Date of Hearing: January 15, 2020

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Marc Berman, Chair
AB 1245 (Low) – As Amended April 9, 2019

FOR VOTE ONLY

SUBJECT: Political Reform Act of 1974: contribution prohibitions.

SUMMARY: Prohibits contributions from business entities to candidates for elective state office. Specifically, **this bill**:

1) Prohibits a business entity, as defined, from making a contribution to a candidate for elective state office.

2) Prohibits a candidate for elective state office from accepting a contribution from a business entity.

EXISTING LAW:

1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

2) Defines "business entity," for the purposes of the PRA, as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association.

3) Defines "person," for the purposes of the PRA, as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

4) Establishes the following limits on a contribution from a person, other than a small contributor committee or political party committee, to a candidate for elective state office:

    a) In the case of a candidate for elective state office other than statewide elective office, $4,700 per election;

    b) In the case of a candidate for statewide elective office other than Governor, $7,800 per election;

    c) In the case of a candidate for Governor, $31,000 per election.

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

COMMENTS:

1) **Prior Committee Consideration of this Bill**: This bill previously was heard in this committee on April 25, 2019, and was held by the committee without recommendation. Because the committee previously heard and considered this bill during the current legislative session and it has not been substantively amended since that time, the bill has been included on today's agenda as an item for vote only, in accordance with the committee's longstanding custom and practice.

2) **Purpose of the Bill**: According to the author:

> Under federal law, corporations are prohibited from making contributions in federal elections. Currently, 22 states completely prohibit corporations from contributing directly to political candidates. This bill will add California to the list.
>
> AB 1245 decreases the influence of corporate money in California elections by prohibiting corporations from donating to candidates and candidates from accepting corporate contributions. This will restore the integrity of our democratic process by balancing corporate interests with the voice of Californian voters.

3) **Business Entities, Federal Law, and Other States**: The author notes that federal law prohibits corporations from making campaign contributions in federal elections, and 22 states prohibit corporations from contributing directly to political candidates. This bill, however, does not prohibit corporations generally from contributing to candidates for elective state office. Instead, this bill prohibits business entities, as defined, from making campaign contributions to candidates for elective state office, a restriction that is broader than federal law in some cases, while considerably narrower in others.

   Specifically, the term "business entity" under the PRA is defined to include only entities that are *for profit* entities, while federal law prohibits all corporations—whether for profit or nonprofit—from making campaign contributions in federal elections. On the other hand, while federal law prohibits corporations from making campaign contributions, it permits certain other types of business entities to make campaign contributions. A limited liability company (LLC), for instance, may contribute to candidates for federal office if the LLC is a partnership, rather than a corporation, except in certain circumstances.

   These differences have significant implications for the types of entities that are covered by this bill. While for-profit corporations would be prohibited from making campaign contributions to candidates for elective state office, nonprofit corporations could continue to contribute to candidates for elective state office even though they are prohibited from making contributions to federal candidates under federal law. While federal tax laws limit the ability of certain types of nonprofit organizations to make contributions to non-federal candidates (notably, charitable organizations that are organized under Section 501(c)(3) of the Internal Revenue Code are prohibited from making contributions to candidates), other types of nonprofit corporations can and do make significant campaign contributions to candidates for elective office. For example, professional and trade associations, which often are organized

as nonprofit corporations under Section 501(c)(6) of the Internal Revenue Code, would continue to be permitted to make campaign contributions to candidates for elective state office under this bill. Of the 22 states that prohibit corporations from contributing directly to political candidates, none of those states appears to allow nonprofit corporations that are professional or trade associations to contribute to candidates.

4) **Implications of This Bill Are Difficult to Determine**: Notwithstanding the author's stated purpose of attempting to decrease the influence of corporate money in California elections, this bill lacks sufficient detail necessary to evaluate its effects.

   For instance, while this bill prohibits business entities from making contributions to candidates for elective state office, it does not specify whether such entities are permitted to make contributions to political action committees (PACs) that contribute to candidates. If business entities *are* permitted to make such contributions, would the PAC be required to deposit contributions from business entities into a separate account with the funds in that account unavailable for making contributions to candidates? Similarly, federal law and many of the states that prohibit corporate contributions to candidates nonetheless permit a corporation to establish a PAC, and allow corporate funds to be used to pay the costs of establishing, administering, and soliciting funds for the PAC. It is unclear whether such a practice would be allowed under this bill.

   Other policy questions that are not addressed by the current version of this bill include whether a contribution made to a political party by a business entity can be used by the political party to contribute to candidates for elective state office; whether a non-profit organization that receives dues payments from business entities is allowed to use those funds to contribute to candidates for elective state office; and whether the provisions of this bill apply to contributions from business entities to legal defense funds, officeholder accounts, or candidate controlled ballot measure committees?

   In the absence of additional details in this bill, it likely would fall to the FPPC to provide advice and adopt regulations to answer these and other questions about how to implement this bill.

5) **Independent Expenditures**: In January 2010, the United States Supreme Court issued its ruling in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, a case involving a nonprofit corporation (Citizens United) that sought to run television commercials promoting a film it produced that was critical of then-Senator and presidential candidate Hillary Clinton. Because federal law prohibited corporations and unions from using their general treasury funds to make expenditures for "electioneering communications" or for communications that expressly advocated the election or defeat of a candidate, Citizens United was concerned that the television commercials promoting its film could subject the corporation to criminal and civil penalties. In its decision, the Supreme Court struck down the 63-year old law that prohibited corporations and unions from using their general treasury funds to make independent expenditures in federal elections, finding that the law unconstitutionally abridged the freedom of speech.

   While this bill prohibits business entities from making contributions to candidates in the

state, it does not limit the ability of business entities to make independent expenditures. In fact, in light of the *Citizens United* ruling described above, it seems unlikely that such a restriction on independent expenditures would be found to be constitutional. As a result, one of the effects of this bill, if approved, may be to further shift campaign spending away from spending by candidates and toward independent expenditures done by outside entities.

In fact, previously enacted restrictions on campaign contributions to candidates for elective state office have been instructive in demonstrating how campaign contribution restrictions can drive an increase in independent expenditures. Specifically, the amount and percentage of campaign spending made through independent expenditures increased substantially after Proposition 34 at the November 2000 statewide general election enacted campaign contribution limits to candidates for elective state office. In the March 2000 and November 2000 elections, the last two elections that were not subject to the Proposition 34 campaign contribution limits for legislative races, the total amount of money spent on independent expenditures for all legislative races was less than $500,000. By comparison, according to information from campaign disclosure reports that were filed with the Secretary of State, the last three election cycles (2013-14, 2015-16, and 2017-18) have had an average of more than $56 million in spending on independent expenditures in state legislative races.

While this bill restricts the ability of a business entity to contribute money *directly* to a candidate for elective state office, it does not otherwise restrict the amount that a business entity can *spend* in attempting to influence an election for state office. If business entities are unable to make campaign contributions to candidates they support, those entities may instead divert those funds to independent expenditures that are intended to help those same candidates get elected.

6) **Contribution Limits**: As noted above, Proposition 34, which was approved by the voters at the November 2000 statewide election, established limits on the size of campaign contributions made to candidates for elective state office, among other provisions. Proposition 34 was approved with 60.1% of the vote. The findings of Proposition 34 noted that the measure would, "minimize the potentially corrupting influence and appearance of corruption caused by large contributions by providing reasonable contribution and voluntary expenditure limits."

   To the extent that the current contribution limits are reasonable, and are accomplishing the goal of "minimiz[ing] the potentially corrupting influence…caused by large contributions," it is unclear why a contribution from a business entity would pose greater concern than a similar-sized contribution from another entity. If a campaign contribution of $4,700 from a corporation to a candidate for state legislature has the potential to have too great of an influence on that candidate, wouldn't a $4,700 contribution from an executive at that corporation present the same concern?

7) **Local Elective Office**: While this bill prohibits business entities from making contributions to candidates for elective *state* office, it does not restrict contributions from business entities to candidates for *local* office. The reason for this policy distinction is unclear, as business entities regularly make contributions in connection with local elections in California. The

author and the committee may wish to consider whether this bill should apply to candidates for elective *local* office, as well as state office.

8) **Contributions from Business Entities Prior to the Effective Date of This Bill**: As currently drafted, this bill would take effect on January 1, 2021. Unless this bill were amended to require candidates for elective state office to return campaign contributions that they already received from business entities for future elections, candidates who wish to raise money from business entities would be able to continue to do so for the rest of this calendar year, and would be able to use those funds for elections held after the effective date of this bill. Furthermore, any candidate who has already raised money from business entities for an election after January 1, 2021 would be able to use those funds for that future election. Many candidates have already opened committees and received campaign contributions for elections for state office to be held in 2022.

9) **Previous Legislation**: AB 571 (Mullin), Chapter 556, Statutes of 2019, establishes default campaign contribution limits for county and city office at the same level as the limit on contributions from individuals to candidates for Senate and Assembly, effective January 1, 2021, as specified. AB 571 was approved by this committee on a 6-1 vote, and by the Assembly on a 65-13 vote.

10) **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.

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