

Date of Hearing: June 15, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

SB 1349 (Hertzberg) – As Amended April 18, 2016

SENATE VOTE: 38-0

SUBJECT: Political Reform Act of 1974: Secretary of State: online filing and disclosure system.

SUMMARY: Requires the Secretary of State (SOS), in consultation with the Fair Political Practices Commission (FPPC), to develop and certify for public use a new online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format, as specified.

Specifically, **this bill:**

- 1) Makes the following Legislative findings and declarations:
 - a) Advances in technology have made it necessary for the State of California to develop a new, data-driven online filing and disclosure system that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format.
 - b) Members of the public, including voters, journalists, and researchers, should be able to access campaign finance and lobbying information in a robust and flexible manner, including through searches and visual displays such as graphs and maps.
- 2) Requires the SOS, in consultation with the FPPC, to develop an online filing and disclosure system for use by persons and entities that are required to file statements and reports with the SOS in accordance with Political Reform Act (PRA).
- 3) Requires the system to enable a user to comply with all the disclosure requirements of the PRA and, at a minimum, include all of the following:
 - a) A data-driven means or method that allows filers to submit required filings free of charge in a manner that facilitates public searches of the data and does all of the following:
 - i) Enables a filer to comply with all of the disclosure requirements of the PRA, including by entering or uploading requisite data or by indicating that the filer had no reportable activity during a particular reporting period;
 - ii) Retains previously submitted data so that a filer can access that data to amend disclosures or prepare future disclosures;
 - iii) Ensures the security of data entered and stored in the system; and,
 - iv) Is compatible, to the extent feasible, with potential future capability to accept statements from filers who are candidates for and holders of specified local offices,

- elected members of the Board of Administration of the Public Employees' Retirement System, elected members of the Teachers' Retirement Board, and their controlled committees, and committees formed or existing primarily to support or oppose these candidates or elected officials.
- b) The definition of a nonproprietary standardized record format or formats using industry standards for the transmission of the data that is required of those persons and entities that are required to file online and that conforms with the disclosure requirements of the PRA.
- 4) Requires the SOS to do all the following with respect to the online filing and disclosure system developed pursuant to this bill:
- a) Accept test files from software vendors and others wishing to file reports electronically for the purpose of determining whether the file format is in compliance with the standardized record format developed pursuant to this bill and is compatible with the SOS's system for receiving the data. Requires the SOS to publish and make available to the public a list of the software and service providers who have submitted acceptable test files. Requires a filer to submit acceptably formatted files in order to meet the requirements of this bill.
 - b) Make the data filed available on the Internet as follows:
 - i) In a user-friendly, easily understandable format that provides the greatest public access, including online searches and machine-readable downloads of all data contained in the system, as specified;
 - ii) Free of charge and as soon as possible after receipt, or, in the case of late contribution, late in-kind, and late independent expenditure reports, as defined in current law, within 24 hours of receipt;
 - iii) In a form that does not contain the street name or building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed pursuant to the PRA; and,
 - iv) In a manner that allows the public to track and aggregate contributions from the same contributor across filers using a permanent unique identifier assigned by the SOS for this purpose. Requires the SOS to assign this identifier to, at minimum, to each contributor who makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to, or at the behest of, candidates or committees that file electronically with the SOS, pursuant to existing law, or who is registered with the SOS as a major donor committee pursuant to current law.
 - c) Develop a procedure for filers to comply electronically with the requirement to sign their submissions under penalty of perjury pursuant to current law. Requires the electronic signature procedure to allow the filer to file with the SOS and shall not require an original signature to be filed.

- d) Maintain all filed data online for at least 10 years after the date it is filed, and then archive the information in a secure format.
 - e) Provide assistance to those seeking public access to the information.
 - f) Implement sufficient technology to seek to prevent unauthorized alteration or manipulation of the data.
 - g) Provide the FPPC with the necessary information to enable it to assist agencies, public officials, and others in complying with and administering the PRA.
- 5) Requires the SOS to do all of the following with respect to developing the online filing and disclosure system and record format pursuant to this bill:
- a) Consult with the Assembly Committee on Elections and Redistricting, the Senate Committee on Elections and Constitutional Amendments, the FPPC, users, filers, and other stakeholders, as appropriate, about functions of the online filing and disclosure system;
 - b) Hold at least one public hearing, in consultation with the FPPC, no later than July 31, 2017, to receive input about developing the online filing and disclosure system and record format; and,
 - c) Submit a report, no later than December 31, 2017, to the Assembly Committee on Elections and Redistricting and the Senate Committee on Elections and Constitutional Amendments that includes a plan for the online filing and disclosure system, describes how members of the public will be able to query and retrieve data from the system, and includes a plan for integrating statements from other specified filers.
- 6) Requires the SOS to make the online filing and disclosure system available for use no later than February 1, 2019. Permits the SOS to extend this date to a date no later than December 31, 2019 after consulting with the Assembly Committee on Elections and Redistricting and the Senate Committee on Elections and Constitutional Amendments and providing to those committees a report that explains the need for the extension and includes a plan for completion.
- 7) Permits the SOS to accept any funds, services, equipment or grants to further the provisions of this bill provided that the SOS notifies the Assembly Committee on Elections and Redistricting and the Senate Committee on Elections and Constitutional Amendments upon accepting any amount valued at one hundred thousand dollars (\$100,000) or more.
- 8) Exempts the SOS from various information technology requirements, and from project and funding approvals, for the purposes of implementing this bill as expeditiously as possible. Requires the SOS to consult with the Department of Technology, as appropriate, in developing the online filing and disclosure system.
- 9) Requires the SOS, in consultation with the FPPC, before making the system available for public use, to test the system to ensure its functionality and then certify that the system meets all the requirements of this bill. Permits the SOS to consult with the Department of

Technology as needed to fulfill these testing requirements.

- 10) Provides that after the system developed pursuant to this bill is certified, the previous system developed pursuant to existing law shall no longer accept reports and filings, unless otherwise directed by the SOS and the FPPC. Requires the previous system to continue to allow public access to past disclosures unless the SOS migrates that data into the new system.

EXISTING LAW:

- 1) Requires the SOS, in consultation with the FPPC, to provide online and electronic filing processes for use by specified political committees, lobbyists, lobbying firms, and lobbyist employers pursuant to the PRA. This online reporting and disclosure system is commonly referred to as the Cal-Access system.
- 2) Requires the SOS to make all the data filed using the online and electronic filing process available on the Internet for public viewing in an easily understood format.
- 3) Requires the SOS to provide a means or method whereby entities that are required to file statements or reports online or electronically with the SOS can submit those required filings free of charge.
- 4) Requires all state candidates and state political committees that are required to file campaign reports to file those reports online or electronically if the cumulative amount of contributions received, expenditures made, loans made, or loans received is \$25,000 or more.
- 5) Provides that the Department of Technology and the Department of General Services maintain specified oversight responsibilities regarding state informational technology procurements.

FISCAL EFFECT: According to the Senate Appropriations Committee, the Secretary of State's Office indicates that it would incur one-time costs of \$11.6 million and ongoing annual costs of \$2.8 million related to information technology (General Fund).

Costs to FPPC would increase by \$131,000 in the first year, and \$124,000 ongoing (General Fund) to allow it to interface with the new system developed by SOS. Additionally, FPPC would experience unknown, but probably minor, costs to update forms, and modify regulations to reflect the new information technology system.

COMMENTS:

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

In the 2014 election cycle, major donor and independent expenditure committees spent over \$80 million in California, an amount that increases each cycle. The [PRA] requires campaign contributors who reach specified contribution thresholds to file regular reports with the [SOS] of their contributions and expenditures. In addition to candidates for office, "major donors" and "independent expenditure committees" are required to file reports.

Converting filed reports into a user-friendly database has proved to be an ongoing challenge. The [SOS's] current campaign finance database, Cal-Access, does not allow the public to easily access records for contributions made by major donors and independent expenditure committees. For example, one committee may use variations in the spelling of its name each year, making it almost impossible to track contributions over time. Secretary of State Alex Padilla has called Cal-Access "a Frankenstein's monster of code" that is in need of "a complete rebuild." It undermines democracy when the public cannot easily access information about campaign and lobbying disclosures.

- 2) **Political Reform Act and Cal-Access:** In 1974, California voters approved Proposition 9, also known as the Political Reform Act of 1974, which among other things, requires the disclosure of campaign contributions and expenditures and state lobbying activities. The requirements are intended to ensure, among others, that "Receipts and expenditures in election campaigns [are] fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited," and that "The activities of lobbyists [are] regulated and their finances disclosed in order that improper influences will not be directed at public officials."

In 1997, the Legislature passed and Governor Pete Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, which amended the PRA and established the Online Disclosure Act of 1997. SB 49 required the SOS, in consultation with the FPPC, to develop and implement, by the year 2000, an online filing and disclosure system for reports and statements required to be filed under the PRA, as specified. As a result, the SOS created and deployed a system called the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly referred to as Cal-Access.

- 3) **Cal-Access Status:** As mentioned above, 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. According to the SOS, the Cal-Access system is fueled by a complex array of computer applications written in 14 different programming languages including hardware, firmware, and software – some no longer supported by their vendor – that are beyond their useful age. As a result, the Cal-Access system has denied public access, gone offline, and put strain on SOS staff resources. In November 2011, the Cal-Access system went down, and the system was unavailable for most of the month of December.

Although the system has remained online since the cause of the failure was addressed, frequent concerns have been expressed by users and other observers regarding the current state and usefulness of Cal-Access. In an effort to modernize the Cal-Access system, this bill requires the SOS, in consultation with the FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provide public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format, as specified.

- 4) **MapLight Partnership:** Last year, the SOS announced the launch of Power Search, a privately developed, open source campaign finance search engine available on the SOS's website. Power Search allows anyone to access electronically-reported, state-level campaign contribution raw data from 2001 to the present reported to the SOS's Cal-Access campaign finance filing and disclosure system.

Power Search can be used to quickly search for contributions to candidates and ballot measures and contributions from individuals, businesses and other campaign committees. It can also be used to search for independent expenditures made to support or oppose candidates or ballot measures. However, only electronically-reported, state-level, campaign contribution and independent expenditure data is provided through Power Search at this time.

- 5) **Technology Oversight Exemption:** This bill exempts the development of the new online filing and disclosure system from existing information technology procurement requirements and project and funding approvals, for the purposes of implementing this bill as expeditiously as possible. Additionally, this bill requires the SOS to consult with the Department of Technology, as appropriate, in developing the online filing and disclosure system. The provisions that exempt the SOS from various information technology procurement requirements are similar to provisions of SB 397 (Yee), Chapter 561, Statutes of 2011, which permitted online voter registration to begin prior to the completion of a new statewide voter registration database.
- 6) **Funding for Replacing Cal-Access:** In 2012, the Legislature passed and the Governor signed SB 1001 (Yee), Chapter 506, Statutes of 2012, which imposed a \$50 annual fee on specified committees that are required to file disclosure reports pursuant to the PRA and increased the fee on lobbying firms and lobbyist employers from \$25 to \$50 per year per lobbyist. Additionally, SB 1001 required the revenue generated to be deposited into a newly-created Political Disclosure, Accountability, Transparency, and Access Fund (PDATA Fund) in the State Treasury and be used to update or replace Cal-Access. It is estimated that these fees will result in approximately \$490,000 of new revenue yearly for the PDATA Fund.

In a letter dated March 11, 2016, Senator Hertzberg, the author of this bill, requested a budget augmentation to allow the SOS to modernize the Cal-Access system. In that letter, Senator Hertzberg stated that the SOS estimated the cost of replacing the system at \$13.5 million. The letter, however, does not address existing and anticipated moneys from the PDATA Fund.

The Governor's May revision to the 2016-2017 budget proposed \$757,000 for the procurement of contracted services for the improvement of Cal-Access. Additionally, the Assembly proposed an augmentation to the Governor's Cal-Access proposal with an additional \$1 million. The budget conference committee adopted the Assembly's proposal to provide additional funding for the replacement of the Cal-Access system.

- 7) **Previous Legislation:** SB 3 (Yee & Lieu) of 2013, would have required, among other things, the SOS to develop a feasibility study report to outline the technology requirements and the costs of a new statewide electronic campaign filing and disclosure system. SB 3 was vetoed by Governor Brown. In his veto message, the Governor stated 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 and he directed the Government Operations Agency (GOA) to consult the FPPC and the SOS and make recommendations on the best way to improve campaign disclosure. One of the options presented in the GOA report was to replace Cal-Access.

SB 1442 (Lara) of 2014, would have required, among other things, the SOS, in consultation with the FPPC, to develop a new statewide Internet-based system for the electronic filing and public display of all records filed pursuant to the PRA with search capabilities that are data-driven and user-friendly for members of the public. SB 1442 was vetoed by Governor Brown. In his veto message, the Governor stated that before an additional information technology project is authorized, the SOS should complete the two other projects that were underway at the time.

8) **Arguments in Support:** In support of this bill, the FPPC writes:

The bi-partisan Commission unanimously voted to support [SB 1349] because the current campaign and lobbying reporting system, also known as Cal-Access, no longer meets the needs of the [PRA] and greatly limits the Commission's ability to fulfill its mission.

The current Cal-Access was built in 2000 and has remained substantially unchanged to date. The system's limitations have forced the Commission to update regulations and propose legislation according to the system's capacity rather than the best public policy. This agency is greatly dependent on a reliable, flexible, and streamlined database that will assist in the administration and enforcement of the [PRA].

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

Political Reform Act Modernization Coalition (co-sponsor)

Secretary of State Alex Padilla (co-sponsor)

AARP

American Sustainable Business Council

Business Council of San Joaquin County

CA Voices for Progress

CalChamber

California Alliance for Retired Americans

California Business Roundtable

California Church IMPACT

California Clean Money Campaign

California Common Cause

California Forward

California Labor Federation

California League of Conservation Voters

California LULAC

California Newspaper Publishers Association

California OneCare
California Political Treasurers Association
California Professional Firefighters
California School Employees Association
California State Council of the Service Employees International Union
California Teachers Association
Cal Innovates
CALPIRG
Campaign Legal Center
Courage Campaign
Equality California
Fair Political Practices Commission
First Amendment Coalition
Fresno Business Council
Fresno Chamber of Commerce
Howard Jarvis Taxpayers Association
Innovate Your State
Insurance Commissioner Dave Jones
League of Women Voters of California
Los Angeles County Federation of Labor
MapLight
National Institute on Money in State Politics
NFIB
Public Citizen
Sierra Club California
Small Business Majority
Sunlight Foundation
UFCW Western States Council

Opposition

None on file.

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