

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
AB 227 (Davies) – As Introduced January 12, 2021

SUBJECT: Political Reform Act of 1974: contribution prohibitions.

SUMMARY: Prohibits a Governor’s appointee or a person residing in the appointee’s household from making a monetary contribution to the Governor’s campaign, or to a committee organized to benefit the Governor’s campaign, or from requesting or demanding that another person make such a contribution, as specified. Requires a prospective Governor’s appointee, if they or a member of their household made a contribution to the Governor’s campaign or committee within one year prior to the appointment, upon notice of the intended appointment, to immediately disclose the contribution, and prohibits the appointment unless the Governor or the committee refunds the contribution. Specifically, **this bill:**

- 1) Defines the following terms:
 - a) “Governor’s campaign” to mean a campaign for the office of Governor.
 - b) “Governor’s appointee” to mean an individual appointed by the Governor to an office, board, commission, or other public entity.
 - c) “Governor’s prospective appointee” to mean an individual the Governor intends to appoint to an office, board, commission, or other public entity.
- 2) Prohibits a Governor’s appointee or any person residing in the appointee’s household, including a spouse, domestic partner, or child, from doing any of the following, during the term of the appointment and for one year following the expiration of the term:
 - a) Making a monetary contribution to the Governor’s campaign or to a committee organized specifically to benefit the Governor’s campaign.
 - b) Requesting or demanding that another person make or offer a monetary contribution to the Governor’s campaign or to a committee organized specifically to benefit the Governor’s campaign.
- 3) Prohibits the Governor or a committee organized specifically to benefit the Governor’s campaign, or any other person acting on their behalf, from accepting a contribution prohibited above.
- 4) Requires a Governor’s prospective appointee, if they or any person residing in the prospective appointee’s household, including a spouse, domestic partner, or child, during a period of one year prior to the appointment, has made a monetary contribution to the Governor’s campaign or to a committee organized specifically to benefit the Governor’s campaign, to immediately disclose the contribution to the Governor upon notice of the intended appointment. Prohibits the appointment unless the Governor or the committee, as applicable, refunds the contribution.

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 the term “person,” for the purposes of the PRA, to mean 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.
- 3) Prohibits a person, other than a small contributor committee or political party committee, from making a contribution to a candidate for elective state office, and prohibits a candidate from accepting a contribution from such a person, that exceeds the following amounts:
 - a) For candidates for Governor, \$32,400 per election;
 - b) For candidates for Lieutenant Governor, Attorney General (AG), Insurance Commissioner, Controller, Secretary of State (SOS), Treasurer, Superintendent of Public Instruction (SPI), or member of the Board of Equalization (BOE), \$8,100 per election; and,
 - c) For candidates for state Senate or Assembly, for member elected to the Board of Administration of the Public Employees Retirement System, or for member elected to the Teachers' Retirement Board of the State Teachers' Retirement System, and city and county candidates in cities and counties that have not enacted contribution limits, \$4,900 per election.
- 4) Prohibits a person from making a contribution to a state officeholder committee, and prohibits a committee from accepting a contribution from a person, that exceeds the following amounts:
 - a) Officeholder committee for Governor, \$26,900 per calendar year;
 - b) Officeholder committees for Lieutenant Governor, AG, Insurance Commissioner, Controller, SOS, Treasurer, SPI, or member of the BOE, \$6,700 per calendar year; and,
 - c) Officeholder committees for member of the state Senate or Assembly, \$4,000 per calendar year.
- 5) Requires the FPPC to adjust the contribution limits outlined above on January 1 of each odd-numbered year to reflect changes in the consumer price index. Requires the adjusted contribution to be rounded to the nearest \$100.
- 6) Permits the Governor to appoint a person to serve in various offices, some of which are subject to confirmation by the Senate.
- 7) Requires the Governor to nominate a person to fill any vacancy in the office of the SPI, Lieutenant Governor, SOS, Controller, Treasurer, AG, or Insurance Commissioner, or on the BOE.

- a) Provides that such a nominee shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly, and shall hold office for the remainder of the unexpired term.
 - b) Provides that if the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee shall take office as if they had been confirmed by a majority of the Senate and Assembly. Provides that if the 90-day period ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes.
- 8) Makes violations of the PRA subject to administrative, civil, and criminal penalties.

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

COMMENTS:

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

Transparency and accountability are cornerstones of any good government. Our citizens depend on a government that is free of corruption and exploitation. One way to ensure that type of government exists is to make sure political donors are not rewarded for donating to certain candidates. AB 227 will bring a new level of responsibly to our state government and be a model for other states. Pay-to-play politics has shown to be an unfortunate bipartisan issue in our state with both former Democrat and Republican Governors partaking in this action. With an election right around the corner next year, it is time California set a new standard for how we conduct our elections and appointments.

- 2) **Political Reform Act and Appointees:** The PRA requires candidates and committees to file campaign statements by specified deadlines disclosing contributions received and expenditures made. Candidates running for a state office and committees that make contributions to state candidates are limited in the amount of contributions they may accept from a single source. The contribution limits are different depending on the office, the committee, and the contributor. The FPPC is charged with enforcing those rules. According to the FPPC, the PRA does not contain provisions specific to appointees, however, appointees are subject to the same general rules, including contribution limits.
- 3) **Governor's Appointees:** The Governor is responsible for making appointments to approximately 3,000 positions; of those, approximately 700 are subject to Senate confirmation, and the Senate considers about 200 gubernatorial appointees in a typical year. Additionally, existing law requires the Governor to nominate a person to fill any vacancy in the office of the SPI, Lieutenant Governor, SOS, Controller, Treasurer, AG, or Insurance Commissioner, or on the BOE.

This year alone, Governor Newsom has made a variety of high profile appointments. In January, Governor Newsom appointed former Secretary of State Alex Padilla to the US State Senate after Kamala Harris resigned in advance of being inaugurated Vice President of the

United States (US). Shortly thereafter, Governor Newsom appointed former Assemblymember Dr. Shirley Weber as SOS. In March, Governor Newsom announced that he will submit to the State Legislature the nomination of Assemblymember Rob Bonta as the next California AG, filling the seat vacated by Xavier Becerra, who was recently sworn in as Secretary of the US Department of Health and Human Services. The nomination is subject to confirmation by the California State Assembly and Senate within 90 days.

- 4) **Is There a Problem?** While the author has provided the committee with news articles alleging that various California Governors have carried on a political tradition of providing favors, in the form of coveted state appointments, to campaign donors, the author has not provided specific examples or evidence to justify imposing a contribution ban on a Governor's appointee and on the appointee's household members.
- 5) **Constitutional Issues:** By imposing restrictions on campaign contributions made by gubernatorial appointees and persons residing in the appointee's household to the Governor's campaign or to a committee organized specifically to benefit the Governor's campaign, as specified, it could be argued that this bill violates the free speech rights of those appointees. In *Buckley v. Valeo* (1976), 424 US 1, the United States Supreme Court held that "contribution ... limitations operate in an area of the most fundamental First Amendment activities," and such limitations "impinge on protected associational freedoms." The Buckley Court, however, also held that restrictions on contributions could be justified in situations where "the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms."

This bill prohibits any contribution made by a Governor's appointee or person residing in the appointee's household to the Governor's campaign or committee, as specified, or to "a committee organized specifically to benefit the Governor's campaign," for one year prior the appointment, the term of the appointment, and for one year after the appointment expires. Additionally, the bill prohibits the appointment unless contributions made at least one year prior to the appointment are returned. The bill, however, does not define the term "organized specifically to benefit the Governor's campaign," nor is it defined in current law. As a result, this bill could be interpreted to prohibit independent expenditures and therefore prohibit a Governor's appointee or household member from directly and indirectly spending in any way to support their preferred candidate. It is not clear whether a court would consider such a broad restriction to be "closely drawn to avoid unnecessary abridgment of associational freedoms."

Additionally, the provisions of this bill are a ban, not a contribution limit. While courts have upheld contribution bans in certain circumstances, they generally have done so only when those bans are enacted in response to evidence of actual corruption. In *Green Party of Connecticut v Garfield* (2d Cir. 2010) 616 F .3d 189, the United States Court of Appeals, Second Circuit court stated that "a ban on contributions causes considerably more constitutional damage, as it wholly extinguishes that 'aspect of the contributor's freedom of political association.'" In that case, a contribution ban was implemented in the state of Connecticut "in response to a series of scandals in which contractors illegally offered bribes, 'kick-backs,' and campaign contributions to state officials in exchange for contracts with the state" and that the "ban was designed to combat both actual corruption and the appearance of corruption caused by contractor contributions." Because the author has not provided evidence of actual corruption associated with the gubernatorial appointees, it could be argued

that the ban in this bill violates the free speech rights of those appointees and of other members of their households.

- 6) **Previous Legislation:** AB 2689 (Gray) of 2018, would have prohibited a Governor's appointee who is subject to Senate or Assembly confirmation from making contributions or gifts to Senators, members of the Assembly, or candidates for the Senate or Assembly while the appointee's confirmation is pending, as specified. Governor Brown vetoed AB 2689 stating, "The prohibitions in this bill may make sense, but so would many others-including banning contributions from anyone who seeks to influence legislation. There is no question that the current system is flawed, but this piece-meal approach is not the answer. My point is, before the Legislature starts down this road, they should consider where it leads."
- 7) **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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