

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 1752 (Kalra) – As Amended March 21, 2019

SUBJECT: Political Reform Act of 1974: committees: statement of organization.

SUMMARY: Prohibits the Fair Political Practices Commission (FPPC) from imposing any penalty, other than a statutorily prescribed \$150 penalty, against a campaign committee for failing to pay a required \$50 annual fee by the deadline.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Requires each committee that qualifies as a committee by virtue of having received contributions totaling \$2,000 or more in a calendar year (known as a recipient committee) to pay a fee of \$50 per year to the Secretary of State (SOS), as specified. Requires this fee to be paid no later than April 30 of each year. Imposes a penalty of \$150 on any committee that fails to timely pay this fee. Requires the FPPC to enforce these provisions.
- 3) Requires the fees collected from recipient committees, as described above, to be deposited into a specified fund that is available to be used for costs associated with the maintenance, repair, and improvement of the state's online and electronic campaign and lobbying disclosure systems.
- 4) Permits the FPPC to impose administrative penalties in situations where it determines that a violation of the PRA has occurred. Permits the FPPC, through this administrative enforcement procedure, to require the person who violated the PRA to do any of the following:
 - a) Cease and desist violation of the PRA;
 - b) File any reports, statements, or other documents or information required by the PRA; and,
 - c) Pay a monetary penalty of up to \$5,000 per violation.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

In 2011, the Legislature passed a bill establishing a committee filing fee of \$50, and a penalty associated if the filing fee is paid late, of up to three times the filing fee amount, or \$150. While the sponsor and author intended to limit a filing penalty to three times the filing fee amount, or \$150, the code section where the law was added is within the Political Reform Act, which provides additional

penalties for any violations within the Act of up to \$5,000 per violation. Consequently, the absence of clarity has led to confusion about whether the [FPPC] can pursue fines over \$150 dollars for intentional late filings...

AB 1752 will clarify that a committee who submits a late filing is subject to a penalty of \$150, and not subject to additional monetary penalties.

- 2) **Cal-Access System:** In 1997, the Legislature passed and Governor Pete Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, which 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 campaign and lobbying disclosure 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 20 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) **Committee Fees and Penalties:** Given the limitations of the 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 available to be used to update or replace the Cal-Access system.

SB 1001 provided that a committee that fails to pay the required fee by the deadline is subject to a penalty equal to three times the amount of the fee – or \$150. Although the \$50 fee must be paid to the SOS, SB 1001 required the FPPC to enforce the provision of law requiring that committees pay the fee.

SB 1001 took effect on January 1, 2013, so the first annual fees under SB 1001 were due in 2013. In May 2015, the FPPC received more than 2,400 referrals from the SOS of committees that had failed to pay the required annual fee in 2013. Based on those and subsequent referrals, the FPPC began bringing administrative enforcement actions against committees that had failed to pay the \$50 fee and the \$150 penalty outlined in SB 1001.

In addition to seeking payment of the \$50 fee and the statutorily prescribed \$150 penalty, the cases brought through the FPPC's administrative enforcement process also sought to impose additional monetary penalties against those committees for violating the PRA. Specifically, the FPPC concluded that a failure by a committee to pay the annual fee in a timely manner was a violation of the PRA, and that violation was subject to the same penalties that generally are available for violations of the PRA. The FPPC adopted a streamlined enforcement process for situations where committees failed to timely pay the \$50 annual fee, with fines beginning at \$200 for each \$50 annual fee not paid, in addition to the payment of the \$50 annual fee and the \$150 statutorily prescribed penalty. (The \$200 fine applied to situations where a committee paid the \$50 fee and the \$150 penalty in response to the committee's first contact from the FPPC's Enforcement Division. Higher fines applied to situations where it took additional contacts from FPPC enforcement staff for the committee

to pay the \$50 fee and the \$150 penalty.)

Between August 2015 and April 2017, the FPPC imposed fines against committees for failure to timely pay the \$50 annual fee in more than 280 cases. At its April 20, 2017 meeting, however, a member of the FPPC questioned whether the FPPC had the authority to levy a fine against a committee for a violation of the PRA if the committee failed to pay the annual fee in a timely manner. Instead, the member suggested that the \$150 statutorily prescribed penalty in SB 1001 was intended to be the *exclusive* penalty available when a committee failed to pay the \$50 annual fee by the statutory deadline. Since the April 2017 meeting, the FPPC largely has stopped bringing enforcement actions against committees for failing to pay the \$50 annual fee in a timely manner.

Unfortunately, the legislative history of SB 1001 does not provide clarity on whether the Legislature intended the \$150 penalty to be the *exclusive* remedy when a committee failed to pay its \$50 annual fee in a timely manner, or if the Legislature intended those violations to be subject to the same penalties that generally apply to violations of the PRA *in addition to* the \$150 penalty. This bill specifies that the \$150 penalty in SB 1001 is the exclusive penalty that may be imposed against a committee for failing to pay the \$50 annual fee in a timely manner.

- 4) **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

None on file.

Opposition

None on file.

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