

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 45 (Dickinson) – As Amended: April 15, 2013

SUBJECT: Political Reform Act of 1974.

SUMMARY: Makes numerous significant changes to the Political Reform Act of 1974 (PRA). Specifically, this bill:

- 1) Provides that a payment made to a multipurpose organization, as defined, is a contribution to that organization if the donor knows or has reason to know that the payment, or part of the payment, will be used to make a contribution or an independent expenditure.
 - a) Provides that a donor knows that a payment to a multipurpose organization will be used to make a contribution or an independent expenditure if the donor specifies that to be the purpose for which the payment must be used or if the donor makes the payment in response to a solicitation indicating the multipurpose organization's intent to make a contribution or an independent expenditure.
 - b) Provides that a donor is presumed to have reason to know that a payment to a multipurpose organization will be used to make a contribution or an independent expenditure if the recipient multipurpose organization has made aggregate contributions or independent expenditures of \$2,000 or more during the calendar year in which the payment is made or during any of the four preceding calendar years.
 - c) Provides that a donor who makes an aggregate payment of \$50,000 or more to a multipurpose organization within six months prior to an election is presumed to have reason to know that the aggregate payments will be used by the multipurpose organization to make a contribution or an independent expenditure if the multipurpose organization makes an aggregate contribution or independent expenditure of \$50,000 or more to support or oppose a candidate or ballot measure within the six months prior to that election.
 - d) Requires a donor who makes a contribution described above to be identified and reported by the multipurpose organization receiving the contribution, in accordance with regulations adopted by the Fair Political Practices Commission (FPPC).
 - e) Defines "multipurpose organization," for the purposes of this bill, as a nonprofit organization, a federal or out-of-state political action committee, or a local club focusing on educational or social activities.
- 2) Provides that a person retains his or her status as a "candidate," for the purposes of the PRA, for the duration of time that he or she holds office.

- 3) Requires a filing officer to immediately affix a date stamp to each statement of economic interests filed pursuant to the PRA to reflect the date of receipt by the filing officer.
- 4) Increases the threshold of contributions received or independent expenditures made by an entity, from \$1,000 to \$2,000 in a calendar year, before that entity is considered a "committee," for the purposes of the PRA.
- 5) Increases, from \$100 to \$250, the threshold at which contributions must be itemized, and information must be provided about the names, addresses, occupations, and employers of contributors, on campaign reports.
- 6) Provides that for committees primarily formed to support or oppose a statewide ballot measure, the threshold at which contributions and expenditures must be itemized, and greater details must be provided about those contributions and expenditures, shall be set pursuant to regulations adopted by the FPPC, and may be adjusted by the FPPC in any odd-numbered year after 2013, provided that the threshold shall be no lower than \$500 and no higher than \$2,500.
- 7) Provides that, in the case of candidates and committees that are required to file campaign disclosure reports with the Secretary of State (SOS), those reports need to be filed in a paper format only if the filer is not required to file the statement by online or other electronic means. Provides that an original paper copy of the report shall nonetheless be filed with the SOS if the online or electronic system operated by the SOS is malfunctioning, unavailable, or otherwise not capable of receiving online or electronically filed disclosure statements and reports.
- 8) Requires a statement or report filed with the SOS pursuant to specified provisions of the PRA to be made available to the FPPC upon request.
- 9) Permits the FPPC to seek injunctive relief in superior court to compel disclosure consistent with the PRA. Permits a superior or appellate court to grant a stay of an order granting relief pursuant to these provisions. Requires the court to grant expedited review to an action filed pursuant to this procedure, as specified.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires multipurpose organizations to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such funds to make campaign contributions or expenditures, or when such organizations have previously made contributions or independent expenditures from their general treasuries of \$1,000 or more during the calendar year, or the previous four years, in California.

- 3) Defines the term “candidate” to include an officeholder who is the subject of a recall election. Provides that an individual who becomes a candidate shall retain his or her status as a candidate until that status is terminated, as specified.
- 4) Provides that any person or combination of persons who directly or indirectly does any of the following is considered a “committee” for the purposes of the PRA:
 - a) Receives contributions of \$1,000 or more in a calendar year;
 - b) Makes independent expenditures of \$1,000 or more in a calendar year; or,
 - c) Makes contributions totaling \$10,000 or more per year to or at the behest of candidates or committees.
- 5) Requires periodic campaign statements that are filed pursuant to provisions of the PRA to include specified information, including the following:
 - a) The cumulative amount of contributions received during the period covered by the statement;
 - b) The total amount of contributions received during the period covered by the statement from persons who have given a cumulative amount of \$100 or more;
 - c) The total amount of contributions received during the period covered by the statement from persons who have given a cumulative amount of less than \$100; and,
 - d) For each person from which the committee received a cumulative amount of contributions of \$100 or more, all of the following information with respect to any contributions received from that person during the period covered by the statement:
 - i) The full name of the person;
 - ii) The person's street address;
 - iii) The person's occupation;
 - iv) The name of the person's employer, or if self-employed, the name of the business;
 - v) The date and amount received for each contribution received during the period covered by the statement; and,
 - vi) The cumulative amount of contributions from that person.
- 6) Requires candidates and committees that are required to file specified campaign statements by online or electronic means with the SOS to additionally file the original and one copy of those campaign statements in a paper format with the SOS. Provides that the paper original shall be the official filing for audit and other legal purposes until the SOS determines that the

online or electronic campaign disclosure system is operating securely and effectively.

- 7) Prohibits an audit or investigation of any candidate, controlled committee, or committee primarily supporting or opposing a candidate or measure in connection with a report or statement required by specified provisions of law from beginning until after the last date for filing the first report or statement following the general, runoff, or special election for the office for which the candidate ran, or following the election at which the measure was adopted or defeated, except as specified.
- 8) Permits the FPPC to make investigations and audits with respect to any reports or statements required by specified provisions of the PRA.

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

COMMENTS:

- 1) Purpose of the Bill: According to the author, "Without AB 45, we will continue to see last minute 'money bombs' flowing into California elections without informing voters where this money is coming from. The public has a right to know the source of the money so informed decisions can be made at the ballot box."
- 2) Multipurpose Organizations, Campaign Disclosure, & the "One Bite" Rule: Under existing law, when a multipurpose organization makes contributions or independent expenditures of specified amounts in connection with an election in California, that organization must file a report disclosing that it made the contributions or independent expenditures. In some cases, the organization is required to report only the fact that it made a contribution or independent expenditure, while in other cases, the report must also disclose certain donors to the organization. One of the key rules in determining whether or not a multipurpose organization is required to disclose its donors when it makes contributions or independent expenditures in connection with California elections is commonly referred to as the "one bite at the apple" rule. This rule is particularly relevant to entities that are organized under Section 501 of the Internal Revenue Code, since those entities typically are not otherwise required to publicly disclose their donors.

The "one bite" rule is intended to ensure that a multipurpose organization is required to reveal the name of a donor to that organization only if the donor knew, or had reason to know, that his or her donation could be used for political purposes in California. Under the "one bite" rule, a multipurpose organization is not necessarily required to disclose any information about donors to that organization unless that organization has previously made expenditures or contributions of at least \$1,000 during the calendar year, or at any time in the prior four calendar years. Once a multipurpose organization takes its first "bite" by making contributions or expenditures of \$1,000 or more, donors to that organization are presumed to know that the organization is involved in making contributions or expenditures in connection with California elections, and thus are presumed to know that their donations may be used for political purposes.

Even if a multipurpose organization has not taken its "one bite at the apple," that organization

nonetheless may still be required to disclose the names of donors when it makes a contribution or expenditure if those donors knew or had reason to know that their donations would be used for political purposes. For instance, if a multipurpose organization sent a solicitation for donations, and that solicitation specified that the donations were being sought for the purpose of making contributions or expenditures in a California election, individuals who donated to the organization in response to that solicitation would know that their donations would be used for political purposes, and as a result their names may be subject to disclosure notwithstanding the fact that the organization did not previously take its "one bite at the apple." However, it can be difficult to enforce this reporting requirement, since an enforcement agency needs to have access to the organization's solicitations or other communications with donors in order to determine whether those donors had reason to know that their donations would be used for political purposes.

Without adequate enforcement of these reporting requirements, there is a concern that individuals who wish to conceal their involvement in making contributions or expenditures in connection with California elections can do so by moving their money through multipurpose organizations that have not yet taken their "one bite at the apple." This frustrates one of the key purposes of the PRA: to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that the voters may be fully informed and improper practices may be inhibited.

This bill is intended to address some of the challenges with ensuring thorough and appropriate disclosure of campaign contributions and expenditures made by multipurpose organizations by specifying circumstances in which a donor to a multipurpose organization is deemed or presumed to know or have reason to know that his or her donations will be used for political purposes. Some of these provisions are similar to regulations adopted by the FPPC. This bill also establishes, however, a new situation in which a donor would be presumed to have reason to know that his or her donations to a multipurpose organization would be used for a political purpose. Under this provision if an individual makes donations of \$50,000 or more to a multipurpose organization in the last six months before an election, and that multipurpose organization makes contributions or independent expenditures of \$50,000 or more in the six months before the election, then the donor is presumed to have reason to know that his or her donations would be used for a political purpose. The implication of this provision is that if a person makes a large contribution shortly before an election to an organization that, in turn, makes a significant amount of contributions or independent expenditures in connection with that election, it is likely that the donor knew about the organization's plans to make contributions or expenditures.

- 3) Injunctive Relief: This bill gives the FPPC greater authority to seek to compel disclosure in court on an expedited basis when necessary to ensure that contributions and expenditures are appropriately disclosed prior to an election. These provisions, along with the multipurpose organization provisions discussed above, appear to be in response, in part, to an \$11 million campaign contribution made to the Small Business Action Committee PAC (SBAC PAC) three weeks prior to the November 2012 statewide general election.

The SBAC PAC, which was a primarily formed committee that was opposing Proposition 30 and supporting Proposition 32 at the time the contribution was received, reported that the \$11 million contribution was made by Americans for Responsible Leadership (ARL), an Arizona-

based non-profit organization. ARL initially refused to disclose the names of its donors, arguing that it was not required to do so under California law because it had not "solicited earmarked contributions for any particular project" and because "[n]o contributors to ARL at any time specified where any of their donations 'must go.'" ARL had not made contributions or independent expenditures in California in the four years preceding the \$11 million contribution, so it had not taken its "first bite," as described above.

After receiving a complaint regarding the \$11 million contribution, the FPPC requested to review certain records held by ARL to ensure compliance with state campaign disclosure laws, and subsequently commenced a discretionary audit of ARL. When ARL did not produce records as requested by the FPPC, the FPPC sued ARL in Sacramento Superior Court seeking an order to compel ARL to produce those records. ARL opposed that request on a variety of grounds. The Court ultimately granted the FPPC's request for an order for ARL to produce the requested records. After an unsuccessful appeal, ARL and the FPPC reached a settlement in which ARL revealed that it was not the true source of the \$11 million contribution, but instead was an intermediary for that contribution. ARL disclosed that the actual source of the \$11 million was another nonprofit organization, Americans for Job Security (AJS), which made a contribution to a second intermediary (and another nonprofit organization), the Center to Protect Patient Rights (CPPR). CPPR, in turn, made the contribution to ARL. AJS has not disclosed its donors.

This bill seeks to give the FPPC additional tools to ensure compliance with the PRA by permitting the FPPC to seek injunctive relief to compel disclosure that is required by the PRA, and by requiring the court to grant expedited review to any such action in order to ensure that campaign contributions and expenditures are disclosed, if appropriate, prior to the election.

- 4) Disclosure Thresholds & Potential Amendments: When originally enacted, the PRA required the public disclosure of the names and street addresses of all campaign contributors who made contributions to a committee of \$50 or more. Subsequent legislation in 1978 (AB 3155 (W. Thomas), Chapter 650, Statutes of 1978) raised the public disclosure threshold for the names and addresses of campaign contributors to \$100. Adjusting those thresholds for inflation, \$50 in 1974 is approximately the equivalent of \$236 today, while \$100 in 1978 is approximately the equivalent of \$357 today. This bill proposes to raise the threshold at which contributions must be itemized for most committees to \$250, which is roughly in line with what the original disclosure thresholds were when adjusting for inflation.

By contrast, federal law requires campaign reports for political committees of federal election campaigns to disclose detailed information for contributions of \$200 or more. If the committee is supportive of the proposal to raise this itemized disclosure threshold, it may wish to consider whether it would be appropriate to raise the threshold to \$200, instead of \$100, so that it is consistent with the federal threshold.

For contributions that are made to a committee primarily formed to support or oppose a statewide ballot measure, however, this bill allows the FPPC, by regulation, to set the threshold at which contributions must be itemized, provided that the threshold cannot be less than \$500 nor more than \$2,500. This change in the threshold at which contributions must be itemized represents a significant increase from the thresholds that were originally established

when the PRA was enacted. By significantly increasing the dollar threshold for campaign contributions before the names and addresses of those contributors are required to be publicly disclosed, this bill could be viewed as contrary to the stated purpose of the PRA of ensuring that receipts in election campaigns are fully disclosed.

On the other hand, the current \$100 itemization threshold for contributions made to committees primarily formed to support or oppose statewide ballot measures is low enough that it could be susceptible to being struck down by a court. In fact, there is litigation pending in federal court dealing with this issue. On January 9, 2009, ProtectMarriage.com, a committee in support of Proposition 8 on the November 2008 statewide ballot, filed a lawsuit in the United States District Court for the Eastern District of California against the SOS and the FPPC (ProtectMarriage.com et al. v. Bowen et al.). The lawsuit sought to invalidate as unconstitutional the PRA's \$100 disclosure threshold for contributors to ballot measure committees. Although the District Court upheld the constitutionality of the PRA's campaign disclosure requirements in November 2011, the Plaintiffs subsequently appealed the District Court's decision. The case is currently pending before the Ninth Circuit Court of Appeals.

If the committee supports giving the FPPC the authority to set this particular disclosure threshold by regulation, and to adjust that threshold on a periodic basis, the committee may wish to consider whether the adjustments made by the FPPC should be limited to reflect a change in the Consumer Price Index (CPI). While the FPPC has statutory authority to adjust certain limits and thresholds in the PRA, those adjustments are required to be tied to changes in the CPI.

- 5) Committee Qualification Thresholds: This bill also seeks to increase the threshold of contributions received or independent expenditures made by an entity, from \$1,000 to \$2,000 in a calendar year, before that entity is considered a "committee," for the purposes of the PRA. When the PRA was originally enacted, those thresholds were set at \$500. In 1987, that threshold was raised to its current \$1,000 level through the passage of SB 1547 (Ellis), Chapter 632, Statutes of 1987. Adjusting those thresholds for inflation, \$500 in 1974 is approximately the equivalent of \$2361 today, while \$1000 in 1987 is approximately the equivalent of \$2049 today. The committee qualification thresholds proposed by this bill are roughly in line with what the original committee qualification thresholds were when adjusting for inflation. In support of updating the committee qualification thresholds, the FPPC argues that this change "will update the outdated committee qualification monetary threshold in a manner that balances the rights of smaller groups and grassroots advocates with the burdens imposed once an organization qualifies as a committee under the [PRA]."
- 6) Paper Copies of Campaign Reports: Under existing law, certain candidates and committees that file campaign reports online or electronically with the SOS are also required to file those reports on paper. This bill eliminates that requirement, except during times when the online or electronic system operated by the SOS is malfunctioning, unavailable, or otherwise not capable of receiving online or electronically filed statements.
- 7) Definition of a Candidate: The PRA provides that a person who becomes a candidate retains that status as a candidate under the PRA until that status is terminated pursuant to specified provisions. The determination of whether a person is a candidate under the PRA effects whether that person is required to file certain campaign reports and whether that person can

control a committee that makes independent expenditures. Regulations adopted by the FPPC provide that a candidate retains his or her status as a candidate until he or she leaves office. This bill codifies that determination.

- 8) Technical Errors: This bill contains two technical errors that committee staff recommends addressing should this bill move out of committee.

First, on page 16, line 35, committee staff recommends deleting the words "initiative or", as they are duplicative and unnecessary.

Second, on page 25, line 36, this bill contains a cross reference to a code section that does not exist. Committee staff recommends that this cross reference be replaced by a reference to the PRA, generally.

- 9) Related Legislation: SB 27 (Correa), which is pending in the Senate Elections & Constitutional Amendments Committee, revises the disclosure rules that apply to multipurpose organizations that make contributions and expenditures in California elections.

AB 800 (Gordon), which is also being heard in this committee today, permits the FPPC to seek injunctive relief to compel disclosure, among other provisions.

AB 914 (Gordon), which is also being heard in this committee today, requires specified nonprofit organizations that make campaign contributions, expenditures, or independent expenditures in California elections to file reports disclosing the donors to the nonprofit organization, as specified.

- 10) Previous Legislation: AB 1881 (Donnelly) of 2012, would have increased the threshold, from \$100 to \$5,000, at which the names and addresses must be publicly reported for campaign donors who contributed to committees that are not candidate controlled committees. AB 1881 failed passage in this committee on a 2-5 vote.

- 11) 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. Most amendments to the PRA that are not submitted to the voters, including 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 Common Cause (if amended)
Fair Political Practices Commission

Opposition

Center for Competitive Politics