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Assembly
California Legislature

ASSEMBLY COMMITTEE ON
ELECTIONS AND REDISTRICTING
PAUL FONG, CHAIR

AGENDA

1:30 P.M. – June 24, 2014
State Capitol, Room 444

BILLS HEARD IN SIGN-IN ORDER

Item	Bill No. & Author	Summary
1.	SB 52 (Leno)	Political Reform Act of 1974: campaign disclosures.
2.	SB 113 (Jackson)	Elections: voter registration.
3.	SB 831 (Hill)	Political Reform Act of 1974.
4.	SB 844 (Pavley)	Elections: ballot measure contributions.
5.	SB 952 (Torres)	Prohibited financial interests: aiding and abetting.
6.	SB 1063 (Block)	Voter registration: juvenile detention facilities.
7.	SB 1101 (Padilla)	Political Reform Act of 1974.
8.	SB 1103 (Padilla)	Political Reform Act of 1974: candidacy for elective state office.
9.	SB 1104 (Padilla)	Political Reform Act of 1974: campaign communication disclosure.
10.	SB 1253 (Steinberg)	Initiative measures.
11.	SB 1365 (Padilla)	California Voting Rights Act of 2001.
12.	SB 1442 (Lara)	Political Reform Act of 1974: campaign statements.
13.	SB 1443 (De León)	Political Reform Act of 1974: gift limitations.

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 52 (Leno and Hill) – As Amended: June 18, 2014

SENATE VOTE: 28-11

SUBJECT: Political Reform Act of 1974: campaign disclosures.

SUMMARY: Changes the content and format of disclosure statements required on advertisements supporting or opposing ballot measures. Specifically, this bill:

1) Repeals existing requirements governing disclaimers and disclosure statements that must appear on campaign advertisements relating to ballot measures, including all of the following:

   a) A requirement that an advertisement for or against a ballot measure include a disclosure statement identifying the two highest cumulative contributors of $50,000 or more to the committee funding the advertisement;

   b) A requirement that a committee that supports or opposes one or more ballot measures must name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of $50,000 or more in any reference to the committee required by law; and,

   c) A requirement that an advertisement supporting or opposing a ballot measure that is paid for by an independent expenditure (IE) must 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.

2) Requires an advertisement regarding a ballot measure that is disseminated by a political party or candidate-controlled committee to include a disclosure statement that reads as follows:

   "Paid for by [name of the committee that paid for the advertisement]."

3) Requires an advertisement regarding a ballot measure that is disseminated by a committee other than a political party or candidate controlled committee to include a disclosure statement in accordance with the following:

   a) In the case of a radio advertisement or a prerecorded telephonic message, the disclosure statement shall read as follows:

      "This ad has major funding from [state names in descending order of identifiable contributors who have made the two largest cumulative contributions to the committee that paid for the advertisement]. Paid for by [name of the committee that paid for the

advertisement]."

i) Provides that only one identifiable contributor is required to be included in a disclosure statement if there is only one identifiable contributor to the committee that paid for the ad or if the ad lasts 15 seconds or less.

ii) Provides that if there are no identifiable contributors to the committee that paid for the ad, or if the content of the ad names each of the identifiable contributors required to be named in the disclosure statement, the ad may include only the following sentence of the disclosure statement:

"Paid for by [name of the committee that paid for the advertisement]."

b) In the case of a television or video advertisement, the disclosure statement shall read as follows:

Ad Paid for by a Committee whose Top Funders are:

1. [Identifiable contributor who made the largest contribution to the committee]
2. [Identifiable contributor who made the second largest contribution to the committee]
3. [Identifiable contributor who made the third largest contribution to the committee]

Funding Details At: [website containing contributor information].

Paid for by [name of the committee that paid for the advertisement].

c) In the case of a mass mailing or print advertisement designed to be distributed personally, the disclosure statement shall read as follows:

Ad Paid for by a Committee whose Top Funders are:

1. [Identifiable contributor who made the largest contribution to the committee]
2. [Identifiable contributor who made the second largest contribution to the committee]
3. [Identifiable contributor who made the third largest contribution to the committee]

Funding Details At: [website containing contributor information].

Paid for by [name of the committee that paid for the advertisement].

i) Provides that if the advertisement is five inches tall or less, it does not need to include the "Funding Details" line.

ii) Provides that if the advertisement is four inches tall or less, it needs to include only the two top funders, instead of the three top funders.

iii) Provides that if the advertisement is three inches tall or less, it needs to include only the top funder, instead of the three top funders.

4) Imposes the following requirements on the disclosure statements required by this bill:

   a) In the case of a radio advertisement or prerecorded telephonic message, the statement must be at the beginning or end of the advertisement, read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement.

   b) In the case of a television or video advertisement, the statement must be included in a disclosure area with a solid black background on the entire bottom one-third of the screen at the beginning or end of the advertisement for a minimum of five seconds in the case of an advertisement lasting 30 seconds or less, or for a minimum of 10 seconds in the case of an advertisement lasting longer than 30 seconds.

   c) In the case of a mass mailing or print advertisement designed to be distributed personally:

      i) In the case of an advertisement disseminated by a political party or candidate-controlled committee, the statement must be included in a disclosure area on the outside display surface of the advertisement; and,

      ii) In the case of an advertisement disseminated by a committee other than a political party or candidate-controlled committee, the statement must be included in a disclosure area on the largest page of the advertisement with a solid white background with black text.

5) Specifies requirements for the size, color, and placement of the text of disclosure statements required by this bill.

6) Provides that the disclosure of the name of an identifiable contributor under this bill does not need to include legal terms such as "incorporated," "committee," "political action committee," or "corporation" or their abbreviations, unless the term is part of the contributor's name in common usage or parlance.

7) Provides that if this bill requires disclosure of the name of an identifiable contributor that is a sponsored committee that has a single sponsor, only the name of the committee's sponsoring organization shall be disclosed.

8) Provides that if an identifiable contributor that is required to be included in a disclosure statement pursuant to this bill is the parent of a subsidiary corporation whose economic interest is more directly impacted than the parent by a measure that is the subject of the advertisement, then the subsidiary's name shall be disclosed.

9) Defines the following terms, for the purposes of this bill:

   a) "Advertisement" to mean any general or public communication that is either of the following:

      i) Authorized and paid for by a committee for the purpose of supporting or opposing a candidate for elective office; or,

ii) A ballot measure advocacy communication supporting or opposing the qualification, passage, or defeat of a ballot measure.

b) Provides that the term "advertisement" does not include any of the following:

i) A communication from an organization, other than a political party, to its members;

ii) A campaign button smaller than 10 inches in diameter; a bumper sticker smaller than 60 square inches; or a small tangible promotional item such as a pen, pin, or key chain, upon which the disclosures required by law cannot be conveniently printed or displayed;

iii) Clothing apparel;

iv) Sky writing;

v) An electronic media communication, if inclusion of disclosures is impracticable or would severely interfere with the committee's ability to convey the intended message because of the nature of the technology used to make the communication; or,

vi) Any other advertisement as determined by regulations of the Fair Political Practices Commission (FPPC).

c) "Cumulative contributions" to mean the cumulative amount of contributions received by a committee beginning 12 months prior to the date the committee made its first expenditure for the purpose of supporting or opposing a candidate for elective office or for the purpose of qualification, passage, or defeat of a ballot measure, and ending seven days before the time the advertisement is disseminated or broadcast.

d) "Identifiable contributor" to mean a person that is the original source of funds for contributions received by a committee that cumulatively total $50,000 or more, notwithstanding the fact that the funds were transferred, in whole or in part, through one or more other committees or persons.

10) Requires the FPPC, not later than January 1, 2016, to promulgate regulations related to the reporting and tracking of funds transferred by an identifiable contributor to committees and other persons.

11) Requires disclosure statements to be updated to reflect any changes in the order of identifiable contributors as follows:

a) In the case of television, radio, or other electronic media advertisements, within seven business days, or within five business days if the order of contributors changes within 30 days of an election; and,

b) In the case of a print advertisement, including non-electronic billboards, prior to placing a new or modified order for additional printing of the advertisement.

12) Permits the FPPC to promulgate regulations to require disclosures on all forms of advertisements regarding ballot measures not covered by this bill, including electronic media advertisements and billboards. Requires the regulations, if feasible, to require the listing of the name of the committee and as many of the three identifiable contributors that made the largest cumulative contributions as possible in a conspicuous manner, unless the committee that paid for the advertisement is a political party or candidate-controlled committee, in which case only the name of the committee must be shown. Provides that the disclosure area may occupy no more than 10 percent of the advertisement.

13) Makes the following findings and declarations:

a) Ever-increasing amounts are raised and spent in support of and opposition to state and local ballot measures, especially in the form of advertisements. The outcomes of such elections are disproportionately impacted by whichever side is able to raise and spend the most money to advance its position.

b) Ever-increasing amounts are spent on California campaigns by persons who do one or more of the following:

i) Frequently use their wealth to fund local and state ballot measures designed to advance their own economic interests.

ii) Increasingly avoid having their identities disclosed in election-related advertisements by channeling funds through one or more persons before those funds are received by a committee, thereby undermining the purpose and intent of laws requiring disclosure on such advertisements.

iii) Spend extraordinary amounts of money running election-related advertisements while hiding behind dubious and misleading names, including, but not limited to, advertisements by primarily formed committees and general purpose committees.

iv) Increasingly evade disclosure by funding advertisements designed to persuade voters without expressly advocating support or opposition.

c) The activities described in (b) cause the public to become increasingly disaffected with the democratic process, discouraging participation in elections and coloring public perceptions of the legitimacy and integrity of state and local government.

d) The people of California and their government officials have a compelling interest in knowing the true and original source of committee funding and receiving clear information identifying the largest original contributors responsible for political advertisements funded by such committees.

e) The disclosure of original contributors on advertisements serves the following important governmental and societal purposes:

i) Providing the people and government officials current and easily accessible information regarding who is funding advertisements that are intended to influence

their votes on ballot measures.

ii) Enabling the people and government officials to identify potential bias in advertisements to assist them in making more informed decisions and giving proper weight to different speakers and messages.

iii) Deterring actual corruption and avoiding the appearance of corruption by providing increased transparency of contributions and expenditures.

iv) Improving the people's confidence in the democratic process and increasing their motivation to actively participate in that process by regular voting and other forms of civic engagement.

v) Promoting compliance with and detecting violations of the Political Reform Act (PRA), while also addressing the problems and advancing the state interests described in the PRA.

14) Makes technical and conforming changes.

EXISTING LAW:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.

2) Requires an advertisement for or against any ballot measure to include a disclosure statement identifying any person whose cumulative contributions are $50,000 or more. Provides that if there are more than two donors of $50,000 or more, the disclosure only needs to include the highest and second highest donors in that order.

3) Requires a committee that supports or opposes one or more ballot measures to name itself using a name or phrase that identifies the economic or other special interest of its major donors of $50,000 or more. Provides that if the major donors of $50,000 or more share a common employer, the identity of the employer must also be disclosed.

4) 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.

5) Provides that when a disclosure of the top two donors is required on an advertisement pursuant to either of the above provisions, only the largest donor needs to be disclosed on an advertisement that is an electronic broadcast of 15 seconds or less or a print advertisement of 20 square inches or less.

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

COMMENTS:

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

> Campaign spending has reached unprecedented levels in recent years. In 2012, over $475 million was spent on ballot measures alone in California. Furthermore, many ballot measure committees and general purpose committees that contribute to them are purposely established to disguise who exactly is funding the campaign messages that voters see and hear, hiding behind vague names such as "Californians for Progress." Money is often purposefully channeled through multiple layers of committees or organizations to make it harder to trace and disclose. As a result, the March 2013 PPIC Poll found that 84% of all likely voters, across political ideology, want increased public disclosure of funding sources for signature gathering and initiative campaigns.
>
> While it is essential for individuals and organizations in a democracy to be able to communicate effectively and efficiently with voters, it is equally important that voters are not intentionally deceived and elections are not decided upon misinformation. SB 52 will increase transparency of campaign spending in elections by disclosing major contributors on campaign advertisements for and against ballot measures to ensure that the true original contributors are known by voters when they see the ads. SB 52 requires all state and local ballot measure ads in California to clearly and prominently list their top three original funders of $50,000 or more in the case of television and print ads, or top two funders in the case of radio ads. Strengthening disclosure requirements on ballot measure advertisements is necessary to help Californians be better informed and feel more represented by their government.
>
> Current law does not require disclosure of any major funders for ads that clearly refer to ballot measures that are meant to influence the public on their vote, but that do not expressly advocate for their passage or defeat. SB 52 resolves this loophole by requiring clear and prominent disclosure of the top funders on "ballot measure advocacy communications," which means "an advertisement that is disseminated, broadcast, or otherwise communicated within 45 days of the election concerning a measure that clearly refers to the measure and that a reasonable person would interpret the overall message as being for or against the measure."
>
> SB 52 will also ensure that the top contributors disclosed on ballot measure advertisements are truly the top three original funders of the advertisement, not misleading committee or nonprofit names. Current disclosure reporting law has a fundamental limitation in that ballot measure ads must only show their direct contributors that gave them money, not the original contributors of that money – i.e., the original individuals, corporations or unions that gave it. SB 52 ensures that ballot measure disclosure will follow the money – no matter how many committees or other persons funds are transferred through.

2) Existing Political Advertising Disclaimers: Under the PRA, committees must put "paid for by" disclaimers on campaign advertising, including campaign mailers, radio and television ads, telephone robocalls, and electronic media ads. The following, which is based on a publication produced by the FPPC, discusses disclaimer requirements for committees that purchase advertisements or circulate material supporting or opposing a state or local candidate or ballot measure in California.

When is a disclaimer required on political ads or materials?

Political committees must include the following disclaimers:

- Mass mailings, including blast campaign emails, must include identification of the sender.

- Paid telephone calls must identify the candidate or committee who paid for or authorized the call.

- Radio and television ads must include a "paid for by" disclaimer under Federal Communications Commission (FCC) law.

- Ballot measure ads and independent expenditure ads must include "paid for by committee name" and such ads by primarily formed committees must also list top two donors of $50,000 or more. This applies to television, radio, and electronic media advertisements, robocalls, mass mailings, and print ads such as newspaper ads, billboards and yard signs.

Are the PRA's disclaimer rules the same for all committees and all ads?

No. Basic disclaimer rules apply to campaign materials disseminated by a candidate for their own election campaign because it is generally clear to the public that the candidate is sending the communication. Stricter disclaimer rules apply to (1) ballot measure advertisements and (2) independent expenditure advertisements on candidates and ballot measures, because it is less clear to the public who is responsible for these ads.

What does the disclaimer have to state?

The basic disclaimer must state: "Paid for by committee name." Ballot measure and independent expenditure ads paid for by primarily formed committees must also list top two donors of $50,000 or more and special committee name rules apply. All independent expenditure ads for or against a candidate must state that the ad was: "Not authorized by a candidate or a committee controlled by a candidate."

How must the disclaimer appear?

Disclaimers on political ads and literature must be clear and conspicuous so as to be understood by the intended public. Written disclaimers must be printed clearly and legibly. Spoken disclaimers must be clearly audible and intelligible.

Updating a disclaimer

When a committee's name changes because of new top donors or otherwise, advertisement disclaimers must be revised. Television, radio, electronic media, or robocalls must be amended within five calendar days. Print media, mass mailings, or other tangible items must be amended every time an order to reproduce is placed.

Advertisements in Languages Other than English

Disclaimers on political advertisements should be written or spoken in the same language used in the advertisement.

Does a disclaimer have to appear on ALL printed materials or campaign items?

No. A disclaimer is not required on regular-size campaign buttons, pins, bumper stickers, or magnets. It is not required on pens, pencils, rulers, mugs, potholders, key tags, golf balls and similar small campaign promotional items where a disclaimer cannot be conveniently printed.

The disclaimer is not required on t-shirts, caps, hats, and other articles of clothing; skywriting and airplane banners; or committee checks and receipts.

3) Constitutional Issues: This measure could be interpreted as a violation of the United States and California Constitutions' guarantees to free speech. While the right to freedom of speech is not absolute, when a law burdens core political speech, the restrictions on speech generally must be "narrowly tailored to serve an overriding state interest," McIntyre v. Ohio Elections Commission (1995), 514 US 334.

In ACLU v. Heller (2004), 378 F.3d 979, the Ninth Circuit Court of Appeals struck down a Nevada law that required any published material concerning a campaign to identify the person paying for the publication. In that case, the state of Nevada argued that its law served three state interests, including helping voters evaluate the usefulness of information in a campaign communication, preventing fraud and libel, and furthering enforcement of disclosure and contribution election laws. The court concluded that Nevada failed to demonstrate that its statute was "narrowly tailored to serve an overriding state interest" in accordance with the test established in McIntyre. The court did note in its ruling, however, that "[a]n on-publication identification requirement carefully tailored to further a state's campaign finance laws, or to prevent the corruption of public officials, could well pass constitutional muster."

Additionally, supporters of this bill have argued that, notwithstanding the decision in the Heller case, the provisions of this bill nonetheless are constitutional in light of disclosure requirements that were upheld by the United States Supreme Court in Citizens United v. Federal Election Commission (2010), 130 S.Ct. 876. While the Citizens United case is probably best known as the case in which the United States Supreme Court struck down a 63 year old law that prohibited corporations and unions from using their general treasury funds to make IEs in federal elections, in the same case, the Court also upheld certain disclaimer

and disclosure provisions of the federal Bipartisan Campaign Reform Act (BCRA) of 2002, also sometimes called "McCain-Feingold" for its Senate authors.

The Citizens United case involved a nonprofit corporation (Citizens United) that sought to run television commercials promoting a film it produced that was critical of then-Senator and presidential candidate Hillary Clinton. Because federal law prohibited corporations and unions from using their general treasury funds to make expenditures for "electioneering communications" or for communications that expressly advocated the election or defeat of a candidate, Citizens United was concerned that the television commercials promoting its film could subject the corporation to criminal and civil penalties. Under BCRA, the film produced by Citizens United and the television commercials promoting that movie were subject to certain disclaimer and disclosure requirements—specifically, a requirement that televised electioneering communications must include a disclaimer indicating the name of the person or organization that was "responsible for the content" of the advertising. Additionally, each communication was required to include a statement that the communication was "not authorized by any candidate or candidate's committee," and was required to display the name and address of the person or group that funded the advertisement. Finally, under a different provision of BCRA, any person who spent more than $10,000 in a calendar year is required to file a disclosure statement with the Federal Elections Commission (FEC) identifying the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of contributors in certain circumstances.

Citizens United (the corporation) challenged these disclaimer and disclosure requirements as applied to the film and the television advertisements promoting that film. Specifically, Citizens United argued that the disclaimer and disclosure requirements were unconstitutional on the grounds the governmental interest in providing information to the electorate did not justify requiring disclaimers for commercial advertisements. The court disagreed, finding that the disclaimers provided the electorate with important information, helping to ensure that voters were informed, and "avoid[ed] confusion by making clear that the ads are not funded by a candidate or political party."

While some of the requirements of this bill are comparable to provisions of federal law that were at issue in Citizens United (for instance, certain disclaimer requirements included in this bill are similar to those required under federal law that were upheld by the court in Citizens United), other requirements in this bill go beyond what is required by federal law, and beyond what was considered by the court in Citizens United. Specifically, the provisions of this bill that require the identities of certain campaign contributors—entities that were not individually responsible for the content or the production of the advertising—to be included in campaign advertising go beyond what is required by federal law. In light of that fact, while the court in Citizens United did uphold certain federal disclaimer requirements, it is unclear whether the broader requirements in this bill would similarly be upheld against a constitutional challenge on the grounds that those requirements violate the First Amendment.

4) Ballot Measure Advertisements Only: Unlike prior versions of this bill, and of similar previous legislation (see below), this bill does not apply to campaign advertisements related to candidates. The existing requirements that apply to those advertisements would continue to apply to candidate ads under this bill. Instead, the new on-advertisement disclosure

requirements contained in this bill apply only to advertisements related to ballot measures.

5) FPPC Discretion: This bill provides the FPPC with a significant amount of discretion and authority to determine how key portions of this bill will be implemented. For instance, this bill requires an advertisement to include the name of a person who is "the original source of funds" for contributions received by the committee that pays for the advertisement, notwithstanding the fact that the funds were transferred through one or more other committees or persons. This bill does not, however, establish the methodology for reporting and tracking of funds that are transferred through committees so that the "original source of funds" can be determined, but instead tasks the FPPC with developing regulations to create such a methodology.

   Furthermore, this bill provides that if an identifiable contributor that is required to be disclosed in a campaign advertisement is the parent of a subsidiary corporation whose economic interest is more directly impacted than the parent by the ballot measure that is the subject of the advertisement, then the subsidiary's name shall be disclosed on the advertisement. However, this bill does not define the term "economic interest," nor does it establish a method for determining which entity's economic interest would be more directly impacted. As a result, these details would need to be determined by the FPPC through the adoption of regulations or the issuance of advice.

6) Changes to Findings and Technical Amendments: In order to ensure that one of the legislative findings in this bill more precisely describes the research that has been submitted by the author and sponsor of this bill, committee staff recommends the following amendment:

   On page 3, lines 7 to 8, strike out "whichever side is able to raise and spend the most money to advance its position" and insert:

   campaign expenditures in support of and in opposition to these measures

   In addition, committee staff recommends the following technical amendments to this bill:

   On page 11, line 19, strike out "8.5" and insert:

   93 square

   On page 11, lines 20-21, strike out "8.5 inches by 11" and insert:

   93 square

7) Previous Legislation: This bill is similar to AB 1148 (Brownley) and AB 1648 (Brownley) from the 2011-2012 Legislative session. AB 1148 was approved by this committee by a 5-0 vote, but failed passage on the Assembly Floor. AB 1648 was approved by this committee by a 4-2 vote, and was approved on the Assembly Floor by a 50-26 vote, but was not heard in the Senate.

   SB 27 (Correa), Chapter 16, Statutes of 2014, establishes conditions under which a

multipurpose organization that makes campaign contributions or expenditures is required to disclose names of its donors. One provision of SB 27 requires a committee that is primarily formed to support or oppose a state ballot measure or state candidate that raises $1,000,000 or more for an election to maintain an accurate list of the committee's top 10 contributors, and requires that list to be posted on the FPPC's website. This bill requires the disclosure statements on certain types of advertisements to include a link to that contributor list on the FPPC's website.

8) 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

California Clean Money Campaign (Sponsor)
In addition, the California Clean Money Campaign submitted copies of petitions signed by more than 5,000 individuals in support of SB 52
Brennan Center for Justice (prior version)
California Alliance for Retired Americans (prior version)
California Church IMPACT (prior version)
California Common Cause
California Federation of Interpreters (prior version)
California Forward Action Fund (prior version)
California League of Conservation Voters (prior version)
California National Organization for Women (prior version)
California OneCare (prior version)
California State Retirees (prior version)
CALPIRG (prior version)
City of Watsonville (prior version)
Consumer Federation of California (prior version)
Courage Campaign (prior version)
Endangered Habitats League (prior version)
Fresno Stonewall Democrats (prior version)
Friends Committee on Legislation of California (prior version)
Global Exchange (prior version)
Green Chamber of Commerce (prior version)
Insurance Commissioner Dave Jones (prior version)
Jericho (prior version)
League of Women Voters of California (prior version)
Los Angeles County Democratic Party (prior version)
Lutheran Office of Public Policy (prior version)
MapLight (prior version)
National Council of Jewish Women (prior version)
Pacific Palisades Democratic Club (prior version)

Progressives United (prior version)
Public Citizen (prior version)
Redwood Empire Business Association (prior version)
Rootstrikers (prior version)
San Diego County Democratic Party (prior version)
Southwest California Synod Evangelical Lutheran Church in America (prior version)
Southwest Voter Registration Education Project (prior version)
Union of American Physicians and Dentists/AFSCME Local 206 (prior version)
United Teachers Los Angeles (prior version)
10 individuals (prior version)

Opposition

Howard Jarvis Taxpayers Association

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

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 113 (Jackson) – As Amended: June 17, 2014

SENATE VOTE: 24-8

SUBJECT: Elections: voter registration.

SUMMARY: Expands pre-registration by authorizing a 16 year old to pre-register to vote once pre-registration is in effect, provided he or she meets all other eligibility requirements, as specified. Specifically, this bill:

1) Lowers the minimum age for submitting an affidavit of registration for purposes of pre-registering to vote from 17 to 16 years of age.

2) Requires a county elections official, in lieu of sending a voter notification card required by current law, to send a voter pre-registration notice to a person under 18 years of age who submits an affidavit of registration in accordance with existing law or the provisions of this bill, upon the determination that the affidavit of registration is properly executed and that the person otherwise satisfies all eligibility requirements to vote. Requires the county elections official to send the voter pre-registration notice by nonforwardable, first-class mail, address correction requested.

3) Creates a pre-registration voter notification card and requires the card to be sent to a person under 18 years of age who submits an affidavit of registration in accordance with existing law or the provisions of this bill. Requires the pre-registration voter notification card to be in the following form:

VOTER NOTIFICATION

Thank you for registering to vote. You may vote in any election held on or after your 18th birthday.

Your party preference is: (Name of political party)

Before any election in which you are eligible to vote, you will receive a sample ballot and a voter pamphlet by mail.

If information on this card is incorrect, please contact our office or update your registration at the Internet Web site of the Secretary of State (SOS).

4) Provides that a county elections official is not required to mail a residency confirmation postcard pursuant to existing law to any person under 18 years of age who has submitted a properly executed affidavit of registration pursuant to the provisions of this bill and who will not be 18 years of age on or before the primary election.

5) Makes other corresponding changes.

EXISTING LAW:

1) Permits a person who is a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election to register to vote.

2) Requires states to implement a statewide voter registration database, as specified, pursuant to the federal Help America Vote Act of 2002 (HAVA).

3) Allows a person who is at least 17 years old and otherwise meets all voter eligibility requirements to register to vote. Provides that the registration will be deemed effective as soon as the affiant is 18 years old at the time of the next election. Requires the registrant to provide current information to the county elections official before the registration becomes effective if the information in the current affidavit is incorrect. Provides that these provisions of law shall become operative only if the SOS certifies that the state has a statewide voter registration database that complies with HAVA.

4) Requires the local registrar of births and deaths to notify the county elections official monthly of all deceased persons 17 years of age and over whose deaths were registered with him/her or of whose deaths he/she was notified by the state registrar of vital statistics.

5) Requires the county elections official, upon receipt of a properly executed affidavit of registration or address correction notice or letter, as specified, to send the voter a voter notification card. Requires the notification card to state the party preference for which the voter has registered in the following format: Party: (Name of political party). Requires the notification card to be in the following form:

VOTER NOTIFICATION

You are registered to vote. The party preference you chose, if any, is on this card. This card is being sent as a notification of:

1. Your recently completed affidavit of registration.

OR,

2. A change to your registration because of an official notice that you have moved. If your residence has not changed or if your move is temporary, please call or write to our office immediately.

OR,

3. Your recent registration with a change in party preference. If this change is not correct, please call or write to our office immediately.

You may vote in any election held 15 or more days after the date on this card.

Your name will appear on the index kept at the polls.

Please contact our office if the information shown on the reverse side of this card is incorrect.

FISCAL EFFECT: According to the Senate Appropriations Committee, unknown, potentially less than $150,000 in reimbursable mandated costs to county elections officials. (General Fund) Partial offsetting costs from not registering these same voters in later years. (General Fund)

Actual costs vary by county and will depend on whether youth will pre-register to vote by mailing in voter registration cards, or by using the online voter registration process through the SOS's website.

COMMENTS:

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

> California has one of the lowest voter registration rates in the nation, and youth aged 18-24 years old stand out as the group that is registering at a far lower rate than any other age group.
>
> Even in the presidential election year of 2012, while nearly 80% of Californians were registered to vote, only 62% of 18-to-24-year-olds were registered.
>
> Studies have shown that the earlier people are introduced to voting, the more likely they are to become life-long participants in democracy.
>
> SB 113 would not change the voting age, which is 18. But it would allow youth to pre-register to vote either online, by mail, or at the DMV, beginning at age 16. Assuming they meet all eligibility requirements, once they turn 18, their registration would become active.
>
> While many voter registration opportunities exist in college, only half of all California adults attend college. When incorporated into high school civics classes, pre-registration provides an opportunity to engage a diverse group of young people preparing to become voters.

2) VoteCal Status: The SOS has been in the process of implementing a new statewide voter registration database for several years, as required by the HAVA. After difficulties with the prior vendor and the termination of that contract, the SOS recently announced the selection of a new contractor to develop the new VoteCal statewide voter registration database. The Department of General Services approved the contract on March 6, 2013. The SOS estimates that VoteCal will be fully implemented by 2016. California's existing pre-registration law and the provisions of this bill will not go into effect until the SOS certifies that the VoteCal system is complete.

3) Notification Provided to Voters: Existing law requires a county elections official to send a voter a voter notification card upon registration or re-registration, as specified. Existing law requires the notification to be sent by nonforwardable, first-class mail, address correction requested. Additionally, current law prescribes the notification card form and specifically requires the card to state that it is being sent as a notification of 1) a recent completed

affidavit of registration, 2) a change to registration because of an official notice that the voter has moved, as specified, or 3) a recent registration with change in party preference. Additionally, the card states that if any of the information on this card is incorrect to contact the county elections official immediately.

This bill creates a new voter notification card, called a voter pre-registration notice, and requires this notice to be sent to those that are under the age of 18 and have pre-registered to vote, as specified. This bill provides that the voter pre-registration notice will be sent upon the determination that the affidavit of registration is properly executed and that the person otherwise satisfies all eligibility requirements to vote. According to the proponents of the bill, this bill aims to provide clearer notification to individuals who have pre-registered to vote by requiring county elections officials to send individuals that are under the age of 18 and pre-registered to vote a separate pre-registration notice that is different from the general voter notification card sent to voters. The voter notification card currently sent to a voter lists three different reasons why the notice was sent - either the notification was sent because the individual 1) recently completed an affidavit of registration, 2) there was a change to the voter's registration because of an official notice that the voter has moved, as specified, or 3) the voter's recent registration with change in party preference. Sending a separate voter pre-registration notice is important because it is vital that it is clear to the pre-registrant that he or she is pre-registered to vote, but is not able to vote until an election held on or after the registrant's 18th birthday.

While the author's intent to provide clearer notification to pre-registered voters is laudable, it is unclear whether this bill will place an extra burden on county elections officials as it requires them to send out different notifications to pre-registrants.

4) Pre-Registration Efforts in Other States and in California: California law permits a person who is at least 17 years old and otherwise meets all voter eligibility requirements to register to vote, as specified. Additionally, according to the National Conference of State Legislatures (NCSL), at least 10 other states allow 17 year olds to pre-register to vote (Alaska, Georgia, Iowa, Louisiana, Maine, Missouri, Nebraska, Oregon, Texas, and West Virginia). Moreover, at least seven other states permit 16 year olds to pre-register to vote (Colorado, Delaware, Florida, Hawaii, Maryland, North Carolina, and Rhode Island, and the District of Columbia). NCSL also reports that other states, including Kansas, Minnesota, Nevada, and Wyoming, do not establish a specific pre-registration age limit.

5) Technical Amendment: The author and sponsor of this bill request a minor technical amendment to clarify that a county elections official is required to send a voter pre-registration notice upon the determination that the affidavit of registration is properly executed and that the person meets all eligibility requirements to vote except that he or she is under 18 years of age. If this bill is approved by this committee, the committee may wish to amend the bill as follows:

   On page 7, in line 32, after the word "vote," insert the following: *except that he or she is under 18 years of age.*

6) Related Legislation. ACA 7 (Mullin), which is on suspense in the Assembly Appropriations Committee, allows a person who is 17 years old and who will be 18 years old at the time of the next general election to register and vote in that general election and in any intervening

primary or special election that occurs after the person registers to vote.

7) Previous Legislation: AB 30 (Price), Chapter 364, Statutes of 2009, allows a person who is 17 years of age to pre-register to vote, provided he or she would otherwise meet all eligibility requirements. AB 30 will not go into effect until the SOS certifies that the state has a statewide voter registration database that complies with HAVA.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Debra Bowen (sponsor)
California Common Cause
California Federation of Teachers
California State Student Association
CALPIRG
League of Women Voters of California
Rock the Vote
University of California Student Association

Opposition

Election Integrity Project, Inc.
One Individual

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 831 (Hill) – As Amended: June 18, 2014

SENATE VOTE: 35-1

SUBJECT: Political Reform Act of 1974.

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

1) Prohibits an elected officer from requesting that a payment be made, and prohibits a person from making a payment at the behest of an elected officer, as specified, to a nonprofit organization that the elected officer knows or has reason to know is owned or controlled by that officer or a family member of the officer. Prohibits an expenditure of campaign funds by an elected officer or committee controlled by an elected officer to a nonprofit organization that the elected officer knows or has reason to know is owned or controlled by the elected officer or a family member of the elected officer.

   a) Provides, for the purposes of these restrictions, that an elected officer is deemed to have complied with this law if the Fair Political Practices Commission (FPPC) determines that the elected officer made a reasonable effort to ascertain whether a nonprofit organization is owned or controlled by the elected officer or a family member of the elected officer.

   b) Provides, for the purposes of these restrictions, that a nonprofit organization is owned or controlled by an elected officer or family member of an elected officer if the elected officer or family member, or a member of that person's immediate family, is a director, officer, partner, or trustee of, or holds any position of management with, the nonprofit organization, and is paid for his or her services.

   c) Defines the term "family member of the elected officer," for the purposes of these restrictions, as the spouse, child, sibling, or parent of the elected officer.

   d) Provides that the restrictions on payments made at the behest of an elected officer do not apply to payments made to a nonprofit organization that is formed for the purpose of coordinating or performing disaster relief services.

2) Requires a nonprofit organization that makes a payment, advance, or reimbursement to a public official for specified travel related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, to disclose to the FPPC the names of donors responsible for funding the payments who knew or had reason to know that their donation would be used for a payment, advance, or reimbursement for the travel. Provides that the nonprofit organization shall not report a donor if the organization has evidence indicating that the donor restricted or otherwise did not intend the donation to be used for such travel. Provides that a donor knows or has reason to know that his or her donation will

be used for the travel under any of the following conditions:

a) The donor directed the nonprofit organization to use the donation for the travel;

b) The donation was made in response to a solicitation for donations for the travel; or,

c) The nonprofit organization made payments for this type of travel in the current calendar year or any of the immediately preceding four calendar years.

3) Requires a public official, when reporting a gift that is a travel payment, advance, or reimbursement on his or her Statement of Economic Interests (SEI), to disclose the travel destination.

4) Prohibits campaign funds from being used to pay for any of the following:

a) A personal vacation for a candidate; elected officer; immediate family member of a candidate or elected officer; or an officer, director, employee, or member of the staff of a candidate, elected officer, or committee;

b) Membership dues for a country club, health club, or other recreational facility;

c) Tuition payments;

d) Clothing of any kind to be worn by a candidate or elected officer;

e) Vehicle use and sports or entertainment tickets not directly related to an election campaign;

f) A gift to a spouse, child, sibling, or parent of a candidate, elected officer, or other individual with the authority to approve the expenditure of campaign funds held by a committee, except for a gift of nominal value that is substantially similar to a gift made to other persons and that is directly related to a political, legislative, or governmental purpose; or,

g) A utility bill for real property that is owned or leased by a candidate, elected officer, campaign treasurer, or any individual with authority to approve the expenditure of campaign funds, or a member of his or her immediate family.

5) Makes technical and conforming changes.

6) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

1) Provides that a payment made at the behest of a candidate for state or local elective office is considered a contribution unless the payment is made for purposes unrelated to the candidate's candidacy. Provides that a payment is presumed to be unrelated to a candidate's

candidacy if it is made principally for legislative, governmental, or charitable purposes.

2) Requires an elected officer to report any payments principally for legislative, governmental, or charitable purposes made at the behest of the officer within 30 days following the date on which the payment or payments equal or exceed $5,000 in the aggregate from the same source in the same calendar year in which they are made. Requires this report to be filed with the elected officer's agency and to contain all of the following:

   a) The name and address of the payor;

   b) The amount of the payment;

   c) The date or dates that the payment or payments were made;

   d) The name and address of the payee;

   e) A brief description of the goods or services provided or purchased, if any; and

   f) A description of the specific purpose or event for which the payment or payments were made.

3) Prohibits specified elected officers and other public officials from receiving gifts, as defined, in excess of $440 in value from a single source in a calendar year. Provides that payments for travel that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy are not subject to the gift limit if either of the following is true:

   a) The travel is in connection with a speech given by the official and the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States; or,

   b) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

4) Requires candidates for, and current holders of, specified elected or appointed state and local offices and designated employees of state and local agencies to file SEIs disclosing their financial interests, including investments, real property interests, and income, including gifts.

5) Requires contributions deposited into a candidate's campaign account to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. Provides that an expenditure to seek office is within the lawful execution of this trust if it is reasonably related to a political purpose and an expenditure associated with holding office is within the lawful execution of this trust if it is reasonably related to a legislative or governmental purpose. Provides that expenditures which confer a substantial personal benefit to the candidate or a person who has the authority to approve the

expenditure must be directly related to a political, legislative, or governmental purpose.

6) Imposes limitations on the use of campaign funds for certain expenditures, including those relating to automotive expenses, travel expenses, tickets for entertainment or sporting events, personal gifts, and real property expenses.

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

COMMENTS:

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

> SB 831 modernizes California's Political Reform Act by increasing transparency of travel related gifts and prohibiting certain types of campaign expenditures.
>
> SB 831 includes all of the following reforms:
>
> 1. Prohibits elected officials from contributing campaign funds to nonprofits owned or operated by their family members.
>
> 2. Prohibits elected officials from contributing campaign funds to nonprofits operated by another elected official on the same governing body.
>
> 3. Prohibits the expenditure of campaign funds for an elected official's mortgage, rent, utility bills, clothing, club memberships, vacations, tuition, tickets for sporting and entertainment events, vehicles, and gifts to family members.
>
> 4. Requires non-profits that pay for travel for elected officials and all FPPC filers to disclose to the FPPC the name of the donors responsible for funding the travel. Currently non-profits do not have to disclose the source of travel funding preventing the public from knowing who was behind the gift to the elected official.
>
> These are important reforms that will help improve and modernize California's Political Reform Act.

2) Behested Payments: In 1996, the FPPC amended its regulatory definition of the term "contribution" to include any payment made "at the behest" of a candidate, regardless of whether that payment was for a political purpose. As a result, payments made by a third party at the request or direction of an elected officer were required to be reported as campaign contributions, even if those payments were made for governmental or charitable purposes.

The change in regulations by the FPPC, along with a number of advice letters issued by the FPPC interpreting the new definition of "contribution," limited the ability of elected officers to co-sponsor governmental and charitable events. In one advice letter, the FPPC concluded that a member of the Legislature would be deemed to have accepted a campaign contribution

if, at his behest, a third party paid for the airfare and lodging for witnesses to testify at a legislative hearing.

In response to the FPPC's modified definition of "contribution," the Legislature enacted SB 124 (Karnette), Chapter 450, Statutes of 1997, which provided that a payment made at the behest of a candidate for purposes unrelated to the candidate's candidacy for elective office is not a contribution. However, SB 124 required that such payments made at the behest of a candidate who is also an elected officer, when aggregating $5,000 or more in a calendar year from a single source, be reported to the elected officer's agency. The elected officer must report such a payment within 30 days.

Examples of payments made at the behest of an elected officer that have to be reported under this provision of law include charitable donations made in response to a solicitation sent out by an elected officer or donations of supplies and refreshments made by a third party for a health fair that was sponsored by an elected officer.

3) Travel Payment Reporting Threshold & Suggested Amendments: The provisions of this bill that require nonprofit organizations that pay for travel expenses for public officials to disclose the names of donors to the organization do not include a reporting threshold. As a result, a nonprofit organization that reimbursed a public official for a $25 train ticket so that the official could speak at the organization's annual conference would be required to file a report disclosing the $25 reimbursement and disclosing donors to the nonprofit organization. The author and the committee may wish to consider establishing disclosure thresholds, so that the reporting obligations created by this bill are limited to nonprofit organizations that make substantial payments for the travel expenses of public officials.

   In order to narrow the scope of the reporting requirements in this bill, committee staff recommends that this bill be amended to provide that a nonprofit organization is required to disclose the names of donors responsible for funding travel payments only if the organization makes travel payments of $10,000 or more in a calendar year, and to provide that the nonprofit organization is required to disclose the names of individual donors who are responsible for funding a travel payment only to the extent that those donors are responsible for $1,000 or more of the travel payment costs. Additionally, committee staff recommends that this bill be amended to specify that a donor to a nonprofit organization would have a "reason to know" that his or her donation would be used for travel payments based on the fact that the nonprofit organization previously funded such travel payments only if the payments made by the nonprofit organization in the current calendar year, or in any of the previous four calendar years, totaled $10,000 or more.

4) Campaign Expenditure Restrictions & Tuition Payments: As noted above, this bill prohibits campaign funds from being used for expenditures for certain specified items and activities, including personal vacations, country club dues, and gifts for family members. Under existing law, it is likely that the expenditure of campaign funds for these purposes would already be prohibited in most circumstances. That's because, as noted above, campaign expenditures generally must be related to a political, legislative, or governmental purpose, and campaign expenditures that confer a substantial personal benefit to the candidate or to an individual who has the authority to approve the expenditure must be *directly* related to a political, legislative, or governmental purpose. It is difficult to envision a scenario, for

instance, where a personal vacation could be deemed to be *directly* related to a political, legislative, or governmental purpose. Thus, it is unlikely that a personal vacation would be considered an allowable expenditure of campaign funds under existing law. Similarly, even though the PRA does not contain an explicit prohibition against the use of campaign funds for health club dues (as this bill does), the FPPC nonetheless has concluded that such an expenditure is impermissible, and the campaign disclosure manuals prepared by the FPPC for state and local candidates specifically state that "a committee may not pay for the candidate's health club dues."

On the other hand, certain campaign expenditures that would be prohibited by this bill may serve important and direct political, legislative, and governmental purposes. For example, in the past, the FPPC has advised that the expenditure of campaign funds to make tuition payments for leadership programs, educational programs to improve the administrative skills of government executives, and training programs designed to assist women entering the political process were directly related to a political, legislative, or governmental purpose. This bill would prohibit such expenditures, because this bill prohibits the expenditure of campaign funds for tuition payments.

If the author's concern with the expenditure of campaign funds for tuition payments is that public officials may use campaign funds for more general educational programs that are not closely related to the official's duties, the FPPC has concluded that such expenditures are not permissible under the existing law. In 1998, the FPPC advised that a county supervisor could not use campaign funds for the purposes of paying tuition for a master's degree program in international policy studies. Even though the master's degree program included training and coursework in public policy, political science, and the economy, the FPPC concluded that the use of campaign funds for those tuition payments was not directly related to a political, legislative, or governmental purpose, because the benefits of holding the academic degree were primarily personal, rather than political, legislative, or governmental, and the degree was not required for a county supervisor to exercise his duties.

The committee and the author may wish to consider whether it is desirable to prohibit public officials from using campaign funds for the purposes of attending educational and leadership programs that are directly related to political, legislative, or governmental purposes, and that assist officials in more effectively performing their governmental duties and representing their constituents.

5) Urgency Clause and Suggested Amendment: As noted above, this bill contains an urgency clause, and would go into effect immediately upon enactment. Given the significant changes that this bill makes to the PRA, however, including creating new restrictions on behested payments and expenditures of campaign funds, and establishing new reporting requirements for travel funded by non-profit organizations, it may be necessary to undertake efforts to educate individuals who are subject to these new laws of the restrictions. Furthermore, given the deadlines for the Governor to act on bills that are approved by the Legislature this year, it is possible that this bill could be signed into law as little as five weeks before the November election. Changing campaign finance rules so close to the date of a statewide election could create confusion, and could hamper the implementation and enforcement of the law.

To address these concerns, committee staff recommends that this bill be amended to remove

the urgency clause.

6) 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

California Common Cause

Opposition

None on file.

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

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 844 (Pavley) – As Amended: June 17, 2014

SENATE VOTE: 35-0

SUBJECT: Elections: ballot measure contributions.

SUMMARY: Requires the Secretary of State (SOS) to create an Internet Web site, or use other available technology, to consolidate information about each state ballot measure in a manner that is easy for voters to access and understand on any computer system platform, as specified. Specifically, this bill:

1) Requires the online version of the state ballot pamphlet to contain, for each candidate featured in the pamphlet and each committee supporting or opposing a state ballot measure featured in the pamphlet, a hyperlink to any campaign contribution disclosure reports for those candidates or committees that are available online.

2) Requires the SOS to create an Internet Web site, or use other available technology, to consolidate information about each ballot measure in a manner that is easy for voters to access and understand on any computer system platform. Requires the information to include all of the following:

   a) A summary of the ballot measure's content;

   b) The total amount of reported contributions made in support of and opposition to a ballot measure and the total amount of reported independent expenditures made in support of and opposition to a ballot measure;

   c) A current list of the top 10 contributors supporting and opposing a ballot measure, if compiled by the Fair Political Practices Commission (FPPC) pursuant to current law. Requires the FPPC to provide the list, and any updates to the list, to the SOS;

   d) A list of each committee primarily formed to support or oppose the ballot measure, as described by current law, and a means to access the sources of funding reported for each committee. Requires the sources of funding to be updated as new information becomes available to the public pursuant to the Political Reform Act of 1974 (PRA);

   e) For committees primarily formed to support or oppose a state ballot measure that raise one million dollars ($1,000,000) or more for an election, the list of the committee's top 10 contributors provided to the FPPC pursuant to current law. Requires the FPPC to provide the top 10 contributor lists, and any subsequent updates to the lists, to the SOS for the purposes of compliance with the provisions of this bill; and,

   f) Any other Internet Web site hyperlinks to other relevant information.

3) Requires the ballot pamphlet, if the ballot contains an election for a state measure, to contain a printed statement that refers voters to the SOS's Internet Web site for a list of committees primarily formed to support or oppose a ballot measure, and information on how to access the committee's top 10 contributors.

4) Requires the ballot pamphlet, for each state measure to be voted upon, to contain, immediately below the analysis prepared by the Legislative Analyst, a printed statement that refers voters to the SOS's Internet Web site for a list of committees primarily formed to support or oppose a ballot measure, and information on how to access the committee's top 10 contributors.

EXISTING LAW:

1) Requires the statewide ballot pamphlet to include information, in a specific order, for each state measure to be voted upon including, but not limited to:

   a) A complete copy of each state measure;

   b) A copy of the specific constitutional or statutory provision, if any, that each state measure would repeal or revise;

   c) A copy of the arguments and rebuttals for and against each state measure;

   d) A copy of the analysis of each state measure prepared by the Legislative Analyst; and,

   e) Table of contents, indexes, art work, graphics, and other materials that the SOS determines will make the ballot pamphlet easier to understand or more useful for the average voter.

2) Provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures, as defined, and imposing other reporting and recordkeeping requirements on campaign committees, as defined.

3) Requires each campaign committee formed or existing primarily to support or oppose a statewide ballot measure to file with the SOS periodic reports identifying the sources and amounts of contributions received during specified periods.

4) Requires a committee primarily formed to support or oppose a state ballot measure or state candidate that raises $1,000,000 or more for an election, to maintain an accurate list of the committee's top 10 contributors, as specified by the FPPC. Requires a current list of the top 10 contributors to be disclosed on the FPPC's Internet Web site, as specified. Requires the FPPC to update the top 10 contributor list as specified. Requires the FPPC to adopt regulations to govern the manner in which the FPPC displays the top 10 contributor list. Requires the FPPC to provide the top 10 contributor lists to the SOS, upon request of the SOS, for the purpose of additionally posting the contributor lists on the SOS's Internet Web site.

5) Requires the FPPC to compile, maintain, and display on its Internet Web site a current list of the top contributors supporting and opposing each state ballot measure, as specified.

6) Requires the state ballot pamphlet to contain a written explanation of the top 10 contributor lists described above, including a description of the Internet Web site where the lists are available to the public.

FISCAL EFFECT: Unknown

COMMENTS:

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

> Over the last two decades, the Legislature has proposed approximately a half dozen proposals to address the public's demand and right to know about who is financing California's ballot initiatives. SB 844 is a narrowly crafted bill that addresses many of the failings and omissions of previous legislative attempts and provides a sensible and efficient way for voters to access this information.
>
> Money plays an enormous role in our politics, but unfortunately voters are often in the dark about who is trying to influence the outcome of initiative campaigns, Californians need greater transparency so they can vote with full knowledge of the financial forces working behind the scenes to shape state law.
>
> Surveys conducted by the Public Policy Institute of California have consistently found that more than 80 percent of likely voters support requiring funding disclosure of donations towards ballot initiatives.
>
> According to MapLight, a nonprofit elections research organization, in order to find out campaign finance information for Proposition 30 (2012), it took 460 mouse clicks to compile a complete list of contributors for and against the ballot initiative.
>
> The average voter does not have the time, nor the expertise to parse through each individual committee to figure out who the top cumulative contributors are for or against each proposition. Without easy-to-access and easy-to-use tools that can identify the top contributors to campaigns for and against ballot initiatives, voters will have a more difficult time making an informed decision about state policy.
>
> The status quo situation of expecting voters to wade through endless lists of data and employ hundreds of mouse clicks to determine who is influencing campaigns is simply unacceptable and not a reasonable expectation.
>
> SB 844 would provide voters with the identities of large financial contributors who pump millions of dollars into campaigns to pass or defeat state ballot initiatives. This information is crucial to ensuring that voters make informed decisions at the ballot box.

2) Contributor Lists in the Ballot Pamphlet and Online: Over the years, numerous legislative proposals have attempted to bring more transparency to who is financing ballot measures. Many proposals have attempted to add campaign contribution information to the state ballot pamphlet as well as require it to be posted and accessible online. Last session, SB 334 (DeSaulnier) of 2011, which was vetoed by Governor Brown, would have required the state

ballot pamphlet to contain a list of the five highest contributors of $50,000 or more to each primarily formed committee supporting or opposing each state measure appearing on the ballot. In his veto message the Governor stated the following:

> This bill would require that the voter pamphlet list the top five contributors for and against a ballot measure. Printing of the voter pamphlet starts months before an election, so the required contributor list would only include contributions received more than 15 weeks before an election. I am concerned that this outdated information could mislead voters about the true supporters and opponents of a ballot measure.
>
> The Secretary of State's website already provides up-to-date and accurate information on all campaign contributions. It is a helpful resource for concerned voters.

This bill, however, does not require the ballot pamphlet to contain contributor information. Rather, this bill requires the ballot pamphlet, if the ballot contains an election for a state measure, to contain a printed statement that refers voters to the SOS's Internet Web site for a list of committees primarily formed to support or oppose a ballot measure, and information on how to access the committee's top 10 contributors.

In addition to the statement provided in the printed ballot pamphlet, this bill also requires the online version of the state ballot pamphlet to contain, for each candidate and committee supporting or opposing a state ballot measure featured in the pamphlet, a hyperlink to any campaign contribution disclosure reports for each candidate or committee that are available online. Directing voters to the SOS's web site and to campaign contribution disclosure reports may be helpful in providing more disclosure on contributions received and expenditures made by each candidate and committee. However, if those reports are not easy to understand by the average voter then they may not be as helpful as intended.

3) State Committee Contributor Lists: Earlier this year, the Legislature passed and the Governor signed SB 27 (Correa), Chapter 16, Statutes of 2014, which, among other things, requires a committee primarily formed to support or oppose a state ballot measure or state candidate, that raises $1,000,000 or more for an election, to maintain an accurate list of the committee's top 10 contributors, as specified by the FPPC. In addition, SB 27 requires the current list of the top 10 contributors to be disclosed on the FPPC's Internet Web site, as specified, and requires the FPPC to update the top 10 contributor lists, as specified. SB 27 requires the FPPC to provide the top 10 contributor lists to the SOS, upon request of the SOS, for the purpose of posting the contributor lists on the SOS's Internet Web site.

   This bill incorporates similar provisions contained in SB 27. For instance, this bill requires the SOS to create an Internet Web site, or use other available technology, to consolidate information about each state ballot measure that includes a summary of a ballot measure's content, a current list of the top 10 contributors supporting and opposing a ballot measure compiled by the FPPC, as specified, and a list of the top 10 contributors provided by the FPPC for committees primarily formed to support or oppose a state ballot measure that raise $1,000,000 or more for an election, as specified.

   In addition to these provisions, this bill also requires the web site created by the SOS to include the total amount of reported contributions and independent expenditures made in support of and opposition to a ballot measure as well as a list of each committee primarily

formed to support or oppose a ballot measure and a means to access the sources of funding reported for each committee. While these new disclosure requirements may provide more transparency, the bill does not specify when these figures will be updated. In particular, the requirement to post the total amount of reported contributions and independent expenditures does not specify when the totals will be updated. Consequently the information provided may be outdated and inaccurate. The committee may wish to amend the bill to provide a timeframe by which the SOS must update the total amount of reported contributions and independent expenditures made in support of and opposition to a ballot measure.

4) Computer System Platform: As mentioned above, this bill requires the SOS to create an Internet Web site, or use other available technology, to consolidate information about each ballot measure in a manner that is easy for voters to access and understand on any computer system platform. It is unclear what the author means by "any computer system platform." The phrase is very broad and could be interpreted to mean that the information must be accessible on any computer system platform, regardless of how old or obsolete the system is.

5) Primarily Formed Committees: The PRA defines a "primarily formed committee" as a recipient committee which is formed or exists primarily to support or oppose any of the following: a single candidate, a single measure, a group of specific candidates being voted upon in the same city, county, or multicounty election, or two or more measures being voted upon in the same city, county, multicounty, or state election.

6) Arguments in Support: Maplight writes in support:

> The political process in California is being flooded by money. In 2012 alone, over $400 million went into campaigns to support and oppose our state ballot measures, an average of nearly $35 million per proposition. 70 % of this money (over $300 million) came from just 20 contributors.
>
> With such large amounts of money coming from such a small fraction of the California electorate (and oftentimes from sources outside of California), it is more important than ever that California voters know who is spending money to influence their decisions at the ballot box…
>
> By allowing voters to easily identify the top ten largest financial contributors for and against California propositions, SB 844 will enable voters to access who is seeking to influence their decisions at the ballot box.

7) Related Legislation: SB 1253 (Steinberg), which is also being heard in this committee today, contains similar provisions to those included in this bill. SB 1253, among other provisions, requires the SOS to create an Internet Web site, or use other available technology, to consolidate information about each state ballot measure in a manner that is easy for voters to access and understand. Specifically, SB 1253 requires the web site to include, among other things, a summary of each ballot measure, a current list of the top 10 contributors supporting or opposing a ballot measure, as specified, a list of each committee primarily formed to support or oppose a ballot measure, as specified, and for committees primarily formed to support or oppose a state ballot measure that raise $1,000,000 or more for an election, a list of the committee's top 10 contributors as provided by the FPPC, as specified.

8) 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 proposition and require a two-thirds vote of each house of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause
California Forward Action Fund
California Voter Foundation
City of Thousand Oaks
League of Women Voters of California
MapLight
Service Employees International Union, California State Council

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 952 (Torres) – As Amended: June 17, 2014

SENATE VOTE: 37-0

SUBJECT: Prohibited financial interests: aiding and abetting.

SUMMARY: Prohibits an individual from aiding or abetting a violation of Government Code section 1090 (section 1090), and related laws. Specifically, this bill:

1) Prohibits an individual from aiding or abetting a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in either of the following crimes:

   a) Being financially interested in a contract made by the member, officer, or employee in his or her official capacity, or by any body or board on which the member, officer, or employee is a member; or,

   b) Being purchasers at any sale or vendors at any purchase made by the member or officer in his or her official capacity.

2) Prohibits an individual from aiding or abetting a Treasurer, Controller, city or county officer, or their deputy or clerk, in purchasing or selling, or in any manner receiving for their own or any other person's use or benefit, any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof. Provides that this provision does not apply to evidences of indebtedness issued to or held by an officer, deputy, or clerk for services rendered by them, nor to evidences of the funded indebtedness of the state, county, or city.

3) Provides that a person who willfully violates this bill is punishable by a fine of not more than $1,000, or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

EXISTING LAW:

1) Prohibits members of the Legislature and state, county, district, judicial district, and city officers or employees, pursuant to section 1090, from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Prohibits state, county, district, judicial district, and city officers or employees from being purchasers at any sale made by them in their official capacity, or from being vendors at any purchase made by them in their official capacity.

2) Prohibits, pursuant to Government Code section 1093 (section 1093), the Treasurer and Controller, county and city officers, and their deputies and clerks from purchasing or selling, or in any manner receiving for their own or any other person's use or benefit, any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness

against the state, or any county or city thereof.

3) Provides that a person who willfully violates section 1090 or 1093 is punishable by a fine of not more than $1,000 or by imprisonment in the state prison, and is forever disqualified from holding any office in the state.

4) Provides that a contract made in violation of section 1090 may be voided by any party to the contract, except for the officer who had an interest in the contract in violation of section 1090.

5) Provides, in general, that all persons who aid and abet in the commission of a crime are principals in any crime so committed.

FISCAL EFFECT: According to the Senate Appropriations Committee, potential increase in state costs for prison terms for aiding or abetting a public officer. To the extent three or four individuals are sentenced to state prison under the provisions of this bill, annual costs would be in the range of $90,000 to $125,000 (General Fund) assuming an average in-state contract bed cost of $31,000.

COMMENTS:

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

> Senate Bill 952 prohibits an individual from aiding or abetting a public officer or public employee in entering into unlawful contracts, and expands penalties to also apply to those individuals who violate those provisions.
>
> California's bribery laws are in need of updating. California residents are entitled to equip prosecutors with all necessary charging tools to prevent, pursue and prosecute the theft of public funds or bribery of public officials.
>
> While current law prohibits government officials from entering into unlawful contracts (Govt. Code 1090), the law is not clear on whether individuals with a financial interest in a contract who aid and abet those government officials are prohibited from doing so and criminally liable.
>
> On May 9, 2011 a special grand jury in San Bernardino County issued a 29 count indictment against members and staff of the San Bernardino County Board of Supervisors (Board) and Colonies Partners, L.P. (Colonies). The indictment (The People of the State of California v. Paul Biane, et al (2011) FSB 1102102) alleges that Colonies conspired to bribe public officials in return for their votes to approve a settlement between Colonies and the County of San Bernardino (County) for $102 million.
>
> The Colonies case is being prosecuted jointly by California Attorney General Kamala Harris and San Bernardino County District Attorney Mike Ramos.

The defense has filed several legal challenges at the trail court and appellate level since the indictment was filed in 2011. Those challenges over the course of four years have stymied the prosecution's efforts to bring the case to a jury trial.

Several legal challenges reached the California State Supreme Court and were decided in favor of the prosecution in December 2013. SB 952 clarifies that a private individual is prohibited and can be held criminally liable for aiding and abetting government officials in entering unlawful contracts under Govt. Code 1090.

SB 952 will strengthen the laws governing bribery of public officials and help bolster public trust in government.

2) Overview of Section 1090: Section 1090 generally prohibits a public official or employee from making a contract in his or her official capacity in which he or she has a financial interest. In addition, a public body or board is prohibited from making a contract in which any member of the body or board has a financial interest, even if that member does not participate in the making of the contract. Violation of this provision is punishable by a fine of up to $1,000 or imprisonment in the state prison, and any violator is forever disqualified from holding any office in the state. The prohibitions against public officers being financially interested in contracts that are contained section 1090 date back to the second session of the California Legislature (Chapter 136, Statutes of 1851).

   Various provisions of state law provide exceptions to, or limitations on, section 1090. Among other provisions, state law provides that an officer shall not be deemed to be financially interested in a contract if the officer has only a "remote interest" in the contract and if certain other conditions are met. Similarly, another section of state law provides that an officer or employee is not deemed to be interested in a contract if his or her financial interest meets one of a number of different enumerated conditions.

3) Aider and Abettor Liability and Government Code Section 1090: As noted above, under California law, a person who aids and abets in the commission of a crime generally can be found guilty of the underlying crime if certain conditions are met. Notwithstanding this fact, courts have held that there is no aider and abettor liability under section 1090. In D'Amato v. Superior Court (2008) 167 Cal. App. 4th 861, the Court of Appeal for the Fourth Appellate District, Division Three, suggested that the separation of powers doctrine precludes criminal prosecutions of public officials for aiding and abetting a violation of section 1090, absent clear legislative intent to permit such prosecutions. In its decision, the court wrote:

   Assessing criminal liability against a public official for aiding and abetting a violation of section 1090 necessarily requires inquiry into the public official's subjective motivations when the prosecution is based on the official's legislative acts. Specifically, Penal Code section 31 provides: "All persons concerned in the commission of a crime,...whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission,...are principals in any crime so committed." To be criminally liable, an aider and abettor must "act with knowledge of the criminal purpose of the perpetrator *and with an intent or purpose* either of committing, or

> of encouraging or facilitating commission of, the offense." (*People v. Beeman* (1984) 35 Cal.3d 547, 560 [199 Cal. Rptr. 60, 674 P.2d 1318], italics added.) Thus, to obtain a conviction under an aider and abettor theory, it is not sufficient to demonstrate merely that the defendant assisted the perpetrator with knowledge of the perpetrator's unlawful purpose; the prosecutor also must prove the defendant's "'*fundamental purpose, motive and intent* [was] to aid and assist the perpetrator in the latter's commission of the crime.'" (*Id.* at p. 556, italics added.)

The court did not conclude that the Legislature was prohibited from making it a crime to aid and abet a violation of section 1090. Instead, the court noted that "the 'common-law principles of legislative and judicial immunity…should not be abrogated absent clear legislative intent to do so,'" and the court concluded that the language of section 1090 suggested that the Legislature had not intended to provide for aider and abettor liability for violations of section 1090. The court wrote:

> [T]he Legislature's wording of section 1090 evinces the intent to exclude aider and abettor liability. Specifically, "where the Legislature has dealt with crimes which necessarily involve the joint action of two or more persons, and where no punishment at all is provided for the conduct, or misconduct, of one of the participants, the party whose participation is not denounced by statute cannot be charged with criminal conduct on either a conspiracy or aiding and abetting theory. [Citation.] So, although generally a defendant may be liable to prosecution for conspiracy as an aider and abettor to commit a crime even though he or she is incapable of committing the crime itself, the rule does not apply where the statute defining the substantive offense discloses an affirmative legislative policy the conduct of one of the parties shall go unpunished. [Citation.]" [Citation.] (*Id.* at 873; *see also In re Meagan R.* (1996) 42 Cal.App.4th 17, 24.)

4) Previous Legislation: AB 1090 (Fong), Chapter 650, Statutes of 2013, authorizes the Fair Political Practices Commission (FPPC) to bring civil and administrative enforcement actions for violations of Section 1090, and requires the FPPC to provide opinions and advice with respect to Section 1090.

   AB 850 (De La Torre) of 2009, would have provided that no person shall knowingly induce or participate in or conspire with a public official to violate Section 1090. AB 850 was held on the Assembly Appropriations Committee's suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support	Opposition
California District Attorneys Association California Police Chiefs Association	None on file.

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

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1063 (Block) – As Amended: June 12, 2014

SENATE VOTE: 21-12

SUBJECT: Voter registration: juvenile detention facilities.

SUMMARY: Requires state and local juvenile detention facilities, as specified, to identify individuals housed in those facilities who are of age to register to vote and not currently serving a sentence for a conviction of a felony, and to provide and assist in completing affidavits of registration and returning the completed voter registration cards, as specified. Specifically, this bill:

1) Requires a state or local juvenile detention facility, including, but not limited to, a juvenile hall, juvenile ranch, juvenile camp, or a facility of the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (DJJ) to do all of the following:

   a) Identify each individual housed in the facility that is of age to register to vote and not currently serving a sentence for a conviction of a felony.

   b) Provide an affidavit of registration to each individual housed in the facility who is of age to register to vote and not currently serving a sentence for a conviction of a felony by doing either of the following:

      i) Providing the individual a paper affidavit of registration; or,

      ii) Directing the individual to an affidavit of registration provided on the Internet Web site of the Secretary of State (SOS).

   c) Assist each individual in the facility that is of age to register to vote and not currently serving a sentence for a conviction of a felony with the completion of an affidavit of registration, unless the individual declines assistance.

2) Requires a facility providing paper affidavits of registration to do either of the following:

   a) Assist the individual who completed the voter registration card in returning the completed card to the county elections official; or

   b) Accept any completed voter registration card and transmit the card to the county elections official.

EXISTING LAW:

1) Specifies that in order to be eligible to vote, an individual must be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, not deemed

mentally incompetent, and at least 18 years of age at the time of the next election.

2) Requires the election board of each county, in order to promote and encourage voter registration, to establish a sufficient number of registration places throughout the county, and outside the county courthouse, for the convenience of a person desiring to register to vote.

3) Requires the SOS to adopt regulations requiring each county to design and implement programs to identify qualified individuals who are not registered voters and to register those individuals to vote.

4) Requires each county probation department to establish a hyperlink on its Internet Web site to the SOS voting rights guide for incarcerated persons, or to post a notice that contains the SOS Internet Web site address where the voting rights guide can be found.

5) Requires the facility administrator of a local detention facility to develop written policies and procedures whereby the county registrar of voters allows qualified voters to vote in local, state, and federal elections.

6) Requires the county elections official to cancel the voter registration of a person upon proof that the person is presently imprisoned or on parole for conviction of a felony.

7) Requires the clerk of the superior court of each county to notify the county elections official twice a year of those persons that have been convicted of a felony since the clerk's last report.

FISCAL EFFECT: According to the Senate Appropriations Committee, unknown, potentially significant reimbursable mandate costs to local detention facilities (General Fund) and minor costs to the CDCR. (General Fund)

COMMENTS:

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

> SB 1063 will direct juvenile detention centers to identify incarcerated youth who are of age to register to vote, provide them with an electronic or paper affidavit of registration, assist with the completion of registration cards, and accept and transmit, or assist the individual in the transmission of, completed voter registration cards to local elections officials.
>
> Juvenile detention and correction facilities in California housed 11,532 individuals under the age of 21 in 2010. The United States locks up more juveniles than any other industrialized country and California ranks among the top twelve states for rates of juvenile incarceration.
>
> Additionally, California has a voter turn-out problem that ranks it 48th among the states in voting participation. Currently, nearly one quarter of California's eligible voters are not registered.
>
> The use of governmental agencies to register citizens to vote is not unprecedented. Section 7 of the National Voter Registration Act (NVRA) requires public assistance

agencies, particularly those that serve low-income or disabled populations, to provide voter registration materials. NVRA voter registration agencies include county welfare department offices, which accept applications and administer benefits for CalFresh, CalWorks, Medi-Cal, and other state programs. Yet none of these agencies have the ability to specifically target youth.

SB 1063 encourages civic participation amongst a hard-to-reach population while simultaneously addressing low youth voter turnout. Additionally, productive participation in society, such as voting, reduces recidivism.

2) Facilitating Voter Registration: According to statistics from the SOS's website and the UC Davis Center for Regional Change, currently there are over six million eligible voters in the state that remain unregistered to vote. Slightly less than half of the state's eligible voters between the age of 18 and 24 are registered to vote. Consequently, efforts to encourage and improve voter registration have been a focus of legislative proposals over past legislative sessions.

This bill focuses on a specific sector of the electorate–currently incarcerated youth–and requires a state and local juvenile detention facility to identify individuals housed in their facilities who are of age to register to vote and not currently serving a sentence for a conviction of a felony, to provide and assist in completing an affidavit of registration, and to return or transmit the completed registration cards to the county elections official, as specified.

On the local level, existing law requires the facility administrator of each local detention facility to adopt written policies and procedures whereby the county registrar of voters allows those qualified voters in the detention facility to vote. Despite the fact that these procedures are adopted at each facility and therefore may not result in uniformity across the state, they are currently in place and provide inmates at the detention facility with information regarding their voting rights. Additionally, last year the Legislature passed and the Governor signed AB 149 (Weber), Chapter 580, Statutes of 2013, which requires a county probation department to either establish a hyperlink on its Internet Web site to the SOS's voting rights guide for incarcerated persons, or to post a notice that contains the SOS Internet Web site address where the voting rights guide can be found

Additionally, on the state level, the CDCR DJJ has a policy in place pertaining to voting which requires the DJJ to advise eligible wards that are 18 years of age and over of their right to register and vote, provide voter registration forms obtained from the county clerks, assist the ward in completing the voter registration form, and ensure that eligible voters are provided with the ballot, as specified.

Given that the CDCR DJJ already has processes in place that are very similar to the requirements in this bill, the provisions of this bill may be duplicative or unnecessary. However, on the local level, this bill may take the processes they have in place a step further and require local facilities to not only provide eligible voters information on their voting rights, but to also provide an affidavit of registration, as specified, assist in completing the affidavit of registration, and returning or transmitting completed affidavits of registration to the county elections officials, as specified.

3) States and Felon Disenfranchisement: According to the Sentencing Project's 2012 report entitled "State-Level Estimates of Felon Disenfranchisement in the United States, 2010," 48 states prohibit inmates from voting while incarcerated for felony offense. Only Maine and Vermont permit inmates who are incarcerated for a felony offense to vote. California is one of 35 states that prohibits felons from voting while they are on parole, and is one of 18 states that allows people on probation for a felony to vote. Individuals imprisoned in the county jail for misdemeanor offenses are eligible to vote in California. Furthermore, once an individual completes his or her term of imprisonment and any period of parole for a felony conviction, that person is allowed to register to vote again in California.

   According to the author, this bill encourages civic participation amongst a hard-to-reach population while simultaneously addressing low youth voter turnout. Juvenile detention and correction facilities in California housed 11,532 individuals under the age of 21 in 2010. Current law provides that if an individual is incarcerated for a misdemeanor offense he or she is eligible to vote in California. This bill will ensure incarcerated youths that are eligible to register and vote not only receive information on their voting rights, but are also provided with assistance in completing an affidavit of registration and transmitting it to the appropriate elections official. Codifying these practices will help increase voter registration and turnout amongst a hard to reach population of eligible youth voters.

4) Arguments in Support: The American Civil Liberties Union of California writes in support:

   > As of 2012, California's voter registration rate ranked forty fifth in the nation. Presently, 6.4 million eligible voters in the state remain unregistered to vote, including barely half of eligible voters between the age of 18 and 24. Among the millions of unregistered voters in California are people who often mistakenly believe they are ineligible to voter due to a criminal charge or conviction. SB 1063 will help facilitate the dissemination of information to people who may have questions about their eligibility to vote.
   >
   > Additionally, voting is often correlated to successful re-entry and the reduced likelihood of re-offense. Voting creates a greater sense of citizenship, participation, and ultimately a vested interest in achieving the overall goals of the community…
   >
   > If returning offenders see themselves as productive members of society, and are able to have input on policies affecting the entire community, this will have a noticeable impact on recidivism. Hence, juvenile detention facilities should identify potentially eligible voters housed in their facilities and give them the opportunity to register to vote.

5) Previous Legislation: AB 149 (Weber), Chapter 580, Statutes of 2013, required each county probation department to provide voting rights information for incarcerated persons. Specifically, AB 149 required each county department to either establish a hyperlink on its Internet Web site to the SOS's voting rights guide for incarcerated persons, or to post a notice that contains the SOS Internet Web site address where the voting rights guide can be found.

   AB 821 (Ridley-Thomas) of 2005, would have required county elections officials to provide affidavits of registration and copies of the "Guide to Inmate Voting" to state and local detention facilities so that those detention facilities could notify specified individuals of their right to vote. AB 821 failed passage in the Senate Elections & Constitutional Amendments Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
A New PATH
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
National Association of Social Workers, California Chapter
Southwest Voter Registration Education Project

Opposition

Department of Finance

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1101 (Padilla) – As Amended: May 27, 2014

AS PROPOSED TO BE AMENDED

SENATE VOTE: 32-1

SUBJECT: Political Reform Act of 1974.

SUMMARY: Prohibits a member of or candidate for the Legislature from soliciting or accepting a campaign contribution during the last month of each year's legislative session, or during the time period between May 14 and June 15. Specifically, this bill:

1) Prohibits a person from making a contribution to member of or a candidate for the Legislature, and prohibits a member of or candidate for the Legislature from soliciting or accepting a contribution, during the following periods:

   a) In each year, the time period between May 14 and June 15 of the same year;

   b) In each odd-numbered year, the period from the date 30 days preceding the date the Legislature is scheduled to adjourn for a joint recess to reconvene in the second year of the biennium of the legislative session to the date that adjournment occurs; and,

   c) In each even-numbered year, the time period between August 1 and August 31.

2) Permits each house of the Legislature to take any disciplinary action it deems appropriate against a Member of that house who violates the provisions of this bill, including, but not limited to, reprimand, censure, suspension, or expulsion.

3) Provides that this bill does not prohibit a contribution made to, or solicited or accepted by, a member of or candidate for the Legislature for purposes of that person's candidacy for an elective state office that is to be voted upon at a special election.

4) Contains a severability clause.

5) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

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) Requires the Director of the Department of Finance to provide the May revision to the Governor's budget to the Legislature on or before May 14 of each year, which is to include

all of the following:

a) An estimate of General Fund revenues for the current fiscal year and for the ensuing fiscal year;

b) Any proposals to reduce expenditures to reflect updated revenue estimates; and,

c) All proposed adjustments to the Governor's budget.

3) Prohibits an elected state officer or candidate for elected state office from accepting a contribution from a lobbyist, and prohibits a lobbyist from making a contribution to an elected state officer or candidate for elected state office, if that person is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.

4) Limits campaign contributions to candidates for elective state office as follows:

a) To a candidate for elective state office other than a candidate for statewide elective office, no person may contribute more than $4,100 per election and no small contributor committee may contribute more than $8,200 per election;

b) To a candidate for elective statewide office other than a candidate for Governor, no person may contribute more than $6,800 per election and no small contributor committee may contribute more than $13,600 per election;

c) To a candidate for Governor, no person or small contributor committee may contribute more than $27,200 per election.

5) Requires the FPPC to adjust these contribution limits biennially to reflect any increase or decrease in the Consumer Price Index.

6) Provides for administrative, civil, and criminal penalties for violations of the PRA.

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

COMMENTS:

1) Author's Amendments: In response to questions and concerns raised when this bill was debated on the Senate Floor, the author of this bill committed to amend it to do the following:

a) To make the fundraising blackout periods proposed by this bill applicable to non-incumbent candidates for the Legislature; and,

b) To specify a date certain for the start (May 14) and the end (June 15) of the fundraising blackout period around the time that the Legislature is considering the state budget for the succeeding fiscal year, instead of having that fundraising blackout period start on the date of the release of the May revision to the Governor's budget, and end on the date that the

Legislature passes a budget.

In addition to these amendments, the author is also proposing an amendment to add a severability clause to this bill.

Due to upcoming committee deadlines, these author's amendments were unable to be amended into the bill prior to the committee's hearing. This analysis reflects these proposed author's amendments.

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

> The California legislature is the most powerful state legislative body in the United States. With a "GDP" approaching two trillion dollars, California is by far the largest economy among our 50 states and the 8th largest economy in the world. Because California is such an important market force…decisions made in California's State Capitol are often felt well beyond our borders. Recognizing this, a multitude of interests actively seek to influence the fate of thousands of pieces of legislation that work their way through California's Capitol each year.
>
> Meanwhile, members of the legislature regularly raise campaign funds to support their re-election efforts.
>
> It is the perceived confluence of campaign contributions and legislative votes that erodes the public's faith in the legislature's ability to keep the two separate. This is of particular concern toward the end of the legislative session as the fate of hundreds of bills is decided while fundraisers abound.
>
> SB 1101 would create a fundraising blackout period in California. It would prohibit solicitation or acceptance of campaign contributions by a member of the legislature from the time of the budget revise through the budget vote and the last 30 days of the legislative session.
>
> The blackout period would be in place during critical budget votes and at the end of legislative session when large volumes of bills including last minute "gut and amend" measures are up for votes.

3) Blackout Periods in Other States: According to information from the National Conference of State Legislatures, 29 states place restrictions on giving or receiving campaign contributions during the legislative session. Of those 29 states, 14 prohibit or restrict only *lobbyist* contributions made during the legislative session, including California, which prohibits individuals who are registered to lobby before the legislature from making contributions to any legislator or any candidate for state legislature at any time, not just during the legislative session.

Fifteen states (Alabama, Alaska, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Nevada, New Mexico, Tennessee, Texas, Utah, Virginia, and Washington) have contribution blackout periods that apply to contributions made by individuals or organizations other than lobbyists. The length of the blackout period generally runs the length of the legislative

session, though in some cases the blackout period extends for a certain time period before or after the legislative session, and in some cases there are exceptions to the blackout periods as an election approaches.

4) Contribution Limits: Proposition 34 was placed on the November 2000 ballot through passage of SB 1223 (Burton), Chapter 102, Statutes of 2000. The proposition, which passed with 60.1% of the vote, revised state laws on political campaigns for state elective offices and ballot propositions. Proposition 34 enacted new campaign disclosure requirements and established new campaign contribution limits, limiting the amount that individuals could contribute to state campaigns. The findings of Proposition 34 noted that the measure would, "minimize the potentially corrupting influence and appearance of corruption caused by large contributions by providing reasonable contribution and voluntary expenditure limits." It was the stated intent of the people in Proposition 34 to enact reasonable contribution limits so that campaign contributions would not be so large as to permit the campaign contributions to have a "corrupting influence." If Proposition 34 is achieving its stated goal, this measure should be unnecessary.

5) Contribution Blackout Period and First Amendment Concerns: This measure could be interpreted as a violation of the United States and California Constitutions' guarantees to free speech. While the right to freedom of speech is not absolute, when a law burdens core political speech, the restrictions on speech generally must be "narrowly tailored to serve an overriding state interest," McIntyre v. Ohio Elections Commission (1995), 514 US 334.

   State and federal courts have repeatedly held that the giving and spending of campaign money involves the exercise of free speech. The United States Supreme Court found in Buckley v. Valeo (1976), 424 US 1 that any "restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." The Supreme Court in Buckley ruled that expenditure limits during a campaign were unconstitutional for this reason. In the same case, however, the court upheld campaign contribution limits, noting that "[b]y contrast with a limitation on expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication." The Buckley court was cautious to note that not all campaign contribution limits would be constitutionally permissible, however, writing "[g]iven the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." The Supreme Court has repeatedly upheld its ruling in Buckley.

   One issue presented by this bill is whether its provisions would prevent candidates from amassing the resources necessary for effective advocacy and whether the state's interest in prohibiting campaign contributions to Legislators is sufficient to justify this limit on contributors' and candidates' free speech rights.

   In at least four states, state or federal courts have struck down laws that prohibited legislators from receiving campaign contributions while the legislature was in session. In 1990, the

Florida State Supreme Court ruled in State v. Dodd (1990) 561 So.2d 263, that a state law that prohibited a candidate running for legislative office or a statewide office from accepting or soliciting a campaign contribution during a regular or special session of the Legislature was "unconstitutional for its overbroad intrusion upon the rights of free speech and association." The court found a number of defects to the Florida law, including that it placed restrictions on candidates "who could not possibly be subject to a corrupting quid pro quo arrangement," and that "by focusing entirely on the legislative session, the Campaign Financing Act fails to recognize that corrupt campaign practices just as easily can occur some other time of the year." Additionally, the court found that the contribution blackout period would cut off "the flow of resources needed for effective advocacy during a crucial portion of the election year," in violation of the test established in Buckley.

The United States District Court for the Eastern District of Missouri, Eastern Division considered a similar contribution blackout period in Shrink Missouri Government PAC v. Maupin (1996) 922 F. Supp. 1413. Unlike the Florida law, Missouri's Campaign Finance Disclosure Law only applied during a regular session of the legislature and it did not prohibit the *solicitation* of campaign contributions during a legislative session, but otherwise was substantially similar to the Florida law. The Maupin court ruled that Missouri's blackout period "severely impacts on a candidate's ability to expend funds which in turn impinges upon the rights of individual citizens and candidates to engage in political debate and discussion."

Two other federal courts reached similar conclusions in 1998. The United States District Court for the Eastern District of North Carolina, Western Division in North Carolina Right to Life v. Bartlett (1998) 3 F.Supp.2d 675, struck down a North Carolina law prohibiting lobbyists from making contributions to legislators and candidates for state legislature during a legislative session. The court ruled that the North Carolina law "prevent[ed] candidates from amassing the resources necessary for effective advocacy," in violation of the test established in Buckley. The United States District Court for the Western District of Arkansas, Fayetteville Division in Arkansas Right to Life v. Butler (1998) 29 F.Supp.2d 540, struck down an Arkansas law that prohibited statewide elected officials and legislators from accepting any contribution 30 days before, during, and 30 days after any regular session of the Legislature. The court concluded that the Arkansas law was unconstitutional because "it does not take into account the fact that corruption can occur at any time, and that only large contributions pose a threat of corruption." Unlike the Florida, Missouri, and North Carolina laws, the Arkansas law did not apply to non-state officeholder candidates for state office, but only to elected state officials.

The provisions of this bill are distinguishable from the laws in Florida, Missouri, North Carolina, and Arkansas in that it does not apply during the entire legislative session, but only during certain portions of the legislative session. Nevertheless, this bill could be susceptible to a constitutional challenge based on issues raised in these decisions.

6) Uneven Playing Field: One of the amendments being taken by the author in this committee today would make the contribution blackout periods imposed by this bill applicable to non-incumbent candidates for state Legislature. This amendment was intended to avoid creating an uneven playing field, where sitting members of the Legislature were prevented from raising campaign funds during certain times of the year, while their opponents were not

subject to the same limitations. While this amendment does help reduce the potential for such an uneven playing field, it does not eliminate that potential entirely. Sitting members of the Legislature who are running for an office other than state Legislature (e.g., for local or statewide office), and who are running against other candidates who are not members of the Legislature could be put at a disadvantage compared to their opponents, since the contribution blackout period would apply to the member of the Legislature, but not to other non-member candidates for offices other than state Legislature.

7) Other Elected State Officers: The author contends that a fundraising blackout period is needed in order to put distance between the giving of political money and the taking of governmental actions during certain times in the legislative process. Legislators are not, however, the only elected state officials that are involved in governmental actions that are taken during that period of the legislative process. In particular, the Governor develops the budget that is considered by the Legislature, is directly involved in negotiations with legislative leaders over the state budget, and has the authority to sign or veto the budget, including line-item veto authority with which the Governor may reduce appropriations in the budget. It is not uncommon for members of the Legislature to negotiate with the Governor over the contents of legislation toward the end of session, and after the Legislative session adjourns, the Governor has 30 days to decide whether to sign or veto hundreds of bills that have been passed by the Legislature (this period of time is commonly referred to as the "bill signing period"). While other state officials are not *as* directly involved in the legislative process, it is nonetheless commonplace for statewide elected officials and members of the Board of Equalization (BOE) to advocate before the Legislature both publicly and privately, including sponsoring, supporting, opposing, and seeking amendments on bills and budget items. If there is a need to put distance between the giving of political money and the taking of governmental actions during certain times in the legislative process, as the author contends, then it may be appropriate to limit the fundraising activities of other elected state officials during these time periods as well.

   The committee may wish to consider whether this bill should be amended to apply to statewide elected officers (including the Governor), members of the BOE, and candidates for those offices. Additionally, the committee may wish to consider whether this bill should be made applicable to the Governor during the bill signing period.

8) Statewide Primary Election & Special Elections: One of the fundraising blackout periods proposed by this bill—the period between the time the May revision is released until the time a state budget is passed by the Legislature—almost certainly will include the date of the statewide primary election and the two to three weeks prior to the primary election in even-numbered years. Limiting fundraising during this crucial campaign period could put Legislators at a significant fundraising disadvantage in relation to other candidates who are not subject to the blackout period.

   Additionally, while this bill contains an exception to the blackout periods in a situation where a candidate is running for elective state office at a special election, this bill does not include similar accommodations for candidates who are running for an office other than state office at an election that is held during a blackout period, or shortly after the conclusion of a blackout period. Such a policy could prevent candidates for local office, for instance, from being able raise campaign funds during a crucial campaign period.

To address these concerns, committee staff recommends that this bill be amended to provide that the fundraising blackout periods will not apply to a candidate in the last 30 days prior to an election at which that candidate will appear on the ballot.

9) Senate Rule: On June 9, 2014, the Senate adopted SR 44 (De León & Steinberg), which amended the Standing Rules of the Senate for the 2013-14 Regular Session by imposing campaign fundraising blackout periods similar to those contained in this bill. Unlike the provisions of this bill, however, the blackout periods in SR 44 apply only to the solicitation and acceptance of campaign contributions from lobbyist employers. SR 44 does not prohibit Senators from soliciting or receiving campaign contributions during the blackout period from individuals or entities who are not lobbyist employers. The rule enacted by SR 44 becomes effective on August 1, so it was not in effect for this year's budget process, but it will be in effect for the last month of session.

   Because SR 44 adopted a Senate rule, rather than enacting a statute, it cannot and does not apply to members of the Assembly or to non-member candidates. Additionally, a violation of the contribution blackout period enacted by SR 44 is punishable only by disciplinary action taken by the Senate, and is not subject to the criminal, civil, or administrative penalties that generally apply for violations of the PRA.

10) Urgency Clause and Suggested Amendment: As noted above, this bill contains an urgency clause, and would go into effect immediately upon enactment. In light of the Legislative calendar, it is unlikely that this bill could be signed into law prior to the adjournment of session this year, and thus, it is unlikely that the contribution blackout periods proposed by this bill could be in effect this year. On the other hand, making such a significant change to campaign finance law in an election year and having that change go into effect immediately could create confusion, and could hamper the implementation and enforcement of the law. To address these concerns, committee staff recommends that this bill be amended to remove the urgency clause.

11) Previous Legislation: AB 2622 (Smyth) of 2010, which failed passage in this committee, would have prohibited members of the Legislature from accepting campaign contributions from June 16 until the budget bill was passed by the Legislature.

   AB 1411 (Torrico) of 2009, would have prohibited a member of the Legislature from participating in any campaign fundraising activity from July 1 until August 15 or the date the budget bill was passed by the Legislature and sent to the Governor, whichever occurred first. AB 1411 died on the inactive file on the Assembly Floor. AB 1411 was not heard in this committee.

   AB 16 (Huff) of 2005, would have prohibited contributions to members of the Legislature and the Governor between the time that the Governor presented the May revision to his or her budget proposal and the time that a budget was enacted. AB 16 failed passage in this committee.

12) 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

California League of Conservation Voters (prior version)
League of Women Voters of California (prior version)
MapLight (prior version)
Pane & Pane Associates, Inc. (prior version)

Opposition

None on file.

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

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1103 (Padilla) – As Amended: June 17, 2014

SENATE VOTE: 34-1

SUBJECT: Political Reform Act of 1974: candidacy for elective state office.

SUMMARY: Prohibits an elected state officer or a candidate for elected state office from having more than two campaign contribution accounts open for receiving contributions in connection with elective state office, or from opening a campaign contribution account to run for elective state office at an election that is more than four years in the future. Specifically, this bill:

1) Provides that if an individual has previously filed a statement of intention to be a candidate for an elective state office, and that individual subsequently files a statement of intention to be a candidate for a different elective state office to be voted on at the same election, the filing of the second statement of intention shall constitute a revocation of the previously filed statement of intention. Provides that the individual shall not thereafter solicit or receive a contribution or a loan for the elective state office for which he or she previously filed a statement of intention to be a candidate.

2) Prohibits an individual from filing, and prohibits the Secretary of State from accepting, either of the following:

   a) A statement of intention to be a candidate for the office of Member of the Assembly at an election other than the next two elections at which the office will appear on the ballot; or,

   b) A statement of intention to be a candidate for an elective state office other than the office of Member of the Assembly at an election other than the next election at which that elective state office will appear on the ballot.

3) Prohibits an elected state officer or candidate for elective state office from having more than two campaign contribution accounts open simultaneously for purposes of receiving contributions in connection with elective state offices.

4) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

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) Requires an individual to file a statement of intention to become a candidate for an elective office, signed under penalty of perjury, prior to soliciting or receiving a contribution or loan.

3) Requires an individual, upon filing a statement of intention to become a candidate for an elective office, to establish one campaign contribution account at an office of a financial institution located in the state. Requires all contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee, to be deposited into the account. Requires all campaign expenditures to be made from the account, except as specified.

4) Prohibits an individual from filing for more than one office at the same election.

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

COMMENTS:

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

> There is a need to build and restore government trust in the election process. The belief that money buys influence from elected legislators has led to laws that attempt to diminish the influence of money. Currently, the PRA limits campaign contributions to $4,100 per person for candidates or office holders that are running for California State Senate and Assembly. Candidates running for statewide constitutional offices have contribution limits of $6,800 per person, with the exception of the Governor who has a limit of $26,000. Despite the contribution limits, an individual who decides to open two candidate-controlled committees can cumulatively generate more money than what is legally permitted and undermine the effectiveness of existing campaign contribution limits.
>
> Currently, it is legal to declare an intention to run for more than one office at a time. By simply expressing the intent to run for multiple offices an official may open multiple campaign committees. These multiple campaign committees can potentially be used to cumulatively raise funds far in excess of the established campaign contribution limits.
>
> Finally, according to the FPPC, "more than $60 million has been raised for races held one, three, even five years in the future with many candidates raising money into multiple committees for different offices at the same time."
>
> The FPPC goes on to say that "while this practice is perfectly legal, it can often be difficult to ascertain the total amount raised or spent by a given candidate because of their ability to maintain multiple committees."

2) Statements of Intention vs. Nomination Papers: A statement of intention to be a candidate for an elective office serves as a notice of an individual's intent to raise campaign contributions toward seeking a particular office. Nomination papers, including declarations of candidacy, are filed with elections officials in order for the individual's name to appear on the ballot as an actual candidate for the office.

3) Contribution Limits: The author contends that permitting individuals to raise campaign contributions for multiple elective state offices at the same time could allow that individual to circumvent the applicable contribution limits in place for the individual offices. Currently, the limits for campaign contributions to candidates for elective state office are as follows:

   - To a candidate for elective state office other than a candidate for statewide elective office, no person may contribute more than $4,100 per election and no small contributor committee may contribute more than $8,200 per election;

   - To a candidate for elective statewide office other than a candidate for Governor, no person may contribute more than $6,800 per election and no small contributor committee may contribute more than $13,600 per election;

   - To a candidate for Governor, no person or small contributor committee may contribute more than $27,200 per election.

   Notwithstanding the author's concern about the potential for candidates to circumvent the contribution limits, the PRA and regulations adopted by the FPPC already contain provisions to protect against such circumvention. When a person files a statement of intention to be a candidate, the PRA requires that statement to be filed under penalty of perjury. As a result, any person who filed a statement of intention for an office that the person had no intention of seeking could be charged with perjury. Once a candidate files a statement of intention, and raises money into a committee associated with that statement of intention, expenditures from that committee must be related to the campaign for the office that the candidate stated an intention to seek. Furthermore, any transfers of funds between two committees for the same candidate are subject to rules that require those funds to be attributed to individual contributors at the time the funds are transferred, thereby protecting against the circumvention of contribution limits. As a result, the extent to which campaign contribution limits can be circumvented through the use of multiple candidate committees under existing law is unclear.

4) Automatic Revocation of Statements of Intention: Because existing law does not provide for the automatic revocation of statements of intention to be a candidate, neither the PRA nor regulations developed by the FPPC include a procedure or a timeline for a candidate to close the committee that is associated with the statement of intention that was revoked. It is unclear, for instance, how long a candidate would have to dispense with funds that were raised by that committee.

   For example, if a candidate intended to run for the Board of Equalization (BOE), and raised money under the contribution limits in place for that office (currently $6,800 per election), but subsequently decided to run for the state Senate instead, that candidate may not be able to transfer all funds from the BOE account into the new Senate account, since the contribution limits for state Senate are lower (currently $4,100 per election) than for BOE. A candidate in such a position would be required to dispense with any funds in the BOE account that are unable to be transferred, including potentially refunding portions of certain contributions, but the rules that would control such a process are unclear. Unless this bill is amended to establish these procedures and timelines, it would be incumbent upon the FPPC to address

these issues via regulation or advice.

5) Limit of Two Campaign Contribution Accounts: One provision of this bill prohibits a candidate from having more than two campaign contribution accounts open simultaneously for purposes of receiving contributions in connection with elective state offices. A small number of candidates currently have more than two campaign accounts open for the purposes of receiving contributions in connection with elective state offices. Presumably, those candidates would be required to close campaign accounts prior to the effective date of this bill. In most cases where a candidate has more than two accounts open, one or more of the open accounts are for elections that have already occurred, and where the candidate has not yet terminated the committee for that previously-held election.

6) Special Elections and Suggested Amendments: By prohibiting individuals from filing a statement of intention to be a candidate for an elective state office at an election other than the next election at which that elective state office will appear on the ballot (or, in the case of a candidate for Assembly, for an election other than the next two elections at which the office will appear on the ballot), this bill could prevent candidates from being able to raise money for a regularly scheduled election that occurs at or around the same time as a special election held to fill a vacancy in the same seat.

   For example, if a vacancy occurred in a seat in the State Senate in November of the year prior to the final year of the term of office, a special election would be held to fill that vacancy for the remainder of the term. The special primary election to fill that seat could be held in the following January or February, with the special runoff election (if necessary) held in March or April. The primary election for the next full term of office for that seat would then be on the ballot in June, with the general election in November. Under the provisions of this bill, a candidate who filed a statement of intention to be a candidate in the special vacancy election would be unable to file a statement of intention to be a candidate for the full term of office at the election held just months later. In fact, it is possible that the deadline to file as a candidate for the full term of office could pass before a candidate was legally able to file a statement of intention to be a candidate at that election.

   To address these concerns, committee staff recommends the following amendments to this bill:

   On page 3, line 6, after "two", insert:

   regularly scheduled

   On page 3, line 10, after "next", insert:

   regularly scheduled

7) Urgency Clause and Suggested Amendment: As noted above, this bill contains an urgency clause, and would go into effect immediately upon enactment. As noted above, however, the enactment of this bill could require a number of candidates to close campaign committees. Furthermore, given the deadlines for the Governor to act on bills that are approved by the Legislature this year, it is possible that this bill could be signed into law as little as five

weeks before the November election. Changing campaign finance rules so close to the date of a statewide election could create confusion, and could hamper the implementation and enforcement of the law.

To address these concerns, committee staff recommends that this bill be amended to remove the urgency clause.

8) 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

California League of Conservation Voters (prior version)
League of Women Voters of California (prior version)
MapLight (prior version)

Opposition

None on file.

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

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1104 (Padilla) – As Amended: June 15, 2014

SENATE VOTE: 28-9

SUBJECT: Political Reform Act of 1974: campaign communication disclosure.

SUMMARY: Requires all campaign communications that support or oppose a candidate for state office or a statewide ballot measure to be submitted to the Secretary of State (SOS) and posted on his or her website. Specifically, this bill:

1) Requires a candidate for elective state office, a slate mailer organization, or a committee that authorizes an expenditure for a campaign contribution to file an electronic copy of the campaign communication with the SOS as follows:

   a) For a campaign communication that is distributed by postal mail in the last 90 days prior to the election at which the candidate or measure that is the subject of the communication will appear on the ballot, the communication must be filed with the SOS not later than 72 hours after the first distribution of the communication;

   b) For a campaign communication that is distributed in a manner other than by postal mail in the last 90 days prior to the election at which the candidate or measure that is the subject of the communication will appear on the ballot, the communication must be filed with the SOS not later than 24 hours after the first distribution of the communication; and,

   c) For a campaign communication that is distributed at any other time, the communication must be filed with the SOS not later than five business days after the first distribution of the communication.

2) Requires the SOS to maintain an archive of all campaign communications that are filed pursuant to this bill, and to make the communications available for public inspection on the SOS's Internet website.

3) Defines "campaign communication," for the purposes of this bill, to mean an advertisement, mass mailing, or slate mailer that advocates support for or opposition to a candidate for elective state office or a statewide ballot measure.

4) Provides that the term "elective state office," for the purposes of this bill, does not include members of the Board of Administration of the Public Employees' Retirement System or of the Teachers' Retirement Board.

5) Provides that this bill shall become operative on January 1, 2017.

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) Regulates certain campaign communications, including mass mailings, slate mailers, print advertisements, and broadcast advertisements, by requiring those items to include specified information and disclosures.

3) Defines the following terms, for the purposes of the PRA:

   a) "Advertisement," to mean any general or public advertisement which 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. Provides that the term "advertisement" does not include a communication from an organization (other than a political party) to its members, a campaign button smaller than 10 inches in diameter, a bumper sticker smaller than 60 square inches, or other advertisement as determined by regulations of the FPPC.

   b) "Elective state office" to mean the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, SOS, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees' Retirement System, member elected to the Teachers' Retirement Board, and member of the State Board of Equalization.

   c) "Mass mailing" as over two hundred substantially similar pieces of mail.

   d) "Slate mailer" as a mass mailing which supports or opposes a total of four or more candidates or ballot measures.

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

COMMENTS:

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

   > The Secretary of State serves as a general repository of historical state documents. The initial Political Reform Act required candidates to submit "a copy of every mass mailing in support of or in opposition to a state candidate or state measure…Such copies sent to the commission shall be public records." (Gov. § 84305). Since then, technology has advanced to facilitate electronic communications between the public and those running for office. Reinstating this requirement will serve to inform and engage voters, thus helping to restore public trust in elected officials.
   >
   > Electronic disclosure of communications is consistent with the increasing acceptance of digital filings for public disclosure reports. The public is served in

that any interested individual will be able to access these documents on the Secretary of State's website. Providing the public with swift and easy access to candidate filings would promote the goal of an informed electorate.

It would also serve another important public policy purpose by allowing candidates and others subject to disclosure to monitor online their own submissions to the Secretary of State to confirm compliance with the law.

2) Local Jurisdictions and Other States: The cities of Berkeley, Los Angeles, Palmdale, and San Jose, and Marin County all require copies of certain campaign communications made in connection with local elections to be publicly disclosed. Other states that have a similar requirement include New York and New Jersey.

3) Campaign Communication Disclosure History: The PRA, as originally enacted via Proposition 9 of 1974, required that "...a copy of every mass mailing in support of or in opposition to a state candidate or state measure shall be sent to the [FPPC]. Such copies sent to the [FPPC] shall be public records."

   According to Robert Stern, one of the architects of Proposition 9 and former General Counsel to the FPPC, this provision was inserted in the PRA because "it was hoped that it would reduce negative mailings since a copy would be on file with the FPPC." The FPPC sponsored the repeal of this requirement in the late 1970s because, according to Stern, "very few people were coming to the office to look at the mailings and the boxes were piling high in our storage room."

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

American Association of University Women—California (prior version)
California League of Conservation Voters
Edwin Lee, Mayor, City and County of San Francisco
League of Women Voters of California (prior version)
MapLight (prior version)

Opposition

None on file.

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

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1253 (Steinberg) – As Amended: June 17, 2014

SENATE VOTE: 29-8

SUBJECT: Initiative measures.

SUMMARY: Makes significant changes to the initiative process. Specifically, this bill:

1) Makes minor modifications to provisions of law that prescribe how words are counted for the purposes of various provisions of the Elections Code, including for the word limit on a ballot title and summary.

2) Requires the Attorney General (AG), upon the receipt of a request from the proponents of a proposed initiative measure for a circulating title and summary, to initiate a public review process for a period of 30 days by doing all of the following:

   a) Posting the text of the proposed initiative measure on the AG's Internet Web site; and,

   b) Inviting, and providing for the submission of, written public comments on the proposed initiative measure on the AG's Internet Web site. Requires the site to accept written public comments for the duration of the public review period. Requires the written comments to be public records, available for inspection upon request pursuant to existing law, but prohibits the written comments from being displayed to the public on the AG's Internet Web site during the public review period. Requires the AG to transmit any written public comments received during the public review period to the proponents of the proposed initiative measure.

3) Permits proponents of the proposed initiative measure, during the public review period, to submit amendments to the measure. Prohibits the submission of an amendment from extending the period to prepare the fiscal estimate required by current law. Prohibits an amendment from being accepted more than five days after the public review period is concluded. Provides that a proponent shall not be prohibited from proposing a new initiative measure and requesting that a circulating title and summary be prepared for that measure pursuant to existing law.

4) Deletes provisions of law that require the fiscal estimate or opinion of the proposed initiative measure be prepared by the Department of Finance (DOF) and the Joint Legislative Budget Committee (JLBC) and instead requires the estimate to be prepared by the DOF and the Legislative Analyst. Requires the fiscal estimate to be delivered to the AG within 50 days of the date of receipt of the proposed measure by the AG, instead of 25 working days from the date the AG receives the *final version* of the proposed measure.

5) Requires the ballot title and summary to satisfy all of the following:

a) Be written in clear and concise terms, understandable to the average voter, and in an objective and nonpartisan manner, avoiding the use of technical terms whenever possible;

b) If the measure imposes or increases a tax or fee, the type and amount of the tax or fee must be described;

c) If the measure repeals existing law in an substantial manner, that fact shall be included; and,

d) If the measure is contingent on the passage or defeat of another measure or statute, that fact shall be included.

6) Requires the AG to invite and consider public comment in preparing each ballot title and summary.

7) Requires the Legislature to provide the AG with sufficient funding for administrative and other support relating to preparation of the ballot title and summary for initiative measures, including, but not limited to, plain-language specialists.

8) Extends the period of time that a proposed initiative measure petition may be circulated from 150 days to 180 days.

9) Requires the proponents of a proposed initiative measure to submit certification, signed under penalty of perjury, to the Secretary of State (SOS) immediately upon the collection of 25 percent of the number of signatures needed to qualify the initiative measure for the ballot.

10) Deletes provisions of law that require a proposed initiative or referendum measure petition to be deemed filed and qualified on the date the SOS receives a certificate or certificates from all the county elections officials showing the petition is signed by the requisite number of voters of the state and instead provides that upon the issuance of a certificate of qualification, an initiative or referendum measure is deemed qualified for the ballot.

11) Requires the SOS, in the case of an initiative measure, to identify the date of the next statewide general election as defined by current law, or the next statewide special election, that will occur not less than 131 days after the date the SOS receives a petition certified to have been signed by the requisite number of voters.

12) Requires the SOS, on the 131st day prior to the date of the election identified, to do all of the following:

a) Issue a certificate of qualification certifying that the initiative measure, as of that date, is qualified for the ballot at the election identified;

b) Notify the proponents of the initiative measure and the elections official of each county that the measure, as of that date, is qualified for the ballot at the election identified; and,

c) Include the initiative measure in a list of all statewide initiative measures that are eligible to be placed on the ballot at the election identified and publish the list on the SOS's

Internet Web site.

13) Requires the SOS, in the case of a referendum measure, upon the receipt of a petition certified to have been signed by the requisite number of qualified voters, to do all of the following:

a) Issue a certificate of qualification certifying that the referendum measure, as of that date, is qualified for the ballot;

b) Notify the proponents of the referendum measure and the elections official of each county that the measure, as of that date, is qualified for the ballot; and

c) Include the referendum measure in a list of all statewide referendum measures that are qualified for the ballot and publish the list on the SOS's Internet Web site.

14) Permits proponents of a statewide initiative or referendum measure to withdraw the measure after filing the petition with the appropriate elections official at any time before the measure qualifies for the ballot.

15) Requires a state or local initiative petition to contain a statement informing voters that the proponents have the right to withdraw the petition at any time before the SOS certifies that the measure has qualified for the ballot.

16) Deletes provisions of law that require Senate and Assembly committees to hold a joint public hearing on the subject of each initiative measure that qualifies for the ballot before the 30th day prior to the date of the election and instead requires the Senate and Assembly committees to hold a joint public hearing on the subject of each initiative measure not later than 131 days before the date of the election at which the measure is to be voted upon.

17) Requires the SOS to create an Internet Web site, or use other available technology, to consolidate information about each state ballot measure in a manner that is easy for voters to access and understand. Requires the information to include all of the following:

a) A summary of the ballot measure's content;

b) A current list of the top 10 contributors supporting and opposing the ballot measure, as compiled by the Fair Political Practices Commission (FPPC) pursuant to existing law;

c) A list of each committee primarily formed to support or oppose the ballot measure pursuant to existing law, and a means to access information about the sources of contributions reported to each committee; and,

d) Any other information deemed relevant by the SOS.

18) Requires information about sources of contributions to be updated as new information becomes available to the public pursuant to existing law.

19) Requires the SOS, if a committee identified above receives at least one million dollars ($1,000,000) in contributions for an election, to provide a means to access online information

about the committee's top 10 contributors reported to the FPPC pursuant to current law. Requires the FPPC to automatically provide any list of top 10 contributors, and any subsequent updates to that list, to the SOS for purposes of compliance with this section.

20) Extends the time period that the SOS must make the ballot pamphlet available for public examination from 20 days to 25 days.

21) Requires the SOS to establish processes to enable a voter to do both of the following:

a) Opt out of receiving the state ballot pamphlet by mail pursuant to existing law; and

b) When the state ballot pamphlet is available, to receive either the state ballot pamphlet in an electronic format or an electronic notification making the pamphlet available by means of online access.

22) Requires the processes described above to become effective only after the SOS has certified that the state has a statewide voter registration database that complies with the federal Help America Vote Act of 2002 (HAVA).

23) Makes it a crime for a proponent of a statewide initiative measure to seek, solicit, bargain for, or obtain any money or thing of value of or from any person, firm, or corporation for the purposes of withdrawing an initiative petition after filing it with the appropriate elections official.

24) Makes other conforming changes.

25) Creates the Ballot Initiative Transparency Act (Act) and makes the following Legislative findings and declarations:

a) Initiative measures, also known as ballot measures or propositions, allow California voters to participate directly in lawmaking. California voters have enjoyed the right to enact laws through the initiative process since 1911. However, many voters find it difficult to understand the language of an initiative measure and to learn who is behind an initiative measure.

b) States the intent of the Legislature in enacting this Act is to update the initiative process, which is more than 100 years old, by doing all of the following:

i) Providing voters with more useful information so that they are able to make an informed decision about an initiative measure. Under this Act, the SOS will be required to give voters one-stop access to a clear explanation of each measure and information about the individuals and groups behind each measure. This gives voters updated information about who is spending large sums of money to support or oppose each initiative measure. Voters will also be allowed to request an electronic copy of ballot materials, thereby reducing the expenses of printing and mailing.

ii) Providing a voter-friendly explanation of each initiative measure. This Act requires that ballot materials be drafted in clear and impartial language.

iii) Identifying and correcting flaws in an initiative measure before it appears on the ballot. Currently, proponents of an initiative measure have few options to correct the language of an initiative measure or to withdraw a petition for a proposed initiative measure, even when flaws are identified. This Act gives voters an opportunity to comment on an initiative measure before the petition is circulated for signatures. Public comment may address perceived errors in the drafting of, or perceived unintended consequences of, the proposed initiative measure. By extending the time for gathering signatures, this Act will give the Legislature the opportunity to hold earlier public hearings to review initiative measures. This Act also allows the proponents of an initiative measure to withdraw the measure after the petition and signatures are submitted to elections officials, but before the measure qualifies for the ballot.

EXISTING LAW:

1) Defines a ballot title and summary to mean the summary of the chief purpose and points, including the fiscal impact summary, of any measure that appears in the state ballot pamphlet.

2) Defines a circulating title and summary to mean the text that is required to be placed on the petition for signatures that is either of the following:

   a) The summary of the chief purpose and points of a proposed initiative measure that affects the Constitution or laws of the state, and the fiscal impact of the proposed initiative measure; or,

   b) The summary of the chief purpose and points of a referendum measure that affects a law or laws of the state.

3) Requires the proponents of a proposed initiative or referendum measure to submit the text of the proposed measure to the AG with a written request that a circulating title and summary of the measure be prepared, prior to circulating the petition for signatures. Requires proponents of any initiative measure, at the time of submitting the text of the proposed initiative measure to the AG, to pay a fee of two hundred dollars ($200).

4) Requires the AG to give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument nor be likely to create prejudice, for or against that proposed measure.

5) Requires the AG to provide a copy of the circulating title and summary to the SOS within 15 days after receipt of the final version of a proposed initiative measure, or if a fiscal estimate or opinion is to be included, within 15 days after receipt of the fiscal estimate or opinion prepared by the DOF and the JLBC. Requires the DOF and the JLBC to deliver the fiscal estimate to the AG within 25 working days from the date of receipt of the final version of the proposed measure.

6) Requires the SOS, upon request of the proponents of an initiative measure which is to be submitted to the voters, to review the provisions of the initiative measure after it is prepared prior to its circulation. Requires the SOS, in conducting the review, to analyze and comment

on the provisions of the measure with respect to form and language clarity and request and obtain a statement of fiscal impact from the Legislative Analyst. Provides that the review performed shall be for the purpose of suggestion only and shall not have any binding effect on the proponents of the initiative measure.

7) Requires the Legislative Counsel to cooperate with the proponents of an initiative measure in its preparation when requested in writing by 25 or more electors proposing the measure when, in the judgment of the Legislative Counsel, there is reasonable probability that the measure will be submitted to the voters of the State under the laws relating to the submission of initiatives.

8) Allows the proponents of a proposed initiative measure to amend the proposed measure prior to the preparation of a circulating title and summary, as specified.

9) Defines official summary date to mean the date a circulating title and summary of a proposed initiative measure is delivered or mailed by the AG to the proponents of the proposed measure.

10) Prohibits a petition for a proposed statewide initiative or referendum from being circulated prior to the official summary date. Requires a petition with signatures on a proposed initiative measure to be filed with the county elections official no later than 150 days from the official summary date.

11) Requires that state initiative petitions circulated for signature to include a prescribed notice to the public.

12) Provides that an initiative or referendum measure petition is deemed filed and the measure qualified on the date that the SOS receives certificates from all of the county elections officials showing that the petition has been signed by the requisite number of voters.

13) Requires the SOS to notify the proponents, and immediately transmit to the elections official or registrar of voter of every county or city and county in the state a certificate, when the SOS has received from one or more elections officials or registrars a petition certified to have been signed by the requisite number of qualified voters.

14) Requires the SOS, upon certification of an initiative measure to appear on the ballot, to transmit copies of an initiative measure and its circulating title and summary to the Senate and the Assembly.

15) Requires that each house of the Legislature assign the initiative measure to its appropriate committees. Requires the committees to hold a joint public hearing on the subject of the proposed measure prior to the date of the election at which the measure is to be voted upon. Prohibits a hearing from being held within 30 days prior to the date of the election.

16) Authorizes the proponents of a statewide initiative or referendum measure to withdraw the measure at any time before filing the petition with the appropriate elections official, as specified.

17) Requires the SOS to submit an initiative measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. Permits the Governor to call a special statewide election for the measure.

18) Requires the SOS to submit a referendum measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. Permits the Governor to call a special statewide election for the measure.

19) Provides that a "general election" means only the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year with respect to an initiative or referendum, as specified. Prohibits an initiative measure from being submitted to the voters at a statewide special election held less than 131 days after the date the measure is certified for the ballot.

20) Requires the SOS to disseminate the complete state ballot pamphlet over the Internet.

21) Requires the SOS to establish a process to enable a voter to opt out of receiving the state ballot pamphlet by mail, as specified. Requires this process to become effective only after the SOS certifies that the state has a statewide voter registration database that complies with the HAVA.

22) Requires the SOS to develop a program to utilize modern communications and information processing technology to enhance the availability and accessibility of information on statewide candidates and ballot initiatives, including making information available online as well as through other information processing technology.

23) Makes certain activities relating to the circulation of an initiative, referendum, or recall petition a criminal offense.

24) Requires a committee that is primarily formed to support or oppose a state ballot measure or state candidate, and that raises one million dollars ($1,000,000) or more for an election, to maintain an accurate list of the committee's top 10 contributors, as specified by the FPPC. Requires a current list of the top 10 contributors to be disclosed on the FPPC's Internet Web site, as specified. Requires the FPPC to update the top 10 contributor list as specified. Requires the FPPC to adopt regulations to govern the manner in which the FPPC displays to top 10 contributor lists. Requires the FPPC to provide the top 10 contributor lists to the SOS, upon request of the SOS, for the purpose of additionally posting the contributor lists on the SOS's Internet Web site.

25) Requires the FPPC to compile, maintain, and display on its Internet Web site a current list of the top contributors supporting and opposing each state ballot measure, as specified.

26) Requires the state ballot pamphlet to contain a written explanation of the top 10 contributor lists described above, including a description of the Internet Web site where the lists are available to the public.

FISCAL EFFECT: According to the Senate Appropriations Committee, annual costs of $114,326 to AG's office. (General Fund)

The AG's office indicates the need for one Personnel Year (PY) at Associate Governmental Program Analyst position to handle the additional workload related to monitoring the required public comment section and associated duties.

The SOS has indicated that amending the initiative qualification process will have minor cost implications for providing notice to the Legislature and providing a certification of all voter initiated measures that qualify for the ballot.

Existing law requires the SOS, upon the completion of VoteCal, to establish a process to allow voters to opt-out of receiving the Voter Information Guide (VIG). This bill would require that, when opting out, the voter would have the option to receive the VIG "in an electronic format." If this is interpreted to mean the SOS will be required to email the VIG to voters electing this option, numerous changes to VoteCal and county election management systems (EMS) would be required. A website function would need to be developed for voters to choose a VIG delivery option of paper, email, or no delivery. Both VoteCal and the county EMS would need to be modified to capture email addresses and store VIG delivery options. Other system changes include the voter registration interface between VoteCal and the EMS, functions for elections officials to extract email addresses, record in the voter record system activity, and more. The costs to modify VoteCal and county EMS systems to send the VIG electronically to those opting out are estimated to be $500,000.

To the degree that voters elected to either not receive the VIG or to receive it in electronic format, there would be unknown, but significant, printing and postage cost savings.

Additionally, the SOS indicates the need for two PY's with a first year cost of $215,000 and $205,000 ongoing relating to the provision requiring the online posting of consolidated ballot measure summaries and the top 10 donors.

COMMENTS:

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

> Californians, in 1911, won the right to enact legislation through the initiative process, giving them the power equal to the legislative branch of government. The initiative process has been a well-used tool for Californians to act on a broad range of issues. In recent years, voters have been asked to decide on an increasing number of highly complex, sometimes confusing initiatives. Although voters overwhelmingly continue to support the initiative process, they're becoming increasingly concerned over various aspects.
>
> The Public Policy Institute of California's (PPIC) 2013 Statewide Survey results substantiated the public's desire to maintain the initiative process but with targeted improvements. The PPIC survey found that 83% of voters "say the wording of initiatives is often too complicated," 75% of voters favor "giving initiative sponsors more time to qualify initiatives if they use only volunteers to gather signatures," and 77% of voters "support a review and revision process to avoid legal issues and drafting errors."
>
> Over the years, the use of the initiative has swelled in frequency – 112 propositions have been put before voters since 2002 – and complexity. Both are major concerns among

voters. SB 1253 would require ballot title and summaries to be written in non-technical terms that are easily understood by voters.

Additionally, SB 1253 establishes a mechanism for public input on changes to an initiative before it qualifies for the ballot. Currently no such mechanism exists. For example, in 1996, Proposition 212 – an ethics and campaign reform initiative – included an unintended provision that repealed a ban on gifts to legislators and other public officials. Unfortunately, proponents were not allowed to fix their mistake and the initiative failed.

There is also no mechanism for a proponent to remove a ballot initiative in the event the proponent comes to some form of negotiated resolution. Such an instance occurred in 2004. The League of Cities qualified a local government protection initiative (Proposition 65) on the ballot. Before the election, they then came to a compromise through a separate measure with the Legislature and Governor, which also went on the same ballot as Prop 1A. There was no way for the League of Cities to remove Prop 65, resulting in them actively opposing it and supporting Prop 1A.

There have been many discussions about the initiative process and possible improvements. SB 1253 takes a reasonable approach to initiative reform that addresses the concerns many Californians have voiced with the current system.

2) AG's Process for Preparing Ballot Summaries and Titles: Before circulating a measure, current law requires initiative proponents to first submit a draft of the proposed initiative or referendum measure to the AG with a written request that a circulating title and summary of the chief purpose of the points of the measure be prepared. At the time of submitting the draft, current law requires the proponents to pay a $200 fee. Upon receipt of the fee and request, the AG is required to prepare a circulating title, which will be the official title and summary of the proposed measure. In addition, existing law requires the AG to provide a copy of the title and summary to the SOS within 15 days after receipt of the final version of the proposed initiative measure. If during that 15-day period, if the proponents submit amendments, other than technical, non-substantive amendments, to the initiative measure, the AG must submit the title and summary to the SOS within 15 days after receipt of such amendments. In addition, if a fiscal estimate or opinion is required, additional time is allotted and existing law requires the DOF and the JLBC to jointly prepare an estimate, as specified, within 25 working days from the date they receive the final version of the proposed measure. In practice, the Legislative Analyst typically prepares the fiscal estimate on behalf of the JLBC, and that estimate is reviewed and approved by the DOF.

   When the official title and summary is complete, the AG sends it and the text of the measure to the Senate and the Assembly. The Legislature may conduct public hearings on the proposed initiative measure but cannot amend it.

   This bill conforms state law to existing practice by requiring the DOF and the Legislative Analyst to prepare the fiscal estimate. In addition, this bill increases the time period allotted for the fiscal analysis to be prepared from 25 working days to 50 days.

3) Public Comment: In addition to the changes mentioned above, this bill makes other substantial changes to the AG's process. This bill adds a 30 day public review period and

requires the AG to post the text of the proposed initiative measure on the AG's Internet Web site and provide for the submission of written public comments on the proposed initiative measure. However, this bill prohibits the written comments from being displayed to the public and instead requires the AG to transmit the written public comments to the proponents of the measure. According to the author, this establishes a mechanism for the public to provide input on changes to an initiative that could help fix perceived drafting errors and avert perceived unintended consequences of the proposed initiative measure.

While the author's goal is laudable, nothing in current law prohibits proponents from posting the initiative text online for public comment. In addition, there are other avenues in which initiative proponents can obtain assistance when drafting the text of their proposed initiative measure. Current law permits initiative measure proponents to obtain assistance from the Office of the Legislative Counsel in drafting the language of the proposed law. In order to do so, the proponents must obtain the signatures of 25 or more electors on a request for a draft of the proposed law before submitting their proposal to the Legislative Counsel. Moreover, current law allows initiative proponents to submit the text of their proposed initiative measure to the SOS for review, as specified. Finally, proponents are permitted to seek the assistance of their own private counsel to help draft the text of the proposed law. In practice, initiative proponents with greater financial resources tend to use private counsel or legal firms that specialize in certain issue areas, such as the Political Reform Act, when drafting the text of a proposed initiative.

4) Possibility of "Spot" Initiatives: During the public review period, this bill permits proponents of a proposed initiative measure to submit amendments to the measure. However, this bill does not place any limitation on the amendments submitted by the proponents. Consequently, this bill does not prevent a proponent from receiving public comments on the text of a "spot" initiative, and then submitting a substantially revised initiative text to the AG after the 30 day public comment period for the ballot title and summary preparation. This scenario renders the public review process meaningless. Moreover, the proponents of a proposed measure could do this and circumvent paying another $200 filing fee.

   Furthermore, because this bill does not prevent the submission of a "spot" initiative, the time period that the Legislative Analyst and DOF have to prepare the fiscal estimate could be negatively impacted. This bill, which extends the time for the DOF and the Legislative Analyst to prepare the fiscal estimate from 25 working days to 50 days, also permits the proponents to submit amendments 5 days after the 30 day public review period. As a result, if the proponents submit an amendment that substantively changes the initiative text, the DOF and Legislative Analyst will only have 15 days to prepare a new fiscal estimate.

5) New Title and Summary Criteria: When the AG is drafting the title and summary for a proposed initiative measure, current law requires the AG to give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument nor be likely to create prejudice, for or against that proposed measure. This bill adds substantial new requirements on how a ballot title and summary must be drafted. This bill requires the ballot title and summary to satisfy all of the following criteria: 1) be written in clear and concise terms, understandable to the average voter, and in an objective and nonpartisan manner, avoiding the use of technical terms whenever possible, 2) include the type and amount of the tax and fee if the measure imposes or increases a tax or fee, 3) indicate whether the measure repeals existing law in any substantial manner, and 4)

indicate whether the measure is contingent on the passage or defeat of another measure or statute. According to the author, this bill aims to result in ballot titles and summaries that are written in non-technical terms that are easily understood by voters. Notwithstanding the author's goal, these new criteria are ambiguous and subjective, and consequently could result in more litigation surrounding the ballot titles and summaries created by the AG.

6) Initiative and Referendum Qualification Changes: Current law provides that an initiative or referendum measure petition is deemed filed and the measure qualified on the date that the SOS receives certificates from all of the county elections officials showing that the petition has been signed by the requisite number of voters. This bill makes significant changes to that process and instead provides for a two-step process for initiative measures. The first step requires the SOS to identify the date of the next statewide general election or the next statewide special election that will occur not less than 131 days after the date the SOS receives a petition certified to have been signed by the requisite number of qualified voters. Secondly, the SOS waits until the 131st day prior to the date of the election identified to issue a certificate of qualification that the measure, as of that date, is qualified for the ballot at the election identified. Under the provisions of this bill, an initiative or referendum measure is deemed to be qualified for the ballot upon the issuance of a certificate of qualification by the SOS, instead of being qualified on the date that the SOS receives certificates from all of the county elections officials showing that the petition has been signed by the requisite number of voters.

   There could be a significant amount of time between the date when the SOS receives certificates certifying that the requisite number of voters had signed the petition and the 131st day prior to the date of the election identified by the SOS. According to the author, this two-step process is designed to increase the time between the completion of the verification of signatures on a petition and the date that the measure is technically qualified to appear on the ballot. Allowing a longer period of time between these two steps will provide the initiative proponents more time to negotiate with the Legislature or other entities and perhaps come to an agreement or settlement.

   In addition, increasing the time period will also provide the proponents with the ability to withdraw the initiative if an agreement or settlement is reached. Current law permits the proponents of a statewide or local initiative or referendum measure to withdraw the measure at any time before filing the petition with the appropriate elections official. This bill extends that period of time and permits the proponents of a statewide initiative or referendum to withdraw the measure after filing the petition with the appropriate elections official at any time before the SOS certifies that the measure has qualified for the ballot.

   It is unclear, however, whether this bill could be interpreted to be in conflict with the California Constitution. Under current law, the Governor is permitted to call a statewide special election for an initiative or referendum measure that is qualified for the ballot. As mentioned above, even if an initiative has been signed by the requisite number of qualified voters, the initiative, under the provisions of this bill, is not deemed to be qualified until after the SOS issues a certification of qualification on the 131st day prior to the identified election. It is unclear whether this new process negates the Governor's ability to call a statewide special election for an initiative measure that has received enough signatures to qualify for the ballot, but is not deemed to be qualified under the provisions of this bill. In order to provide legal assurance, the committee may wish to obtain a legal opinion from the Office of

Legislative Counsel to verify that this bill does not restrict the Governor's ability to call a statewide special election for an initiative measure.

7) Increased Timeframes: Current law requires a petition for a proposed initiative measure to be filed with the county elections official not later than 150 days from the official summary date. This bill extends the circulation time period to 180 days. While the addition of 30 days may be minor, it is unknown how this additional time will impact the current initiative process. Presumably adding extra days to the circulation period could increase the number of initiatives on the ballot.

   In addition, current law requires the SOS to make a copy of the state ballot pamphlet available for public examination not less than 20 days before the SOS submits the ballot pamphlet to the State Printer. This bill extends the public display period to 25 days.

   While both of these time changes may seem minor, in fact they could have a significant impact on the current initiative process. For example, there are many tasks that must be completed and important deadlines that must be met before the final version of the ballot pamphlet goes on public display. Conversely, there are tasks and many statutory deadlines that must be met after the public display period. For instance, if there are any legal challenges to the contents of the SOS's ballot pamphlet or AG's ballot labels and ballot titles and summaries, these challenges must be resolved in court. In addition, time needs to be allocated for the State Printer to print millions of state ballot pamphlets and for the final version of the state ballot pamphlet to be translated into nine foreign languages as required by law. Aside from those tasks, there are other statutory deadlines that must be met. For example, current law requires county elections official to finish sending military and overseas ballots 45 days before election day. Consequently, the lengthening of any statutory requirement could reduce the time available for the SOS to prepare the statewide ballot pamphlet, and may reduce the time available to county elections officials to prepare, print, and mail sample ballots, and print the official ballots for their voters.

8) Related Legislation: SB 844 (Pavley), which is also being heard in this committee today, contains similar provisions to portions of this bill. SB 844 requires the SOS, among other provisions, to create an Internet Web site, as specified, and consolidate information about each ballot measure in a manner that is easy for voters to access and understand on any computer system platform. Specifically, SB 844 requires the web site to include, among other information, a summary of each ballot measure, a current list of the top 10 contributors supporting or opposing a ballot measure, as specified, a list of each committee primarily formed to support or oppose a ballot measure, as specified, and for committees primarily formed to support or oppose a state ballot measure that raise $1,000,000 or more for an election, a list of the committee's top 10 contributors as provided by the FPPC, as specified.

9) Previous Legislation: SB 27 (Correa), Chapter 16, Statues of 2014, requires a primarily formed committee formed to support or oppose a state ballot measure or state candidate, and that raises $1,000,000 or more for an election, to maintain an accurate list of their top 10 contributors and to disclose those lists on the FPPC's Internet Web site, as specified. Additionally, SB 27 requires the FPPC to compile, maintain, and display on its Internet Web site a current list of the top contributors supporting and opposing each state ballot measure, as specified, among other provisions.

AB 2524 (Evans) of 2010, which was held on the Senate Appropriations suspense file, would have required the AG to submit a copy of the text of a proposed initiative measure to the SOS for posting on the SOS's Internet Web site for 30 days to facilitate public comment prior to the AG drafting the ballot title and summary for the proposed measure.

AB 1245 (Laird) of 2003, which was vetoed by Governor Gray Davis, would have required a 30 day public comment period prior to the AG drafting the ballot title and summary. In his veto message, Governor Davis stated that, "I am concerned that an initiative could receive either a negative or positive comment while displayed on the SOS web site; the proponents may then revise the initiative, but is not required to repost it. Consequently, the public may see one version of the initiative prior to the election and an entirely different initiative during the election."

SB 1715 (Margett) of 2006, which failed passage in the Senate Elections & Constitutional Amendments Committee, would have extended the signature gathering period from 150 days to 365 days.

10) 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 Political Reform Act (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 proposition and require a two-thirds vote of each house of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause (sponsor)
AARP California
American Association of University Women
California Chamber of Commerce
California School Employees Association
Disability Rights California
Sierra Club California

Opposition

California Teachers Association

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1365 (Padilla) – As Amended: June 16, 2014

SENATE VOTE: 23-11

SUBJECT: California Voting Rights Act of 2001.

SUMMARY: Expands the California Voting Rights Act of 2001 (CVRA) to allow challenges to district-based elections to be brought under the CVRA, as specified. Specifically, this bill:

1) Prohibits, pursuant to the CVRA, district-based elections from being imposed or applied in a manner that impairs the ability of a protected class of voters to elect candidates of its choice, or its ability to influence the outcome of an election, as the result of the dilution or abridgement of the rights of voters who are members of a protected class.

2) Provides that the fact that a district-based election was imposed on a political subdivision as a result of an action filed pursuant to the CVRA shall not be a defense to an action alleging that the district-based elections violate the provisions of this bill.

3) Requires a court, upon finding that a political subdivision's district-based elections violate this bill, to implement appropriate remedies that are tailored to remedy the violation and that are guided in part by the views of the protected class.

   a) Requires the court to implement an effective district-based elections system that provides the protected class the opportunity to elect candidates of its choice from single-member districts. Provides that if no such system is possible, the court shall implement a single-member district-based election system that provides the protected class the opportunity to join in a coalition of groups to elect candidates of their choice. Permits a court to implement additional remedies, including those outlined below.

   b) Requires a court, if the remedies outlined above in (a) are not legally viable, to implement other appropriate remedies, including increasing the size of the governing body; issuing an injunction to delay an election; or requiring an election to be held on the same day as a statewide election.

4) Provides that if the parties to an action brought under this bill agree to settle a dispute, the parties shall consider the remedies provided for in this bill when negotiating a settlement agreement. Provides that this provision does not limit the remedies available in out-of-court settlements.

5) States that the intent of the Legislature in enacting this bill is to address ongoing vote dilution and discrimination in voting as matters of statewide concern, in order to enforce the fundamental rights guaranteed to California voters under the California Constitution. Requires the provisions of this bill to be liberally construed in furtherance of this legislative

intent to eliminate minority vote dilution.

6) Contains a severability clause.

EXISTING LAW:

1) Prohibits, pursuant to the CVRA, an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class of voters to elect a candidate of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.

2) Defines "protected class," for the purposes of the CVRA, to mean a class of voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) (VRA).

3) Provides that a violation of the CVRA may be established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Provides that elections conducted prior to the filing of an action are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

4) Provides that the occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class. Provides that one circumstance that may be considered when determining whether a violation of the CVRA exists is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action.

5) Provides that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, but may be a factor in determining an appropriate remedy.

6) Provides that proof of intent on the part of voters or elected officials to discriminate against a protected class is not required to find a violation of the CVRA.

7) Requires a court, upon finding that an at-large method of election violates the CVRA, to implement appropriate remedies, including the imposition of district-based elections, which are tailored to remedy the violation.

8) Permits any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged to file an action in the superior court of the county in which the political subdivision is located.

9) Permits a prevailing plaintiff party in an action brought pursuant to the CVRA to recover reasonable attorney's fees and litigation expenses, including, but not limited to, expert witness fees and expenses as part of the costs. Prohibits a prevailing defendant party from recovering any costs unless the court finds the action to be frivolous, unreasonable, or without foundation.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

> California is blessed to have the most diverse population in US. One-quarter of California's population are immigrants who come from across the globe. In addition, 200 unique languages are spoken here. The 2010 census made it clear – diversity will continue to be a trend far into California's future.
>
> Our diversity is an asset that comes with great responsibility for policymakers. Protecting the rights of minorities and ensuring equal and equitable opportunities, must be a priority. Thirteen years ago, California took the lead in protecting the voting rights of our diverse population with passage of the California Voting Rights Act. The Act sought to end the negative impact that at-large elections have on voter turnout and equitable representation.
>
> The result is that dozens of school districts, community college districts and cities have moved or are moving to district based elections. However, once a local government adopts district based elections, voters lose the protections of the California Voting Rights Act.
>
> Nothing in state law protects minority voters from poorly drawn districts. Poorly drawn districts can have the same negative impact on voter turnout and equitable representation as at-large elections. Dividing up minority populations or cramming them into only one district can weaken their ability to even influence an election. SB 1365 will create a process, building on the current California Voting Rights Act, for the public to challenge poorly drawn district elections.

2) California Voting Rights Act of 2001: SB 976 (Polanco), Chapter 129, Statutes of 2002, enacted the CVRA to address racial block voting in at-large elections for local office in California. In areas where racial block voting occurs, an at-large method of election can dilute the voting rights of minority communities if the majority typically votes to support candidates that differ from the candidates who are preferred by minority communities. In such situations, breaking a jurisdiction up into districts can result in districts in which a minority community can elect the candidate of its choice or otherwise have the ability to influence the outcome of an election. Accordingly, the CVRA prohibits an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class of voters to elect the candidate of its choice or to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class.

The first case brought under the CVRA was filed in 2004, and the jurisdiction that was the target of that case—the City of Modesto—challenged the constitutionality of the law. Ultimately, the City of Modesto appealed that case all the way to the United States Supreme Court, which rejected the city's appeal in October 2007. The legal uncertainty surrounding the CVRA may have limited the impacts of that law in the first five years after its passage.

Since the case in Modesto was resolved, however, many local jurisdictions have converted or are in the process of converting from an at-large method of election to district-based elections due to the CVRA. In all, approximately 130 local government bodies have transitioned from at-large to district-based elections since the enactment of the CVRA. While some jurisdictions did so in response to litigation or threats of litigation, other jurisdictions proactively changed election methods because they believed they could be susceptible to a legal challenge under the CVRA, and they wished to avoid the potential expense of litigation.

This bill expands the CVRA to permit challenges to be brought to district-based election systems that impair the ability of a protected class of voters to elect the candidates of its choice or to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class. Challenges to district-based election systems under the CVRA would be subject to the same standards and procedures that currently apply to challenges to at-large election systems that are brought under the CVRA. As is the case with challenges to at-large election systems under the CVRA, prevailing plaintiff parties that bring successful challenges to district-based election systems under this bill would be able to recover attorney's fees, including expert witness fees and expenses. Prevailing defendant parties are not able to recover costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

The primary difference between challenges brought under the CVRA to at-large elections and challenges brought to district-based elections under this bill are the remedies that would be available when a court finds that a violation exists. While existing law does not explicitly limit the remedies that a court may consider in response to an at-large election system that violates the CVRA, it does state that the imposition of district-based elections may be an appropriate remedy for such a violation. By contrast, if a district-based election system were found to violate the CVRA under the provisions of this bill, the court would be required to implement a single-member district-based election system as a remedy, unless such a remedy was not legally viable. In situations where the court finds that such a remedy is not viable, this bill requires the court to consider other appropriate remedies, including increasing the size of the governing body, delaying an election, or changing the dates of elections in the political subdivision.

3) Federal Voting Rights Act of 1965 & Shelby County v. Holder: The 15th Amendment to the U.S. Constitution provides, in part, that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous conditions of servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions. The 15th Amendment was ratified in February 1870.

In 1965, Congress determined that state officials were failing to comply with the provisions

of the 15th Amendment. Congressional hearings found that litigation to eliminate discriminatory practices was largely ineffective because state and local jurisdictions would institute new discriminatory practices to replace any such practices that were struck down in court. As a result, Congress passed and President Johnson signed the VRA. The VRA, among other provisions, prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" from being imposed by any "State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."

Section 2 of the VRA is a nationwide prohibition against voting practices and procedures, including redistricting plans and at-large election systems, poll worker hiring, and voting registration procedures, that discriminate on the basis of race, color, or membership in a language minority group. Section 2 allows the U.S. Attorney General (AG), as well as affected private citizens, to bring lawsuits in federal court to challenge practices that may violate the VRA. Section 4 of the VRA sets the criteria for determining whether a jurisdiction is covered under certain provisions of the VRA, including the requirement for review of changes affecting voting under Section 5. Section 5 of the VRA requires certain states and covered jurisdictions to receive approval for any changes to law and practices affecting voting from the U.S. Department of Justice (DOJ) or the U.S. District Court of the District of Colombia to ensure that the changes do not have the purpose or effect of "denying or abridging the right to vote on account of race or color." The requirement to obtain approval under Section 5 is commonly referred to as a "preclearance" requirement.

While much of the VRA is permanent, certain special provisions of the VRA are temporary, including Section 5. When the VRA was enacted, Section 5 was scheduled to expire in five years. Subsequently, Congress extended those provisions for another five years in 1970, an additional seven years in 1975, and an additional 25 years in 1982, and again for an additional 25 years in 2006. As a result, Section 5 currently is scheduled to expire in 2031.

In April 2010, Shelby County in Alabama filed suit in the U.S. District Court for the District of Columbia challenging the constitutionality of Section 5 of the VRA, and of the coverage formulas contained in Section 4(b) of the VRA. Because the State of Alabama was covered under the preclearance requirements of Section 5, Shelby County was also covered as a political subdivision of Alabama. In the lawsuit, Shelby County contends that Congress exceeded its authority under the 15th Amendment and thus violated the 10th Amendment and Article IV of the U.S. Constitution when it voted to reauthorize Section 5 without changing or updating the formulas that determined which jurisdictions were covered under Section 5. The District Court rejected Shelby County's arguments, and upheld the constitutionality of the Section 5 reauthorization and the coverage formulas contained in Section 4(b). On appeal, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the ruling of the District Court, and Shelby County subsequently appealed to the U.S. Supreme Court.

On June 25, 2013, the U.S. Supreme Court, in Shelby County v. Holder, held that the coverage formula in Section 4(b) of the VRA is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the VRA. The Court stated that although the formula was rational and necessary at the time of its enactment, it is no longer responsive to current conditions. The Court, however, did not strike down Section 5, which contains the preclearance conditions. Without Section 4(b), however, no

jurisdiction will be subject to Section 5 preclearance unless Congress enacts a new coverage formula.

The effect of the Shelby County decision is that the jurisdictions identified by the coverage formula in Section 4(b) no longer need to seek preclearance from the U.S. AG or the U.S. District Court for the District of Columbia before implementing new voting changes, unless they are covered by a separate court order entered under Section 3(c) of the VRA.

All or specific portions of the following states were required to have their voting changes precleared before the U.S. Supreme Court decision in Shelby: Alabama, Alaska, Arizona, Florida, Georgia, Louisiana, Michigan, Mississippi, New Hampshire, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia. Also included were the California counties of Kings, Monterey, and Yuba. Merced County previously was subject to the preclearance requirement, but it successfully bailed out from Section 5 coverage in 2012 through a court approved consent decree negotiated with the U.S. DOJ.

According to the U.S. DOJ, the ruling in Shelby County does not affect Section 3(c) of the VRA. Jurisdictions covered by a preclearance requirement pursuant to court orders under Section 3(c) remain subject to the terms of those court orders. Additionally, the Supreme Court's decision states that Section 2 of the VRA, which prohibits discrimination in voting based on race or language minority status, and which applies on a permanent nationwide basis, is unaffected by the decision. Likewise, other provisions of the VRA that prohibit discrimination in voting remain in full force and effect, as do other federal laws that protect voting rights, including the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, and the Help America Vote Act.

4) Consolidation Issues and Los Angeles County: Existing law requires all state, county, municipal, district, and school district elections that are held on a statewide election date to be consolidated with the statewide election, except that the Los Angeles County Board of Supervisors is allowed to deny a request for consolidation of an election with the statewide election if the voting system used by the county cannot accommodate the additional election. This unique provision allowing Los Angeles County to deny consolidation requests was created through the passage of SB 693 (Robbins), Chapter 897, Statutes of 1985, in response to attempts by a number of cities in Los Angeles to move their municipal elections to the same day as statewide elections. Los Angeles County sought the ability to deny consolidation requests because its voting system could accommodate only a limited number of contests at each election, and the county was concerned that the move by cities to hold their elections at the same time as the statewide election would exceed the capacity of their voting system. Los Angeles County still uses a variant of the voting system that it used in 1985, though the county is currently in the planning and design stage for developing and transitioning to a new voting system. One of the principles that the county has articulated to guide the development of its new voting system is having a system that has "sufficient technical and physical capacity to accommodate…consolidation of elections with local districts and municipalities." That voting system, however, is not expected to be available for use countywide before 2018.

Because of the capacity limitations of Los Angeles County's voting system, the county has denied requests from various local governmental bodies in the county that have sought to

hold their elections at the same time as—and to have their elections consolidated with—statewide elections. In fact, in April 2013, Los Angeles County denied requests from six school districts and a water district in the Santa Clarita Valley to hold their elections at the same time as statewide elections. According to an article in the Los Angeles Times, those districts were seeking to move the dates of their elections in an attempt to improve voter participation and to avoid possible liability under the CVRA.

This bill provides, as one potential remedy for a violation of its provisions, that a court may require a jurisdiction to hold its elections on the same day as a statewide election. Until Los Angeles County replaces its voting system and is able to accommodate a larger number of requests to consolidate elections with the statewide election, such a court order could force a local jurisdiction in Los Angeles County to hold its elections on the same day as a statewide election, but not have that election be consolidated with the statewide election. When two elections are held on the same day, but are not consolidated, those elections are commonly referred to as "concurrent" elections. When concurrent elections are conducted, voters who are voting in both elections have separate ballots for each election, and can have separate polling locations for each election. As a result, concurrent elections can cause voter confusion, and otherwise can create challenges for voters, candidates, and election officials.

If this bill results in local jurisdictions in Los Angeles being ordered to hold their elections on the same day as a statewide election, those jurisdictions could be forced to hold concurrent elections, rather than having their elections consolidated with the statewide election. Such a result may minimize the benefits of changing the election date.

5) Potential Conflicts with Existing Law: This bill permits a court, upon finding that a district-based election system violates the provisions of the CVRA, to implement remedies in addition to implementing a redistricting plan, including increasing the size of the governing body, issuing an injunction to delay an election, and requiring an election to be held on the same day as a statewide election. Depending on the type of jurisdiction in question, some or all of these options may conflict with other existing provisions of state law governing these subjects. For instance, existing law prescribes the number of city council members that may be elected by or from districts.

6) Coalition of Groups and Author's Amendment: This bill permits a court to implement, as an appropriate remedy, a single-member district-based election system that provides a protected class the opportunity to join with a coalition of groups to elect candidates of their choice. Neither this bill nor existing law defines "coalition of groups" for the purpose of implementing this provision. To address this issue, the author proposes to amend this bill to replace the phrase "coalition of groups" with the phrase "coalition of two or more protected classes."

7) Related Legislation: AB 280 (Alejo), which is pending in the Senate Elections & Constitutional Amendments Committee, prohibits specified changes to elections practices and procedures from being made in certain jurisdictions unless those jurisdictions demonstrate to the Secretary of State or the superior court that the changes are not likely to result in a discriminatory effect on the participation of voters from any racial or ethnic group that constitutes at least 20 percent of the total citizen voting-age population in the jurisdiction. AB 280 was gutted-and-amended in the Senate, so the current contents of that

bill have not been considered by this committee or the Assembly.

AB 2715 (Hernández), which was approved by this committee on a 5-2 vote, requires cities with a population of 100,000 or more to elect city council members by district, instead of at-large, beginning January 1, 2017. AB 2715 was held on the Assembly Appropriations Committee's suspense file.

AB 1440 (Campos), which was approved by this committee on a 7-0 vote and by the Assembly on a 77-0 vote, requires any political subdivision that is switching from an at-large method of election to a district-based method of election to hold at least two public hearings on the proposed district boundaries prior to adopting those boundaries, among other provisions. AB 1440 is pending in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (co-sponsor)
Asian Americans Advancing Justice—Los Angeles (co-sponsor)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area (co-sponsor)
Mexican American Legal Defense and Educational Fund (co-sponsor)
National Association of Latino Elected and Appointed Officials Educational Fund (co-sponsor)
California Latino Legislative Caucus
League of Women Voters of California
Secretary of State Debra Bowen
Service Employees International Union, California State Council

Opposition

None on file.

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

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1442 (Lara, et al.) – As Amended: May 12, 2014

SENATE VOTE: 34-0

SUBJECT: Political Reform Act of 1974: campaign statements.

SUMMARY: Requires most state candidates and campaign committees to file periodic campaign reports every calendar quarter, instead of semi-annually. Requires the development of a new Internet-based campaign filing and public display system. Specifically, this bill:

1) Requires elected state officers, candidates for elective state office, and recipient committees that are primarily formed to support or oppose a candidate for elective state office or one or more statewide ballot measures to file quarterly campaign statements, instead of semi-annual campaign statements, in accordance with the following schedule:

   a) No later than April 7 for the period commencing January 1 and ending March 31;

   b) No later than July 31 for the period commencing April 1 and ending June 30;

   c) No later than October 7 for the period commencing July 1 and ending September 30; and,

   d) No later than January 31 for the period commencing October 1 and ending December 31.

2) Requires an independent expenditure committee or major donor committee that is primarily formed to support or oppose a candidate for elective state office or one or more statewide ballot measures to file quarterly campaign statements, pursuant to the schedule outlined above, unless the committee has not made contributions or independent expenditures during the reporting period. However, because independent expenditure committees and major donor committees cannot, by definition, be primarily formed to support or oppose a candidate for elective state office or one or more statewide ballot measures, this appears to be a drafting error.

3) Eliminates requirements for committees to file certain special reports, including supplemental preelection statements, supplemental independent expenditure reports, odd-numbered year reports, and state ballot measure contribution and independent expenditure reports.

4) Requires contributions and independent expenditures of $1,000 or more that are made on election day to be reported within 24 hours of the time that the contribution or expenditure is made.

5) Requires the Secretary of State (SOS), in consultation with the Fair Political Practices Commission (FPPC), to develop a statewide Internet-based system for the electronic filing and public display of all records filed pursuant to the Political Reform Act (PRA), including,

but not limited to, statements of organization, campaign statements, reports, registrations, and certifications filed by or for any of the following:

a) An officeholder account or legal defense fund;

b) A committee that is primarily formed to support one or more candidates for elective state office or one or more statewide ballot measures, including, but not limited to, major donor and independent expenditure committees;

c) A slate mailer organization;

d) A lobbyist, lobbying firm, or lobbyist employer; and,

e) A multipurpose organization that is required to file any report pursuant to the PRA.

6) Requires the electronic filing and public display system described above to provide both of the following:

a) Search capabilities that are data-driven and user-friendly for members of the public; and,

b) Regular availability of all filings in a raw, machine-readable data format that may be downloaded by members of the public.

7) States the intent of the Legislature to enact legislation that would provide for monthly filing of campaign statements, instead of the quarterly filing established by this bill, after the SOS implements the electronic filing and public display system required by this bill.

8) Makes conforming and technical changes.

EXISTING LAW:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.

2) Requires candidates, political committees, and slate mail organizations to file specified periodic and activity-based campaign finance reports, including semiannual statements, pre-election statements, supplemental pre-election statements, and late contribution/expenditure reports that include specified campaign finance information.

3) Defines "late contribution" as either of the following:

a) A contribution, including a loan, that totals $1,000 or more in the aggregate and that is made to or received by a candidate, controlled committee, or committee primarily formed or existing primarily to support or oppose a candidate or measure within 90 days before the date of the election at which candidate or measure is to be voted on; or,

b) A contribution, including a loan, that totals $1,000 or more in the aggregate and that is made to or received by a political party committee within 90 days before a state election.

4) Defines "late independent expenditure" as an independent expenditure that totals $1,000 or more in the aggregate and that is made for or against a specific candidate or measure involved in an election within 90 days before the date of the election.

5) Requires a "late contribution" or a "late independent expenditure," as defined, to be publicly reported within 24 hours of the time that it is made or received, as specified.

6) Requires the SOS, in consultation with the FPPC, to provide an online and electronic filing system for use by specified state candidates, committees, lobbyists, lobbying firms, and lobbyist employers. This online reporting and disclosure system is commonly referred to as the Cal-Access system. Requires the SOS to make all the data filed using the system available on the Internet for public viewing in an easily understood format and to provide a means whereby entities that are required to file statements or reports online or electronically with the SOS pursuant to the PRA, can submit those required filings free of charge.

FISCAL EFFECT: According to the Senate Appropriations Committee:

• First year costs of $156,000 and annual ongoing costs of $146,000 to the SOS (General Fund).

• Annual costs of $147,000 to the FPPC (General Fund).

The SOS will require 2 personnel years (PYs) for Program Technician III positions at a cost of $156,000 in the first year and $146,000 ongoing resulting from increased workload associated with the more frequent filing of the reports, as well as compliance and fine enforcement.

The FPPC indicates the need for 1/2 PY for an Attorney I position and 1 PY for a Political Reform Consultant to handle new regulations, increased requests for advice, and for the revisions of forms and campaign manuals.

Preliminary estimates for implementing an online filing system for campaign disclosure reports is $10 million to $15 million.

COMMENTS:

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

> This bill is a part of a package of bills that are aimed at strengthening the relationship between the citizens of California and their state government – the California Accountability in Public Service Act (CAPS Act). Recent events have raised significant questions about the transparency and accountability of rules and political practices in state government. This package of bills is the most significant change to political practices in California in at least twenty years. SB 1442 is a part of the CAPS Act and replaces semi-annual reporting statements with quarterly filing reports. This doubles the amount of disclosure currently provided to the public. This will streamline and consolidate the current reporting

process without losing transparency. Specifically, it makes the following changes to reporting:

- Replaces Semi-Annual Statements with Quarterly Filing Reports – doubles the amount of disclosure currently provided to [the] public.
- Reducing total amount of statements to four, making compliance easier – resulting in greater disclosure.
- Reducing complexity while increasing disclosure.
- Keeps 24 Hour Reporting for contributions over $1,000 in the 90-day pre-election period, so large contributions will continue to be disclosed immediately.
- Keeps one pre-election report closest to the election.

Transparency is one key to restoring public trust in government. The current campaign filing system does not provide enough timely disclosure of campaign activity and the number of reports required makes it more difficult for the public to access the information. A new system based on quarterly filing for state officials accomplishes increased disclosure with fewer reporting statements.

Additionally, SB 1442 requires the Secretary of State to consult with the FPPC to develop an online campaign reporting system. An online system will improve the ease of reporting, occurrence of reporting and allow the public to easily access reports. A user-friendly, online reporting system is an important component to ensuring that state government is transparent and accountable to the public. Once such a system is developed, it is the intent to [move to] monthly filing of campaign statements.

2) Filing Schedules, State Committees, and Suggested Amendments: Under existing law, candidates and committees generally are required to file regular campaign disclosure reports semi-annually. Candidates generally are required to file two pre-election campaign statements for any election where they will appear on the ballot, and certain non-candidate committees similarly must file pre-election reports. When candidates and committees are required to file these pre-election reports, they generally must also file late contribution reports, and late independent expenditure reports, disclosing within 24 hours any contributions made or received and independent expenditures made of $1,000 or more in the last 90 days before the election (election cycle). Candidates and committees can also be required to file additional special campaign reports at other times of the year, based on the particular campaign finance activity of the candidate or committee.

This bill seeks to require elective state officers, candidates for elective state office, and other state committees to file quarterly reports, instead of semi-annual reports, while reducing the number of pre-election reports to one such report per election (the new quarterly reports would, in effect, replace the first pre-election report that is required to be filed under existing law). For many state candidates and committees, this change will result in a small increase in the number of reports that must be filed over a given period of time. Some state candidates and committees will file fewer campaign reports under this bill, however, due to the

elimination of certain special activity-based reports. Local candidates and committees would continue to file semi-annual reports and two pre-election reports per election.

Due to drafting errors, however, this bill does not currently require *all* state committees to file quarterly reports. Instead, as currently drafted, state general purpose committees would continue to file semi-annual reports, but would not be required to file *any* pre-election reports. Committee staff recommends that this bill be amended to correct those drafting errors to ensure that all state committees are subject to quarterly reporting.

3) Periodic and Activity Based Reports and Suggested Amendments: Under the PRA, there are two general types of reporting requirements. The first type of report is referred to as a periodic report. Periodic reports must be filed according to a specified time schedule for all similarly-situated candidates and committees, regardless of the amount of campaign activity during the period of time covered by the report. These reports generally include all campaign activity (contributions, loans, expenditures, etc.) that occurred over a specified period of time. Semi-annual reports and preelection reports are two examples of periodic reports that are required under the PRA.

The second type of report that the PRA requires is an activity-based report. An activity-based report is triggered when a candidate or committee has campaign activity that meets or exceeds a specific dollar threshold. Late contribution reports and late independent expenditure reports are examples of activity-based reports.

This bill seeks to eliminate a number of special activity-based reports in an effort to streamline the campaign reporting process. Among the reports that would be eliminated by this bill are supplemental preelection statements, special odd-numbered year reports, and supplemental independent expenditure reports. Because this bill requires state candidates and committees to file quarterly reports, and because previous legislation has expanded the circumstances under which 24 hour reporting is required for contributions and independent expenditures, these special activity-based reports largely can be eliminated without sacrificing disclosure or transparency.

There is one type of report that this bill proposes to eliminate (special state ballot measure contribution and expenditure reports), however, that could result in a loss of timely disclosure of campaign activity in connection with the qualification of proposed state ballot measures. AB 1759 (Umberg), Chapter 438, Statutes of 2006, required specified campaign committees to file an electronic report within 10 business days of making contributions or independent expenditures of $5,000 or more to support or oppose the qualification or passage of a single state ballot measure. This reporting requirement was enacted, in part, in response to a situation where a state general purpose committee made close to $900,000 in contributions to two committees that were seeking to qualify state ballot measures. Because of the timing of those contributions, the committee making the contributions was not required to disclose its donors until after those measures had qualified for the ballot.

Because the reporting requirements created by this bill may not ensure the timely disclosure of information that would otherwise be required to be reported pursuant to AB 1759, committee staff recommends that this bill be amended so that the special reporting

requirements that were enacted by AB 1759 not be eliminated.

4) Cal-Access Status: Created in 1999, Cal-Access is a database and filing system the SOS has used to make much of the lobbying and campaign finance information available online at no cost to users. In November 2011, the Cal-Access system went down, and the system was unavailable for most of the month of December. In response to a letter from the chair of this committee, the SOS provided the following information about the status of the Cal-Access system and the challenges to replacing that system with a new (and more robust) campaign and lobbying disclosure database:

> Cal-Access is a suite of applications developed in 13 different programming languages which, until [recently], ran the system on a server cluster and associated components…that are more than 12 years old, using an uncommon version of the Unix operating system.... While the [SOS] has the funding to maintain the existing hardware and software, finding parts and qualified people to do the maintenance on such outdated equipment has been increasingly difficult....
>
> The Cal-Access system went down November 30, was restored December 7, went down December 9, and was restored again on December 30. The causes of the outages were layered and complex, and no quick fix was available....
>
> The recovery efforts that [SOS] staff and contractors pursued in December should stabilize Cal-Access and enable it to continue running, but the system can never be made stronger or patched with new features. Any attempt to upgrade or modernize Cal-Access could be as risky, time-consuming, and expensive as developing and deploying a new system. Even the December work to restore Internet availability of Cal-Access will not last forever. It is highly likely that Cal-Access will require more robust servers in the next three to four years simply to continue providing access to the ever-growing volume of information.
>
> The cost of an entirely new system and the speed with which it can be deployed will depend on many factors and ultimately can only be borne out through the state's IT procurement process, which history has shown to be lengthy and expensive. Before the Cal-Access outage began on November 30, my office was looking at existing commercial off-the-shelf (COTS) products, as well as systems used by other states to prepare a feasibility study report (FSR) – the project blueprint that is the required precursor for an IT project and subject to approval by state control agencies. Any consideration of an FSR, along with the subsequent legislative and gubernatorial review of any budget change proposal to conduct a procurement, would take into account the replacement of Cal-Access in the context of the two major IT procurements – VoteCal and California Business Connect – that my office is currently conducting.

5) Suggested Technical Amendments: In addition to the amendments outlined above, committee staff recommends the following technical amendments to this bill:

On page 4, line 34, strike out "or quarterly"

On page 4, line 36, strike out "84200.3, 84200.8," and insert:

84200.8

On page 11, line 2, after "(e)" insert:

of this section and subdivision (h) of Section 84605

On page 11, line 33, after "and" insert:

, except as provided by subdivision (j) of Section 84615,

On page 11, line 39, after the first "and" insert:

, except as provided by subdivision (j) of Section 84615,

On page 12, lines 32 to 33, strike out "held on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year"

On page 14, line 8, after "filed" insert:

with the Secretary of State

On page 14, strike out lines 29 through 39, inclusive, and on page 15, strike out lines 1 through 30, inclusive.

6) Previous Legislation: SB 3 (Yee & Lieu) of 2013, would have required the SOS, not later than December 31, 2014, to develop a FSR to outline the technology requirements and the costs of a new statewide electronic campaign filing and disclosure system, among other provisions. SB 3 was vetoed by Governor Brown. In his veto message, the Governor argued that other provisions of the bill were "costly and unnecessary," but also acknowledged that the current campaign filing and disclosure system needed to be upgraded.

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

California Common Cause
California Forward Action Fund

Opposition

None on file.

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

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1443 (De León, et al.) – As Amended: April 10, 2014

SENATE VOTE: 34-0

SUBJECT: Political Reform Act of 1974: gift limitations.

SUMMARY: Limits the value and types of gifts that can be given to and received by public officials. Specifically, this bill:

1) Prohibits a lobbyist or lobbying firm from making *any* gift to a candidate for elective state office, an elected state officer, or a legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist, instead of limiting such gifts to an aggregate value of not more than $10 in a calendar month, as is the case under existing law. Prohibits an official from knowingly receiving a gift that is unlawful under this provision.

2) Lowers, from $440 to $200, the limit on the aggregate value of gifts that specified public officials can receive from a single source in a calendar year. Ends a requirement for the Fair Political Practices Commission (FPPC) to adjust this limit in January of each odd-numbered year to reflect any changes in the Consumer Price Index (CPI), and instead permits the FPPC, at its discretion, to increase the limit in January of each odd-numbered year by an amount that does not exceed any changes reflected in the CPI.

3) Prohibits a candidate for elective state office, an elected state officer, or a legislative official from accepting the following gifts:

    a) A gift of tickets or the equivalent of tickets to any of the following events or venues:

        i) A professional concert or other professional entertainment event, regardless of the value of the ticket;

        ii) A professional sporting event, regardless of the value of the ticket;

        iii) An amateur sporting event for which the value of the ticket received exceeds $50;

        iv) A racetrack event, regardless of the value of the ticket;

        v) A theme park, amusement park, or other similar venue, regardless of the value of the ticket; or,

        vi) An amateur theatre, concert, or other entertainment event for which the value of the ticket received exceeds $50;

b) Golfing green fees, complimentary golf course access, or the equivalent, regardless of the value;

c) Skiing, hunting, or fishing trips or other recreational outings, regardless of the value;

d) Spa treatments, spa access fees, or other equivalent complimentary beauty or cosmetic services, regardless of the value; or

e) Cash, gift cards, or cash equivalents, regardless of the value.

4) Provides that, for the purposes of the ban on certain gifts of tickets outlined above, the term "professional" means an event with performers who are compensated for the event or who engage in the performance activity as their vocation.

EXISTING LAW:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

2) Makes it a felony for a public official or public employee to accept or agree to accept anything of value in exchange for an official act.

3) Defines "agency official" to mean any member, officer, employee, or consultant of any state agency who as part of his or her official responsibilities participates in any administrative action, as defined, other than in a purely clerical, secretarial, or ministerial capacity.

4) Defines "legislative official" to mean any employee or consultant of the Legislature whose duties are not solely secretarial, clerical, or manual.

5) Prohibits a lobbyist or lobbying firm from making gifts aggregating more than $10 in a calendar month to a candidate for elective state office, an elected state officer, or a legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist. Prohibits an official from knowingly receiving a gift that is unlawful under this provision.

6) Prohibits elected state and local officers, candidates for elective state or local office, members of state boards and commissions, and designated employees of state or local government agencies from accepting gifts from a single source in a calendar year with a total value of more than $440, with certain limited exceptions. Requires the FPPC to adjust this gift limit on January 1 of each odd-numbered year to reflect changes in the CPI, rounded to the nearest $10.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

> SB 1443 is a product of the Senate Ethics Working Group, and a part of a legislative package supported by the Senate Democratic Caucus (the others are SB 1441 and SB 1442) aimed at bolstering public confidence in California's elected officials and improving transparency in the gift reporting process.
>
> This measure seeks to severely reduce the gift limit and completely ban gifts such as tickets to professional sporting events and concerts, amusement parks, golfing green fees, spa treatments, and recreational trips. Increasing of the gift limit over the years, which is currently set at $440, is…approaching the conflict of interest threshold of $500. SB 1442 would reduce the gift limit to $200.
>
> The legislative package put forward by the Senate Ethics Working Group represents the most comprehensive reform to the Political Reform Act in decades.

2) Gift Definitions and Exemptions: The following is a description of existing statutory and regulatory gift definitions and a list of exemptions taken from an FPPC fact sheet intended for elected state officers, candidates for elective state office, members of state boards and commissions, designated employees of state government agencies, and state officials who manage public investments. For a complete discussion of these definitions and exemptions please see the fact sheet at http://www.fppc.ca.gov/factsheets/StateGiftFactSheet2014.pdf.

Gift Definition

A "gift" is any payment or other benefit provided to an official that confers a *personal* benefit for which the official does not provide payment or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.

Gifts to Family Members

Under certain circumstances, a gift to an official's family member is considered a gift to the official. Anything given to a family member is presumed to be a gift to the official if: (1) there is no established relationship between the donor and the family member where it would generally be considered appropriate for the family member to receive the gift or; (2) the donor is someone who lobbies the official's agency, is involved in an action before the official's agency in which the official may foreseeably participate, or engages in business with the agency in which the official will foreseeably participate. (Wedding gifts are treated differently, see below.)

For purposes of this rule, an official's "family member" includes the official's spouse; registered domestic partner; any minor child of the official who the official can claim as a dependent for federal tax purposes; and a child of the official who is aged 18 to 23 years old, attends school, resides with the official when not attending school, and provides less than one-half of his or her own support.

General Gift Exceptions

The following payments are not gifts, are not required to be reported on an official's Statement of Economic Interests (SEI) (Form 700), and are not subject to the $10 lobbyist gift limit:

1. Items that are returned unused to the donor or for which the recipient reimburses the donor.

2. Items that are donated unused to a non-profit, tax-exempt (501(c)(3)) organization or to a government agency without claiming a tax deduction.

3. Gifts from a family member unless the family member is acting as an agent or intermediary for another person who is the true source of the gift.

4. Informational material provided to assist the recipient in the performance of official duties.

5. A devise or inheritance.

6. Campaign contributions.

7. Personalized plaques and trophies with an individual value of less than $250.

8. Admission for the official and one guest at an event where the official performs a ceremonial role.

9. Admission, and food and nominal items, at an event at which the official makes a speech.

10. Benefits received as a guest attending a wedding reception.

11. Bereavement offerings, such as flowers at a funeral.

12. Benefits received as an act of neighborliness such as the loan of an item, an occasional ride, or help with a repair.

13. Two tickets for admission to attend a campaign or charity fundraiser, as specified.

14. Passes or tickets that the recipient does not use and does not give to another person.

15. Certain travel payments, as specified.

16. Gifts provided to the recipient's government agency, as specified.

17. Leave credits (e.g., sick leave or vacation credits), as specified.

18. Food, shelter, or similar assistance received in connection with a disaster relief program.

19. Items awarded in an employee raffle, as specified.

20. Items received by an employee during an employee gift exchange.

Limited Gift Exceptions

The following payments generally are not considered gifts, and are not required to be reported on an official's SEI (Form 700), but may be subject to the $10 lobbyist gift limit:

1. Gifts of hospitality including food, drink, or occasional lodging that is received in an individual's home when the individual or a member of his or her family is present. Such hospitality provided by a lobbyist is a gift unless the hospitality is related to another purpose unconnected with the lobbyist's professional activities.

2. Gifts commonly exchanged between an official and another individual (other than a lobbyist registered to lobby the official's agency) on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value.

3. Reciprocal exchanges between the recipient and another individual (other than a lobbyist registered to lobby the official's agency) that occur on an ongoing basis, as specified.

4. Personal benefits commonly received from a dating partner. These benefits are subject to disqualification under conflict of interest laws if the dating partner is a lobbyist registered to lobby the official's agency, as specified.

5. Acts of human compassion provided by an individual other than a lobbyist registered to lobby the official's agency, as specified.

6. Benefits received from a long-time personal friend, other than a lobbyist registered to lobby the official's agency, where the gift is unrelated to the official's duties.

7. Benefits received from an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position, as specified.

Gift Exceptions Requiring Alternate Reporting

The following payments are not subject to the gift limit, but the recipient may be required to report these items and they can subject the recipient to disqualification under conflict of interest laws:

1. A prize or award received in a bona fide competition, contest, or game of chance not related to the official's duties is not subject to the gift limit, but must be reported as income on the official's SEI (Form 700) if the prize or award is valued at $500 or more, and can subject the recipient to disqualification under conflict of interest laws.

2. Gifts or donations made to an agency and used by one or more officials in the agency are

not gifts to the officials, subject to certain conditions, and do not subject the officials to disqualification under conflict of interest laws, but the agency must report the gift, as specified.

3. A payment made at the behest of an official that is principally for legislative, governmental, or charitable purposes is not a gift and does not subject the official to disqualification under conflict of interest laws, but must be reported under certain circumstances.

4. Wedding gifts are not subject to the $440 gift limit, but are subject to the $10 lobbyist/lobbying firm gift limit, are reportable, and can subject the recipient to disqualification under conflict of interest laws. For purposes of valuing wedding gifts, one-half of the value of each gift is attributable to each spouse.

3) Any Public Official May Choose to Decline Gifts: No public official is compelled to accept gifts. To the extent that a public official is concerned that the acceptance of gifts may result in a negative public perception, that official is free to decline any or all gifts. In fact, a number of members of the Legislature have chosen not to accept gifts of any kind or value.

4) Lobbyist Gift Limit & Inadvertent Violations of the Law: As noted above, existing law prohibits lobbyists and lobbying firms from making gifts aggregating more than $10 in a calendar month to a candidate for elective state office, an elected state officer, or a legislative official. This bill would eliminate that $10 limit, and instead would prohibit a lobbyist or lobbying firm from making a gift of *any* value to a candidate for elective state office, an elected state officer, or a legislative official.

   By prohibiting lobbyists and lobbying firms from making gifts of any value to candidates for elective state office, elected state officers, and legislative officials, this bill could result in an inadvertent violation of the law if an official accepted a bottle of water while meeting with a lobbyist.

   Given the fact that the $10 gift limit has long protected against this type of inadvertent violation, and given that it is unlikely that a gift valued at $10 or less could raise the possibility of corruption or the appearance thereof, the committee may wish to consider whether it is prudent to prohibit gifts of less than $10.

5) Different Gifts, Different Limits: This bill would establish restrictions on gifts given to certain officials based not on the value of the gift, but rather on the type of gift given. As a result, it would be legal for an elected state official to accept a gift of a bottle of wine valued at $200, but it would be illegal for the same official to accept an $8 ticket to a minor league baseball game. An elected state official could not accept a $5 gift card to a coffee shop from the shop's owner, but could accept $200 worth of coffee from the same person. The committee may wish to consider whether it is rational to restrict gifts in this manner, based not on the value of the gift, but rather on the type of gift.

6) Why $200? When the PRA was enacted in 1974, it did not include a general limit on the value of gifts that could be received by public officials, though it did include the $10 lobbyist gift limit. In 1988, the voters approved Proposition 73, which prohibited elected

officeholders from accepting any gift exceeding $1,000 in value in a calendar year from a single source, among other provisions. SB 1738 (Roberti), Chapter 84, Statutes of 1990, subsequently lowered the gift limit to $250 for elected state officials, and made the same $250 gift limit applicable to members of state boards and commissions and to designated employees of state agencies, among other provisions (though the gift limit remained at $1,000 for local elected officeholders until the passage of SB 701 (Craven), Chapter 690, Statutes of 1995). SB 1738 also required the FPPC to adjust the gift limit every two years to reflect inflation. Based on those adjustments, the gift limit has risen to $440.

This bill lowers the gift limit from $440 to $200, and makes it discretionary for the FPPC to decide whether to adjust that limit to reflect any inflation. The author argues these changes are appropriate because the $440 limit "may be perceived as too high a level." While it is almost certainly true that some individuals view a $440 gift limit as "too high a level," it is also likely true that some individuals view a $200 gift limit as too high, while others may not be concerned with a gift limit that is higher. To the extent that the concern is one of public perception, the rationale for setting the gift limit at $200 is unclear.

7) Technical Amendment: While this bill lowers the gift limit, it does not adjust the corresponding conflict of interest threshold for gifts received by public officials. To resolve this technical issue, committee staff recommends that this bill be amended to adjust the conflict of interest threshold in Government Code Section 87103 (e).

8) Previous Legislation: SB 1426 (Blakeslee) of 2012, would have prohibited lobbyists, lobbyist firms, and lobbyist employers from giving specific types of gifts (such as gift cards, and amusement park and racetrack tickets) to elected state officers and members of their immediate family. SB 1426 was approved by this committee, but was held on the Assembly Appropriations Committee's suspense file. A similar bill, SB 18 (Blakeslee) of 2011, was held on the Senate Appropriations Committee's suspense file.

AB 1412 (Torrico) of 2009, and AB 2368 (Blakeslee) of 2010, would have prohibited a lobbyist employer from making gifts to a Member of the Legislature aggregating more than $10 in a calendar month. AB 1412 was approved by this committee, but died on the inactive file on the Assembly Floor. AB 2368 was approved by this committee, but was held on the Assembly Appropriations Committee's suspense file.

AB 2795 (Blakeslee) of 2008, would have prohibited a lobbyist employer from making gifts to state candidates, elected state officers, legislative officials, and certain agency officials aggregating more than $10 in a calendar month with certain exceptions for food or refreshments of a nominal value offered other than as part of a meal and tickets to certain events sponsored by the lobbyist employer. AB 2795 was approved by this committee but was held on the Assembly Appropriations Committee's suspense file.

9) 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

California Common Cause

Opposition

Professional Beauty Federation of California (unless amended)

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