

Date of Hearing: January 12, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 227 (Davies) – As Amended January 3, 2022

SUBJECT: Governor: appointments.

SUMMARY: Requires the Governor to disclose, at the time the Governor appoints a person to a position, whether the prospective appointee made monetary contributions of \$1,000 or more to the Governor's campaign in the 12 months prior to the person's appointment, as specified.

Specifically, **this bill:**

- 1) Requires the Governor, if a Governor's prospective appointee has made a contribution of one thousand dollars (\$1,000) or more to the Governor's campaign or to a committee organized specifically to benefit the Governor's campaign within the 12-month period preceding the public announcement of the appointment, to disclose as part of the public announcement, whether oral or written, that such a contribution was made and the amount of the contribution.
- 2) Defines the following terms for purposes of this bill:
 - a) "Committee" has the meaning set forth in Political Reform Act (PRA).
 - b) "Contribution" has the meaning set forth in the PRA.
 - c) "Governor's campaign" means a campaign for the office of Governor.
 - d) "Governor's prospective appointee" means an individual the Governor intends to appoint to an office, board, commission, or other public entity.

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 a "committee," for the purposes of the PRA, to mean any person or combination of persons who directly or indirectly does any of the following:
 - a) Receives contributions totaling two thousand dollars (\$2,000) or more in a calendar year.
 - b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
 - c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.
- 3) Defines a "contribution" to mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and

adequate consideration is received or if it is clear from the surrounding circumstances that the payment is not made for political purposes, as specified.

- 4) 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.
- 5) 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.
- 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, subject to confirmation by the Legislature, as specified.

FISCAL EFFECT: Unknown

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 restrictions or other provisions that are specific to potential gubernatorial appointees, however, appointees are subject to the same general rules, including existing 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.

Last year alone, Governor Newsom made a variety of high profile appointments. Last January, Governor Newsom appointed former Secretary of State Alex Padilla to the United States (US) Senate after Kamala Harris resigned in advance of being inaugurated Vice President. At the same time, Governor Newsom appointed former Assemblymember Dr. Shirley Weber as SOS to replace Alex Padilla. Last March, Governor Newsom appointed Assemblymember Rob Bonta as the AG, filling the seat vacated by Xavier Becerra, who was sworn in as Secretary of the US Department of Health and Human Services.

- 4) **Is There a Problem?** While the author has provided the committee with news articles alleging that previous 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 evidence to demonstrate that campaign contributors are being given gubernatorial appointments in exchange for making campaign contributions, or as a reward for having made such contributions. Furthermore, the author has not provided information to demonstrate that existing disclosure requirements fail to provide sufficient public transparency about any campaign contributions that were made by prospective appointees of the Governor. As detailed above, existing law already requires candidates and committees to file periodic campaign statements disclosing contributions received and expenditures made, which would include any contributions made by a prospective gubernatorial appointee.
- 5) **Enforcement & Suggested Amendment:** While this bill requires the Governor to disclose whether prospective appointees of the Governor made monetary contributions to the Governor's campaign prior to their appointment, it does not contain an enforcement mechanism, nor does it detail who will ensure that the Governor is fulfilling the duty to disclose this information. In an effort to provide clarity, transparency, and accountability, the author and the committee may wish to consider amending the bill to require the SOS to report annually to the Legislature on all of the Governor's appointees and the campaign contributions made and the amount they contributed within the 12-months preceding the

public announcement of their appointment. The SOS is uniquely suited for this role as the SOS's Political Reform Division administers Cal-Access, the state's online campaign filing and disclosure database for reports and statements required to be filed under the PRA.

- 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."

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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