

Date of Hearing: August 31, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 481 (Gordon) – As Amended: August 13, 2012

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: (May 12, 2011) SENATE: 38-0 (August 30, 2012)
(vote not relevant)

SUBJECT: Political Reform Act of 1974: campaign disclosure.

SUMMARY: Makes numerous substantive changes to state law governing independent expenditures (IEs) in campaigns.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Require every committee that makes an IE of \$1,000 or more within 90 days before the election involving the candidate or measure that the IE supports or opposes, to file a report publicly disclosing that IE within 24 hours, regardless of whether the committee is required to file campaign reports online or electronically with the Secretary of State (SOS).
- 2) Require every candidate, controlled committee, or committee that is primarily formed or existing primarily to support or oppose a candidate or measure, that receives a contribution of \$1,000 or more within 90 days before the election at which the candidate or measure is to be voted on, to file a report publicly disclosing the receipt of that contribution within 24 hours, regardless of whether the candidate or committee is required to file campaign reports online or electronically with the SOS. Require every political party committee that receives a contribution of \$1,000 or more within 90 days before a state election to file a report publicly disclosing the receipt of that contribution within 24 hours, regardless of whether the committee is required to file campaign reports online or electronically with the SOS.
- 3) Add the principal officers of campaign committees to a list of officials (including candidates, campaign treasurers, and elected officers) that are required to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to comply with the other provisions of the Political Reform Act (PRA). Define the term "principal officer" for the purposes of the PRA.
- 4) Require a specified person, who is affiliated with a campaign committee that is required to disclose an IE on a campaign statement or report, to sign a verification on a report prescribed by the Fair Political Practices Commission (FPPC), declaring that the person has not received unreported contributions or reimbursements for making the IE, and has not coordinated any expenditure made during the reporting period with the candidate, proponent of the measure, or opponent of the candidate or measure, that is the subject of the IE.
- 5) Make every advertisement that is paid for by an IE under specified circumstances, regardless of the medium, subject to an existing requirement that currently applies only to broadcast and

mass mailing advertisements, whereby the advertisement must include a disclosure of the name of the committee making the IE and the names of two largest contributors of \$50,000 or more to the committee making the IE, as specified.

- 6) Make corresponding changes.

EXISTING LAW:

- 1) Requires all candidates and committees that are required to file campaign reports in connection with a state elective office or state measure to file those reports online or electronically with the SOS if the cumulative amount of contributions received, expenditures made, loans made, or loans received is \$25,000 or more.
- 2) Requires general purpose committees, including political party committees and small contributor committees, that cumulatively receive contributions or make expenditures of \$25,000 or more to support or oppose candidates for any elective state office or state measures, to file campaign reports online or electronically with the SOS.
- 3) Requires slate mailer organizations to file campaign reports online or electronically with the SOS if the cumulative reportable payments received or made for the purposes of producing slate mailers is \$25,000 or more.
- 4) Requires a committee that makes an IE of \$1,000 or more, after the closing date of the last campaign statement required to be filed prior to the election but before election day, to report the expenditure within 24 hours of the time the expenditure is made.
- 5) Requires a committee that is required to file campaign reports online or electronically with the SOS to report any IE of \$1,000 or more made in the last 90 days prior to an election within 24 hours of the time the expenditure is made.
- 6) Requires a committee that receives a contribution of \$1,000 or more after the closing date of the last campaign statement required to be filed prior to the election, but before election day, to report the contribution within 24 hours of the time the contribution is received.
- 7) Requires a committee that is required to file campaign reports online or electronically with the SOS to report any contribution of \$1,000 or more received in the last 90 days prior to an election within 24 hours of the time the contribution is received.
- 8) Requires a broadcast or mass mailing advertisement supporting or opposing a candidate or ballot measure that is paid for by an IE to include a disclosure statement identifying the name of the committee making the expenditure and the names of the persons from whom the committee making the IE received its two highest cumulative contributions of \$50,000 or more during the 12-month period prior to the expenditure.

AS PASSED BY THE ASSEMBLY, this bill required a person who was collecting petition signatures to wear a badge indicating whether he or she was a paid signature gatherer or a volunteer signature gatherer, and required similar information be disclosed on any state or local initiative, referendum, or recall petition.

FISCAL EFFECT: According to the Senate Appropriations Committee, the FPPC indicates minor, absorbable General Fund costs.

COMMENTS:

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

More and more, voters receive information from or see advertisements funded by [IE] committees. As with any information, it is important to know the source. In this case, voters should be entitled to know who is responsible for and financing these campaigns. According to the [FPPC], [IEs] have been on the rise in California politics at both the state and local level for the past decade. In June 2010, the [FPPC] issued a finding that \$127 million had been spent on [IEs] in the previous ten years. Additional figures from the [FPPC] show that between the June primary and the November general election in 2010, more than \$29 million in [IEs], or nearly 23% of the prior decade's [IE] spending, was expended on the elections for four constitutional offices. Similarly, in 2006, the Los Angeles City Ethics Commission noted that "increasing numbers of candidates elected in Los Angeles since 2001 have been supported by independent spending, and few since that time have been successful without it."

The Political Reform Act (PRA) recognizes this form of political involvement, but decisional law has also made clear that [IEs] will continue to have a role in elections. The Supreme Court's 2010 decisions in *Citizens United v. FEC* and *SpeechNow.org v. FEC* effectively allowed corporations, unions, individuals, and associations to spend unlimited amounts of money from their general treasuries on [IEs] for or against candidates. The Court's decision in June to reverse the Supreme Court of Montana in *American Tradition Partnership, Inc. v. Bullock* signals that we are entering a new era of [IEs].

This growth of [IEs] makes appropriate disclosure all the more necessary. In order for voters to make fully informed decisions, it is important that they know, in a timely manner, who if not the candidate, is paying for the political messaging. AB 481 makes four distinct, but related changes to [IE] law. They are, in the order found in AB 481, as follows:

1. 24-Hour Reporting of [IEs] (SECTIONS 82036 and 82036.5)

At the state and local level virtually all [IEs] are made within the three months prior to an election. Under existing law applicable to state candidates or measures, [IEs] of \$1,000 or more made up to 90 days prior to an election must be reported within 24 hours. However, the law applicable to [IEs] on local candidates or measures, only requires reporting within 24 hours for the last 16 days before an election. AB 481 would amend the latter section, thereby standardizing the reporting time to 90 days prior to an election for both state and local candidates or measures. The bill would make a corresponding change to the

definition of “late contribution,” so that it too is consistent with the 90 days prior to an election 24-hour reporting requirement.

The effect of the change would be simplification for campaign report filing schedules, [FPPC] manuals, and advice. This change would also provide the public with increased disclosure about contributors to [IE] committees, thereby allowing the public to make more informed decisions about issues and candidates.

2. [IE] Committees: Principal Officers (SECTIONS 82047.6, 84102, and 84104)

According to the [FPPC], there have been a significant number of enforcement situations where [IE] committees are no longer active or have terminated by the time violations are discovered or investigated. In these circumstances, there may be no party left for the [FPPC] to hold accountable for PRA violations. The ability for an [IE] committee to violate the law then disband and avoid liability is certainly inconsistent with the spirit of the law.

AB 481 addresses the most direct remedy for this situation, which is to establish principal officer liability for PRA violations committed by their committees. The bill adds principal officers to the existing law campaign statement-related requirements of candidate, treasurers, and elected officers. Beyond the circumstance where a committee is no longer active or has terminated, the inclusion of principal officer liability should also have the effect of deterring violations such as failing to disclose contributions and expenditures, and failing to properly identify donors on campaign advertisements.

3. [IE] Source Verification (SECTION 84213)

In recent years, the [FPPC] has undertaken more money laundering investigations and related administrative prosecutions. AB 481 would amend the PRA to require [IE] committees and major donors committees to verify that they have used their own funds to qualify as a major donor or [IE] committee. It would do so by directing the [FPPC] to create a new verification form that would be filed with the [FPPC]. By requiring a signed verification, the bill would increase accountability of existing law regarding the true source of the contribution or expenditure.

4. Advertisement Disclosure for [IEs] (SECTION 84506)

For purposes of [IE] disclosure, an advertisement “is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure or ballot measures.” Under existing law, advertisements paid for by an [IE] are required to include the name of the committee that paid for the advertisement and the names of the top two \$50,000 contributors. There is, however, an anomaly in the law – as the disclosure applies only to “broadcast or mass mailing” advertisement. Therefore, these disclosure provisions do not apply to newspaper, other print advertisements, or billboards.

AB 481 would require that any advertisement paid for by an [IE] be required to include the name of the committee that paid for the ad and the names of the top two \$50,000 contributors. There does not appear to be a rationale why the law does not extend to all forms of advertisement, nor should the distinction exist. Moreover, this change is consistent with existing law regarding “primarily formed committees,” which already requires disclosure of the top two \$50,000 donors to any advertisement for or against a ballot measure. The effect of the change is to make it easier for the public to know who is responsible for an advertisement and the source of the contributions being made to fund the [IE]. In turn, voters can then make more informed decisions about issues and candidates.

- 2) Proposition 34 and Growth of IEs: In 2000, the Legislature passed and the Governor signed SB 1223 (Burton), Chapter 102, Statutes of 2000, which became Proposition 34 on the November 2000 general election ballot. The proposition, which passed with 60 percent of the vote, made numerous substantive changes to the PRA, including enacting new campaign disclosure requirements and establishing new campaign contribution limits, limiting the amount that individuals could contribute to state campaigns (ranging from \$3,000 to \$20,000 per election at the time, depending on the office).

A study done by this committee in 2006 and a subsequent report by the FPPC found that since campaign contribution limits went into effect in California with the passage of Proposition 34 at the November 2000 statewide general election, the amount of campaign spending done through IEs increased by more than 6,000 percent in Legislative elections, and more than 5,500 percent in statewide elections. In hotly contested campaigns for seats in the Legislature, it is not uncommon for spending through IEs to exceed the total amount of spending by all candidates in the race. On the other hand, prior to the enactment of contribution limits as a part of Proposition 34, IEs were relatively rare. In the March 2000 and November 2000 elections, the last two elections that were not subject to the Proposition 34 campaign contribution limits, the total amount of money spent on IEs for all legislative races was less than \$500,000.

- 3) 24 Hour Reporting of IEs and Contributions: Under existing law, only committees that are required to file campaign statements online or electronically with the SOS are required to report, within 24 hours, all contributions and IEs of \$1,000 or more that are received or made during the last 90 days before an election. All other committees are required to report, within 24 hours, all contributions and IEs of \$1,000 or more that are received or made in the last 16 days before the election.

The requirement for committees to file campaign statements online or electronically with the SOS generally applies only to committees that make contributions or expenditures in connection with races for elective *state* offices or *state* measures, and that have received contributions or made expenditures totaling \$25,000 or more in connection with state offices or state measures. Committees that are involved exclusively in local races, and committees that are involved in state races but that have not reached the \$25,000 threshold, are not subject to the requirement that campaign statements be filed online or electronically with the SOS, and therefore are subject to a 24 hour reporting requirement for the receipt of contributions of \$1,000 or more, and the making of IEs of \$1,000 or more, only during the last 16 days before the election.

This bill makes all committees, regardless of whether the committee is active in state or local races, and regardless of the cumulative amount of contributions received and expenditures made, subject to the 24 hour reporting requirements for the last 90 days before an election.

- 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. 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.
- 5) Prior Version: The prior version of this bill, which was approved by the Assembly, dealt with individuals who collect signatures on initiative, referendum, or recall petitions. Those provisions were removed from this bill in the Senate, and the current contents were added. As a result, this bill has been re-referred to this committee pursuant to Assembly Rule 77.2.

REGISTERED SUPPORT / OPPOSITION:

Support

Fair Political Practices Commission (sponsor)
Secretary of State Debra Bowen

Opposition

None on file.

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