

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON ELECTIONS

Marc Berman, Chair

SB 752 (Allen) – As Amended June 23, 2021

**SENATE VOTE:** 35-0

**SUBJECT:** Elections: disclosure of contributors.

**SUMMARY:** Lowers the contribution thresholds at which a contributor to a political committee may be required to be identified on political ads paid for by that committee, or on petitions that the committee pays to circulate, as specified. Changes the text and formatting of required disclosures on petitions and electronic media and video campaign advertisements, as specified. Specifically, **this bill:**

- 1) Amends the definition of “top contributors,” for the purposes of the Political Reform Act (PRA), to mean the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more in the case of an advertisement in support of or opposition to a state measure or a statewide candidate, except for a candidate for the Board of Equalization (BOE), or of \$10,000 or more in the case of an advertisement in support of or opposition to any other measure or candidate, including a candidate for the BOE.
- 2) Provides that an advertisement that is required to include a disclosure of the top contributors to the committee paying for the advertisement must precede the names of the top contributors with the words “Ad Committee’s Top Funders” or “Ad Committee’s Top Funder,” instead of the words “committee major funding from,” except as specified.
- 3) Allows a committee to shorten its name in a disclosure that is required to appear on an advertisement paid for by the committee if the advertisement is a video advertisement that is disseminated over the internet; a print advertisement that is larger than those designed to be individually distributed, as specified; an electronic media advertisement that is a graphic or image, as specified; or a text message advertisement, as specified. Permits the committee’s name to be shortened by doing either of the following:
  - a) Displaying only enough of the first part of the committee’s name to uniquely identify the committee, including the name of any committee sponsors, as specified; or,
  - b) If the advertisement is paid for by a committee and is required to include the top contributors to the committee in the advertisement, as specified, displaying the words “Committee ID” followed by the committee’s identification number.
- 4) Makes a number of formatting changes to the disclosures required on a campaign advertisement disseminated as a video, including over the Internet, including the following:
  - a) Specifies the type color for displaying certain disclosures and prohibits the names of top contributors from having their type condensed in all circumstances, as specified.

- b) Requires a specified disclosure that an advertisement is paid for by an independent expenditure (IE) to appear outside and immediately above the disclosure area in which the committee's name and top contributors are disclosed.
- 5) Makes various changes to the disclosures required on an electronic media campaign advertisement that is a graphic or image, as specified, including the following:
- a) Repeals a requirement that such advertisements include the text "Who funded this ad?," "Paid for by," or "Ad Paid for by," as specified, with the text being a link to a website that includes more detailed disclosures, and instead requires the advertisement to include a disclosure of the name of the committee that paid for the advertisement and the single top funder to that committee if required, followed by the word "More," except as follows:
    - i) Provides that if this disclosure would take up more than 25 percent of the graphic or image when printed in an 8-point font, the graphic or image may instead include only the text "Who funded this ad?"
    - ii) Provides that if including "Who funded this ad?" would take up more than 25 percent of the graphic or image, the graphic or image does not need to include a disclosure.
  - b) Requires all such advertisements to include a link to a website containing a full disclosure of the committee's name, the three top contributors to the committee when required, and a disclosure that the advertisement is an IE when required unless the advertisement itself includes all that information, as specified.
  - c) Specifies the background and type colors in which the disclosures must be displayed and prohibits the names of top contributors from having their type condensed in all circumstances, as specified.
  - d) Narrows a rule that allows social media posts, comments, and similar communications paid for by a committee to omit disclosures if the committee includes those disclosures in its profile, landing page, or similar location such that the rule applies only to advertisements posted by the committee itself. Requires similar social media communications that are paid for by a committee but posted by a third party to comply with the disclosure rules that otherwise apply to those types of advertisements.
- 6) Makes various changes to the disclosures required on a campaign advertisement that is a text message, as specified, including the following:
- a) Provides that a text message that is required to include a disclosure of the top contributors to the committee paying for the message is only required to disclose the committee's single top contributor in all circumstances.
  - b) Requires the disclosure to be included in the text of the text message itself, and not within any graphics that are included as part of the text message.
  - c) Makes minor changes to the permissible text of disclosures in text messages to allow those disclosures to be made in a more conversational tone.

- 7) Prohibits any text or image that is not required to appear in the area on a campaign advertisement that discloses the name of the committee and its top contributors from being included in that area, except as specified.
- 8) Permits a disclosure statement required by a local ordinance that is substantially similar to a statement required by specified provisions of the PRA to be merged into a single statement.
- 9) Requires specified public notices that appear on state and local initiative petitions to appear on state and local referendum and recall petitions. Amends those public notices as follows:
  - a) Deletes a requirement that a specified notice appear on any petition that does not include an Official Top Funders disclosure, as specified.
  - b) Requires the following notice, as specified, to be included on petitions that include an Official Top Funders disclosure: “SIGN ONLY IF IT IS THE SAME MONTH SHOWN IN THE OFFICIAL TOP FUNDERS OR YOU SAW AN ‘OFFICIAL TOP FUNDERS’ SHEET FOR THIS MONTH.”
- 10) Repeals a requirement that state initiative petitions include a specified notice that the proposed initiative measure may be withdrawn by the proponents of the measure.
- 11) Increases the number of donors from which a nonprofit organization without full-time staff must have received contributions, from 50 to 500 donors, in order for that organization to be eligible to be listed as an endorser of a proposed ballot measure as part of an Official Top Funders disclosure for that measure.
- 12) Requires a state or local initiative, referendum, or recall petition that does not include an Official Top Funders disclosure on the petition itself to include the following text, as specified, on the portion of the petition where voters sign the petition, below the signer’s printed name and above the signer’s signature: “DO NOT SIGN UNLESS you have seen Official Top Funders sheet and its month is still valid.”
- 13) Makes various other minor changes to formatting requirements for specified public notices related to the initiative, referendum, and recall process, and for specified disclosures that are required to appear on campaign advertisements.
- 14) Makes various findings and declarations.
- 15) Makes technical and conforming changes.

**EXISTING LAW:**

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Defines “advertisement,” for the purposes of the PRA, as any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures, except as specified.

- 3) Requires advertisements that support or oppose candidates or ballot measures to include disclosure statements in specified circumstances. Requires these disclosures to comply with certain formatting, display, legibility, and audibility requirements.
  - a) Requires an advertisement supporting or opposing a candidate that is paid for by an IE to include a statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate, as specified.
  - b) Defines “top contributors,” for the purposes of these disclosure statements, as the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more.
  - c) Requires generally that an advertisement supporting or opposing a candidate or ballot measure paid for by a committee, other than a political party committee or a candidate’s own campaign committee, include the words “committee major funding from” followed by the names of the committee’s top contributors, as defined above. Prescribes requirements regarding the form, content, and presentation of the top contributors disclosures on advertisements, which vary significantly based on the medium of the advertisement, as specified.
- 4) Prescribes requirements regarding the form, content, and presentation of initiative, referendum, and recall petitions.
- 5) Requires state and local initiative petitions to contain the following notices, as specified:
  - a) For petitions that do not include the Official Top Funders disclosure on the petition: “YOU HAVE THE RIGHT TO SEE AN ‘OFFICIAL TOP FUNDERS’ SHEET.”
  - b) “THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.”
- 6) Requires a state initiative petitions to contain the following notice, as specified: “THE PROPONENTS OF THIS PROPOSED INITIATIVE MEASURE HAVE THE RIGHT TO WITHDRAW THIS PETITION AT ANY TIME BEFORE THE MEASURE QUALIFIES FOR THE BALLOT.”
- 7) Requires, when a campaign committee pays for the circulation of a state or local initiative, referendum, or recall petition, as specified, that an “Official Top Funders” disclosure be made on the petition itself, or on a separate sheet that is presented to prospective petition signers. Requires the disclosure to identify the committee’s name, any qualifying top contributors, the month and year during which the Official Top Funders disclosure is valid, and an address to a webpage that includes the most recent Official Top Funders disclosure, as specified. Requires the disclosure to include the three highest contributors whose cumulative contributions are \$50,000 or more, as specified.
- 8) Permits the committee to include a list of up to three endorsers as a part of the Official Top Funders disclosure, as specified. Defines an “endorser,” as any of the following:
  - a) A business that has been in existence for at least two years and has had at least one full-time staffer during that period.

- b) A non-profit organization that was not originally created for the purposes of serving as a committee, as specified, that has been in existence for at least two years, and either has received contributions from more than 50 donors in that period or has had at least one full-time staffer during that period.
- c) A political party.
- d) An individual, whose name may include their title if they are an elected official or represent one of the organizations described above.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, the FPPC indicates that it would incur annual costs of \$145,000 in 2021-22, and \$138,000 in the out years, to implement its provisions of the bill. Costs to the Secretary of State would be minor and absorbable.

**COMMENTS:**

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

The 1974 Political Reform Act instituted numerous important transparency reforms and extensive campaign disclosure requirements. Subsequent legislation has modernized the PRA's disclosure requirements on television advertisements and expanded disclosure to additional forms of online advertising.

SB 752 further improves election transparency by updating and clarifying disclosure formatting on political advertising and in the petition process. In the last few election cycles, we have seen new tactics used to avoid transparency by circumventing current disclosure requirements.

Formatting requirements for political television ads allow ad funders to make text unclear to viewers and online graphic ads are not required to display any top contributors. Some petition signature gatherers have not been showing voters the list of top funders of the petition campaign as required by law. Political Action Committees have also utilized a loophole to hide their top funders in local and legislative races with many contributions just under \$50,000 to avoid disclosure under the current DISCLOSE Act threshold.

The bill updates formatting requirements on television and online advertisements, and lowers the threshold to be considered a top contributor in local, legislative, and Board of Equalization races to bring much needed clarity to our political process and provides voters with vital information to make informed decisions.

- 2) **“Disclose Act” and Related Previous Legislation:** Four years ago, the Legislature approved and Governor Brown signed AB 249 (Mullin), Chapter 546, Statutes of 2017, which significantly changed the content and format of disclosure statements required on specified campaign advertisements in a manner that generally required such disclosures to be more prominent. AB 249 also established new requirements for determining when contributions are considered to be earmarked, and imposed new disclosure requirements for earmarked

contributions to ensure that committees are able to determine which contributors must be listed on campaign advertisements. AB 249 is commonly known as the "Disclose Act." The passage of AB 249 marked the culmination of seven years of debate and negotiation over similar legislation. AB 249 took effect on January 1, 2018.

Since the enactment of AB 249, there have been several other bills that have modified the content and format of the disclosure statements created by that bill. AB 2155 (Mullin), Chapter 777, Statutes of 2018, made various changes to the Disclose Act that generally were minor, clarifying, or technical in nature, or otherwise were consistent with disclosure examples that were provided by supporters when AB 249 was being considered by the Legislature. AB 2188 (Mullin), Chapter 754, Statutes of 2018, required online platforms that sell political ads to make specified information about those political ads available to the public, and made various changes to the required format for disclosures on electronic media ads. AB 201 (Cervantes), Chapter 555, Statutes of 2019, required a text message that supports or opposes a candidate or ballot measure to disclose the name of the candidate or committee that paid for the text message and, in certain circumstances, the top contributors to the committee. AB 864 (Mullin), Chapter 558, Statutes of 2019, made numerous, mostly technical changes to the Disclose Act and other provisions of state law governing the content and format of disclosure statements that are required to appear on communications disseminated by candidates and committees.

Last session, the Disclose Act's approach was extended to apply to initiative, referendum, and recall petitions with the passage of SB 47 (Allen), Chapter 563, Statutes of 2019. SB 47 generally requires that individuals who are asked to sign state or local initiative, referendum, or recall petitions be provided with information about the committee that is paying for the petition to be circulated, if any, and the top campaign contributors to that committee, as specified. Those disclosures, which must comply with various formatting and legibility requirements, are referred to as an "Official Top Funders" disclosure. SB 47 permits the Official Top Funders disclosure to appear on the petition itself, or on a separate sheet that is required to be shown to individuals who are asked to sign the petition.

- 3) **Top Contributors Threshold:** Under existing law, campaign ads must disclose the top contributors of \$50,000 or more to the political committee paying for the ad, unless the committee is a candidate or political party. According to a press report from the 2020 election cycle, many donors to IE committees, particularly those that are active in legislative and local races, contribute amounts just below this threshold. One political consultant quoted in that report admitted that donors were making contributions just under the \$50,000 threshold in order to avoid being disclosed on committees' ads.

SB 752 revises the top contributors disclosure threshold to \$10,000 or more for campaign ads supporting or opposing local ballot measures and candidates that are not elected statewide, including candidates for the BOE, Legislature, and local office. For campaign ads supporting or opposing candidates for statewide office or statewide ballot measures, the threshold under SB 752 remains unchanged at \$50,000.

The same definition of "top contributors" used for campaign ad disclosures is also used to determine the top contributors to a committee circulating an initiative, referendum, or recall petition, who must be disclosed as part of the "Official Top Funders" disclosure referenced above. By amending the threshold for political committees, SB 752 also changes the top

contributors disclosure threshold to \$10,000 or more for local petitions, but leaves the threshold for statewide petitions unchanged at \$50,000.

Lower levels of campaign spending are likely to have a more significant effect in local races than in statewide races. Accordingly, lowering the threshold for being considered a “top contributor” for local measures and for candidates that are not elected statewide may help provide additional meaningful disclosure about the sources of major campaign expenditures in those elections. On the other hand, having two different thresholds for disclosure of top contributors will increase complexity in the law and may create additional challenges for enforcement of and compliance with the law. Furthermore, having different thresholds could create confusion for voters who may not understand that a top contributor that is listed on an advertisement related to a local election may have donated significantly less than a top contributor listed on an advertisement related to a statewide election.

- 4) **“Endorsers” and Suggested Amendment:** As detailed above, existing law permits a committee that is paying for the circulation of a petition to include, as a part of the Official Top Funders disclosure, a list of up to three endorsers. Existing law also limits the types of entities that are permitted to be listed as endorsers. Non-profit organizations without full-time staff that meet specified criteria, including having received contributions from more than 50 donors in the last two years, are among the entities that may be listed as endorsers.

This bill proposes to increase the number of donors—from 50 to 500—that such an organization must have in order to qualify to be listed as an endorser. The rationale for this change, according to the sponsor of this bill, is to address a concern that requiring only 50 individual donors might permit “astroturf” nonprofits to undermine the intent of a provision that was intended to allow established grassroots nonprofits to be listed as endorsers on petitions. However, it appears that this concern may be a hypothetical one—committee staff has not been provided with any examples of “astroturf” nonprofits being used to circumvent the intent of SB 47. Furthermore, SB 47 has only been in effect for approximately 19 months. In light of the limited period of time to evaluate the effectiveness of SB 47 and the lack of evidence that the current threshold of 50 donors has been abused, committee staff recommends that the bill be amended to strike this change from the bill.

- 5) **State Ballot Measure Withdrawals and Suggested Amendment:** SB 1253 (Steinberg), Chapter 697, Statutes of 2014, also known as the “Ballot Initiative Transparency Act,” made significant changes to the initiative process, including creating a formal process for the proponents of a statewide initiative or referendum to withdraw the measure after filing the petition with the elections official. That withdrawal process was designed to allow a proponent to remove a measure from the ballot if the proponent came to a compromise over the measure with the Legislature after the proponent submitted petition signatures.

In creating that withdrawal process, SB 1253 additionally required state initiative petitions to include a specified notice that the proponents have the right to withdraw the measure. This bill proposes to eliminate that notice. According to the sponsor of this measure, the intent of eliminating the notice is to better allow voters to focus on other information on the petition, including the top funders disclosure and the title and summary of the measure.

Since SB 1253 was enacted, initiative proponents have withdrawn state initiatives that otherwise were eligible to appear on the ballot on at least seven occasions—twice in 2016,

three times in 2018, and twice in 2020. In one instance, the proponents withdrew their initiative after the Legislature agreed to pass a bill that was loosely related to the subject of the initiative.

The California Constitution provides that “[t]he initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.” When state initiative proponents withdraw an initiative that otherwise is eligible to appear on the ballot, however, the electors are not given the opportunity to approve or reject that initiative. Furthermore, voters do not necessarily have the opportunity to approve or reject any policies that are enacted as part of a compromise that involves an initiative being withdrawn by its proponents. In light of the history of initiative withdrawals since SB 1253 became effective, the committee may wish to consider whether eliminating the public notice to voters that state initiative proponents have the right to withdraw the measure is desirable, and may wish to amend this bill to maintain that required notice.

- 6) **Technical Amendment:** Committee staff recommends the following technical amendment to this bill:

On page 23, line 32, after “word” insert:

“For,” “From,” or

- 7) **Regular Changes to New and Complex Disclosure Rules:** As detailed above, since AB 249 was approved, there have been at least four subsequent bills enacted into law that changed the disclosure rules it created. This bill would be the fifth bill to change those rules in four years. This bill additionally proposes to change the petition disclosure rules enacted through SB 47 less than two years ago.

Many of the changes previously made to AB 249 were technical clean-up, or were attempts to address unanticipated issues and to respond to perceived efforts to evade the intent of the original legislation, a description that similarly describes many of the changes proposed by this bill. Nonetheless, effective compliance depends on familiarity with and understanding of the law. Such a familiarity and understanding can take time to develop, particularly after a significant overhaul of the law like that of AB 249. Notwithstanding the understandable desire to address actual or perceived abuses of newly-enacted rules, making frequent changes to complex rules so soon after enactment can hinder compliance and enforcement.

- 8) **Arguments in Support:** In a coalition letter in support of this bill, a number of organizations including the California Clean Money Campaign—the sponsor of this bill—wrote:

It’s crucial for voters to know who’s really funding political ads and initiative campaigns. That’s why overwhelming bipartisan majorities in the legislature passed AB 249 (Mullin-Levine) the California DISCLOSE Act in 2017 to show voters the top funders of political ads, and then passed SB 47 (Allen) the Petition DISCLOSE Act in 2019 to show voters the top funders circulating initiative, referendum, and recall petitions.

Both laws have worked well but a few of their provisions are being abused by some campaign committees, subverting the intent of the legislature and denying



voters the ability to clearly see the committees' top funders. SB 752 will clarify AB 249's and SB 47's disclosure requirements in order to end abuses that make it hard for voters to see top funders...

SB 752 is crucial for ensuring that disclosures for political advertisements and initiative, referendum, and recall petitions show voters the relevant top funders in a reasonable fashion that fulfills the original intent of the legislature and gives voters the information they need to make more informed decisions.

- 9) **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**

California Clean Money Campaign (sponsor)  
California Broadcasters Association  
California Church Impact  
California Common Cause  
Consumer Federation of California  
Courage California  
Endangered Habitats League  
Indivisible CA Statestrong  
League of Women Voters of California  
Maplight  
Money Out Voters in  
Progressive Democrats of America, California  
Public Citizen, Inc.  
Rootsaction  
Voices for Progress

##### **Opposition**

None on file.

**Analysis Prepared by:** Ethan Jones / ELECTIONS / (916) 319-2094