

Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2250 (Ridley-Thomas) – As Introduced February 18, 2016

**SUBJECT:** Political Reform Act of 1974: contribution limitations. Urgency.

**SUMMARY:** Prohibits, under state law, contributions, expenditures, and independent expenditures from foreign governments and foreign principals in connection with candidate elections. Specifically, **this bill:**

- 1) Prohibits a foreign government or foreign principal, as defined, from making, directly or through any other person, a contribution, expenditure, or independent expenditure in connection with any election.
- 2) Prohibits a person or a committee from soliciting or accepting a contribution from a foreign government or a foreign principal, as defined, in connection with an election.
- 3) Makes corresponding and technical changes.
- 4) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

**EXISTING STATE 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) Prohibits a foreign government or foreign principal from making, directly or through any other person, a contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, a state or local ballot measure. Prohibits a person or a committee from soliciting or accepting a contribution from a foreign government or a foreign principal in connection with the qualification or support of, or opposition to, any state or local ballot measure.
  - a) Defines “foreign principal,” for the purposes of these restrictions, to include the following:
    - i) A foreign political party;
    - ii) A person outside the United States (US), unless either of the following is established:
      - (1) The person is an individual and a citizen of the US; or,
      - (2) The person is not an individual, and is organized under or created by the laws of the US or of any state or other place subject to the jurisdiction of the US and has its principal place of business within the US;

- iii) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or,
  - iv) A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is neither a citizen of the US nor a lawfully admitted permanent resident of the US.
- b) Provides that these restrictions do not prohibit a contribution, expenditure, or independent expenditure made by a lawfully admitted permanent resident.
  - c) Provides that a person who violates these provisions is guilty of a misdemeanor and shall be fined an amount equal to the amount contributed or expended.
- 3) Permits the FPPC to impose administrative penalties of up to \$5,000 per violation of the PRA.

**EXISTING FEDERAL LAW:**

- 1) Prohibits a foreign national, directly or indirectly, from doing either of the following in connection with a federal, state, or local election:
  - a) Making a contribution or donation of money or other thing of value, or an express or implied promise to make a contribution or donation; or,
  - b) Making an expenditure, independent expenditure, or disbursement for an electioneering communication.
- 2) Prohibits a person from soliciting, accepting, or receiving a contribution or donation made by a foreign national in connection with a federal, state, or local election.
- 3) Defines “foreign national,” for the purposes of the prohibitions described above, as either of the following:
  - a) A government of a foreign country; a foreign political party; or a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or,
  - b) An individual who is not a citizen or a national of the US and who is not lawfully admitted for permanent residence in the US.
- 4) Establishes the Federal Election Commission (FEC), and makes it responsible for the administration and enforcement of the Federal Election Campaign Act (FECA), including the restrictions on contributions and expenditures by foreign nationals described above.

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

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

Since 1966, federal law has prohibited foreign nationals from making contributions in connection with political campaigns in the [US]. The purpose of this law is to protect the process of democratic self-governance for Americans.

Because federal election law does not explicitly provide for ballot measure elections, it is unclear whether this law applies to contributions made in connection with state or local ballot measure campaigns. In fact, the [FEC], which interprets and enforces the federal law, deadlocked on that question in a case last year involving contributions made in connection with a ballot measure in Los Angeles.

Due to the lack of clarity about whether the federal ban on contributions by foreign nationals applies to ballot measure elections, in 1997, California enacted Government Code Section 85320 (Section 85320) through the passage of SB 109 (Kopp), Chapter 67, Statutes of 1997. Section 85320 prohibits foreign governments and foreign principals from making contributions, expenditures, and independent expenditures in connection with a state or local initiative, recall, or referendum measure. Section 85320 additionally prohibits any person or committee from soliciting or accepting a contribution from a foreign government or principal in connection with a ballot measure campaign. Because Section 85320 was in place, the [FPPC] was able to bring an enforcement action concerning the foreign contributions made in connection with the ballot measure in Los Angeles. The FPPC ultimately imposed a fine of \$61,500 in that case for violations of Section 85320 and other provisions of the [PRA]—the first case in which the FPPC brought an enforcement action for a violation of Section 85320.

While it is unclear whether federal law governs contributions made by foreign nationals in connection with ballot measure elections, it clearly prohibits foreign nationals from making contributions in connection with candidate elections in California. The FEC, however, which is responsible for enforcing that law, has a significant backlog and frequently deadlocks on enforcement matters. Furthermore, it is important for the FPPC to have concurrent jurisdiction over the issue of foreign contributions in elections in order to best protect the integrity of California elections.

**2) Foreign Campaign Spending, Federal Law, and Previous Legislation:** As detailed above, federal law prohibits foreign nationals from making contributions in connection with federal, state, and local elections. According to information from the FEC, “[t]he ban on political contributions and expenditures by foreign nationals was first enacted in 1966 as part of the amendments to the Foreign Agents Registration Act (FARA), an ‘internal security’ statute. The goal of the FARA was to minimize foreign intervention in US elections by establishing a series of limitations on foreign nationals. These included registration requirements for the agents of foreign principals and a general prohibition on political contributions by foreign

nationals. In 1974, the prohibition was incorporated into [FECA], giving the [FEC] jurisdiction over its enforcement and interpretation.”

Until 2002, the restriction on contributions by foreign nationals specifically applied to contributions made “in connection with an election to any political office.” Because that language was limited to elections for *office*, it was the position of the FEC that contributions from foreign nationals relating exclusively to ballot measures were not restricted by federal law. (In 2002, the restriction on foreign contributions was amended to make it applicable to any contribution made “in connection with a Federal, State, or local election,” though it is unclear whether that change was intended to cover ballot measure elections.)

In 1997, the Legislature approved and Governor Wilson signed SB 109 (Kopp), Chapter 67, Statutes of 1997, to prohibit foreign governments or foreign principals from making contributions, expenditures, or independent expenditures in connection with state or local ballot measures. The legislative history suggests that SB 109 did not seek to regulate foreign contributions made in connection with elections for *office* because such contributions were already restricted by federal law. Instead, SB 109 was limited to foreign spending in connection with ballot measure elections, thereby restricting foreign spending that was not covered by federal law.

Aside from the fact that state law is limited to foreign spending made in connection with ballot measures, state and federal law differ in one other important respect. While federal law restricts contributions and expenditures by foreign nationals, state law does not restrict contributions or expenditures by a foreign national who is an individual and who is legally present in the US. The initial version of SB 109 (and an unsuccessful bill from the prior legislative session) would have restricted contributions by foreign nationals who were legally present in the US, but that restriction was amended out of the bill to address opposition.

- 3) **Recent Enforcement Action Related to Foreign Contributions:** As noted above by the author of this bill, the FPPC recently brought an enforcement action for the first time in a case involving foreign contributions made in connection with a ballot measure. That enforcement action was initiated after the FEC considered an enforcement action of its own, and declined to take action in that case.

Measure B was a Los Angeles County initiative dealing with adult film production that appeared on the ballot at the November 2012 statewide general election. In October 2012, one of the proponents of Measure B filed a complaint with the FEC alleging that the committee opposing Measure B had received contributions made by a foreign national, and further alleging that those contributions violated FECA. In August 2014, the Associate General Counsel of the FEC recommended dismissing the complaint due in part to a “lack of clear legal guidance” on whether federal law restricts contributions made by foreign nationals in connection with ballot measures. The FEC was equally divided on whether to dismiss the complaint, and in March 2015, it ultimately closed the file on the complaint without taking further action.

In July 2015, after the FEC’s action to close its file, the FPPC received a sworn complaint in connection with the same matter. Last December, the FPPC reached a stipulated settlement

in that case. As detailed in that settlement, Manwin USA, a Delaware-based subsidiary of Manwin International, a Luxembourg-based corporation, made contributions totaling more than \$268,000 to the committee opposing Measure B. In addition, Froytal, a Cyprus-based subsidiary of Manwin International, made a contribution of \$75,000 to the committee opposing Measure B, although that contribution subsequently was returned by the committee. Even though Manwin USA was incorporated under Delaware-law, its contributions violated California law because it was a subsidiary of a foreign corporation and the decision to contribute funds was made by an officer of the foreign corporation who was neither a US citizen nor a lawfully admitted permanent resident of the US.

The FPPC fined Manwin USA a total of \$20,000 for the unlawful contributions that it made, fined Froytal \$5,000 for the unlawful contribution that it made, and fined the committee opposing Measure B and its treasurer a total of \$20,000 for accepting unlawful contributions made by foreign principals. The FPPC also imposed an additional \$16,500 in fines for violations of reporting and disclosure laws that occurred in connection with the unlawful foreign contributions.

- 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**

Fair Political Practices Commission

##### **Opposition**

None on file.

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