, I authored SB 1349 which required the [SOS] in consultation with the [FPPC] to develop and certify for public use a new online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format. This measure updates statute to reflect those changes for the Cal-Access Replacement System."
- 2) **Political Reform Act and Cal-Access:** In 1974, California voters approved Proposition 9, also known as the PRA, which among other things, requires the disclosure of campaign contributions and expenditures and state lobbying activities. The requirements are intended to ensure that "[r]eceipts and expenditures in election campaigns [are] fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited," and that "[t]he activities of lobbyists [are] regulated and their finances disclosed in order that improper influences will not be directed at public officials."

In 1997, the Legislature passed and Governor Pete Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, which amended the PRA and established the Online Disclosure Act of 1997. SB 49 required the SOS, in consultation with the FPPC, to develop and implement, by the year 2000, an online filing and disclosure system for reports and statements required to be filed under the PRA, as specified. As a result, the SOS created and deployed a system called the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly referred to as Cal-Access. Cal-Access is now 19 years old, and the SOS reports that components of the system are no longer supported by their vendor. As a result the system has periodically crashed and denied public access.

- 3) **Cal-Access Replacement Project:** Given the limitations of the existing Cal-Access system, the Legislature has taken steps to replace that system. In 2012, the Legislature enacted SB 1001 (Yee), Chapter 506, Statutes of 2012, which imposed a \$50 annual fee on political 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 Political Disclosure, Accountability, Transparency, and Access Fund, and is available to be used to update or replace the Cal-Access system.

Last session, the Legislature approved and the Governor signed SB 1349 (Hertzberg), Chapter 845, Statutes of 2016, which requires the SOS, in consultation with the FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provide public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format, as specified. The new system is intended to be data driven, rather than form-based, and is intended to permit future compatibility with local campaign finance data.

SB 1349 requires the SOS to make the new filing and disclosure system available by February 1, 2019, but also allows the SOS to extend that date to as late as December 31, 2019, after consulting with this committee and the Senate Committee on Elections and Constitutional Amendments, and providing a report to the committees that explains the need for the extension and includes a plan for completion.

On June 21, 2018, Secretary of State Alex Padilla submitted a letter and report to this committee indicating that his office had made a determination that it is in the best interests of the Cal-Access replacement system project to extend the implementation date for that project to December 31, 2019, as permitted by SB 1349. According to the report, the project team believes that a February 1, 2019 implementation date would leave insufficient time for thorough testing of the new system, while limiting the ability to have stakeholder involvement in the implementation of the new system.

- 4) **Top Ten Contributor Lists:** Among other provisions, SB 27 (Correa), Chapter 16, Statutes of 2014, requires a committee that is primarily formed to support or oppose a state ballot measure or an independent expenditure committee supporting or opposing a state candidate, and that raised \$1 million or more for an election, to maintain an accurate list of the committee's top 10 contributors. That list is required to be submitted to the FPPC for posting on its website. At the time that SB 27 was being considered, there was no easy way to use the Cal-Access system to automate the process of determining a committee's top contributors in the manner envisioned by that bill. Once the Cal-Access replacement system is complete, however, it will have the ability to automatically calculate the top 10 contributors to committees that can then be displayed on the Cal-Access site.

Given the new capabilities that will be included in the Cal-Access replacement system, this bill eliminates the requirement for committees to prepare their own top 10 contributor lists in favor of those that will be generated automatically by the system based on campaign disclosure reports filed by committees. This change should allow for the top 10 contributor lists to be updated in a timelier manner, while allowing for that information to be viewed in the same place (the Cal-Access system) that the public otherwise generally would visit to find information about the committee's contributors. Because the top 10 contributor lists would be generated automatically based on information from filed campaign reports, this bill eliminates a requirement that each committee use reasonable efforts "to identify and state the actual individuals or corporations that are the true sources of the contributions made to the committee from other persons or committees." The top 10 contributor lists generated by the Cal-Access replacement system, however, will reflect all the intermediary reporting requirements in the PRA, and will trace contributions back to the true source as required to be disclosed pursuant to the PRA.

- 5) **Political Committee Annual Fee:** As detailed above, SB 1001 (Yee) of 2012 imposed a \$50 annual fee on political committees, among other provisions. That annual fee is required to be paid no later than January 15. This deadline falls during a period of time during which many committees are in the process of closing down their activity and terminating. (In order for a committee to terminate, it must dispense with any surplus funds and file a post-election campaign finance report, among other provisions. The deadline for submitting a post-election campaign report for the November statewide general election is January 31 of the year following the election.) As a result, it has been challenging for the SOS to collect the annual fee from committees that are in the process of terminating. Accordingly, this bill moves the deadline for political committees to pay the \$50 annual fee from January 15 to April 30.
- 6) **Technical Amendments:** Committee staff recommends the following technical amendments to this bill:
- a) Amend the language on page 4, lines 14-23 of the bill as follows:
- 81007.5. (a) Any report or statement or copies thereof required to be filed ~~in a paper format~~ with any ~~city or county~~ official under Chapter 4 (commencing with Section 84100) or Chapter 7 (commencing with Section ~~87100~~ 87100), other than a report or statement that is required to be filed online or electronically with the Secretary of State in accordance with this title, or with a local government agency in accordance with an ordinance adopted by the agency pursuant to Section 84615, may be emailed or faxed by the applicable deadline, provided that the required originals or paper copies are sent by first-class mail or by any other personal delivery or guaranteed overnight delivery service within 24 hours of the applicable deadline and provided that the total number of pages of each report or statement emailed or faxed is no more than 30 pages.
- b) Amend the language on page 26, lines 9-14 of the bill as follows:
- (c) (1) The Commission shall adopt regulations to govern the manner in which the Secretary of State shall display top 10 contributor lists ~~provided by~~ maintained for a committee that is subject to this section, and the Secretary of State shall post the top 10 contributor lists on its Internet Web site in the manner prescribed by those regulations.
- 7) **Previous Legislation:** AB 895 (Quirk), Chapter 111, Statutes of 2017, eliminated the requirement for entities that file campaign statements online or by electronic means to file a copy of those statements in a paper format, pending a determination of the SOS that the state's online and electronic disclosure systems are operating effectively. These provisions will become operative once the SOS certifies the new online filing and disclosure system for public use.
- 8) **Related Legislation:** AB 2155 (Mullin), which is pending in the Senate Appropriations Committee, and this bill both propose to amend Section 84504.2 of the Government Code, dealing with disclosures that are required to appear on certain political advertisements. While there is no policy conflict between the changes proposed by these two bills, prior to final Legislative approval, one or both of the bills may need to be amended to add double-jointing amendments, in order to ensure that the policy changes proposed by both bills can be enacted.

- 9) **Political Reform Act:** 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

Secretary of State Alex Padilla (sponsor) (prior version)

Fair Political Practices Commission (prior version)

League of Women Voters of California (prior version)

Opposition

None on file.

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