

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON ELECTIONS

Isaac G. Bryan, Chair

SB 1352 (Allen) – As Amended June 22, 2022

SENATE VOTE: (vote not relevant)

SUBJECT: Political Reform Act of 1974: preelection statements.

SUMMARY: Requires candidates, committees, and slate mailer organizations to file a third pre-election campaign disclosure report for every election for which the candidate, committee, or slate mailer organization is required to file such pre-election reports. Specifically, **this bill** requires that a pre-election statement be filed no later than 70 days before the election covering the period ending 75 days before the election, in addition to pre-election statements required by existing law.

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 candidates, political committees, and slate mailer organizations to file specified periodic and activity-based campaign finance reports, including semiannual statements, pre-election statements, and late contribution/independent expenditure (IE) reports that include specified campaign finance information.
- 3) Requires pre-election statements to be filed in accordance with the following schedule:
 - a) For campaign activity during the period ending 45 days before the election, requires a statement to be filed no later than 40 days before the election.
 - b) For activity during the period ending 17 days before the election, requires a statement to be filed no later than 12 days before the election.
 - c) For activity during runoff elections held within 60 days of the qualifying election, requires an additional pre-election statement for the period ending 17 days before the runoff election to be filed no later than 12 days before the election.
- 4) Permits the FPPC, by regulation or written advice, to permit candidates and committees to file campaign statements combining statements and reports required to be filed by the PRA.
- 5) Requires a candidate for elective state office who is required to file campaign reports online or electronically with the Secretary of State (SOS) to file an online or electronic report disclosing any contribution of \$1,000 or more received during an election cycle within 24 hours of receiving such a contribution. Requires such a candidate to file an online or electronic report disclosing any contribution of \$5,000 or more received at any time other than during an election cycle within 10 business days of receiving such a contribution. Defines "election cycle," for the purpose of these provisions, as the period commencing 90

days prior to an election and ending on the date of the election.

- 6) Limits campaign contributions to candidates for elective state office as follows:
 - a) To a candidate for state Senate or Assembly, no person may contribute more than \$4,900 per election and no small contributor committee may contribute more than \$9,700 per election, except as specified.
 - b) To a candidate for Board of Equalization or elective statewide office other than a candidate for Governor, no person may contribute more than \$8,100 per election and no small contributor committee may contribute more than \$16,200 per election, except as specified.
 - c) To a candidate for Governor, no person or small contributor committee may contribute more than \$32,400 per election, except as specified.
- 7) Requires the FPPC to adjust the contribution limits detailed above biennially to reflect any increase or decrease in the Consumer Price Index (CPI).
- 8) Requires the SOS 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. Requires the SOS, in consultation with the FPPC, to develop and certify for public use a *new* online filing system for statements and reports required by the PRA that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format. This new system is commonly referred to as the Cal-Access Replacement System (CARS).

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

COMMENTS:

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

The 1974 Political Reform Act instituted important transparency reforms including campaign contribution reporting requirements. Currently, campaigns must file regular semi-annual reports in January and August disclosing receipt of campaign contributions. In addition to these semi-annual reports, campaigns must file two pre-election reports in the weeks leading up to an election. However, for June primary elections, there is a four-month gap between the January semi-annual report and the first pre-election statement in late April. In this period, voters may have already received campaign advertisements and mailers but only have access to months old contribution reports.

Public access to political campaign contribution reports is essential to building accountability and trust in democracy. SB 1352 seeks to strengthen those principles by adding an additional pre-election report to provide more timely contribution of disclosures to voters in the lead up to an election.

- 2) **Campaign Transparency and Reporting Requirements:** In 1974, California voters approved Proposition 9, also known as the PRA, which requires the disclosure of campaign contributions and expenditures and state lobbying activities, among other provisions. One of the specified purposes of the PRA is that “[r]eceipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.” Consistent with that stated purpose, California’s campaign disclosure laws are among the strongest in the country, especially as it relates to campaign finance disclosure by candidates and officeholders.

In addition to filing semi-annual disclosure reports, candidates for elective office generally must also file two pre-election reports for any election at which the candidate will appear on the ballot, and can be required to file pre-election reports in connection with an election where the candidate or officeholder does *not* appear on the ballot under certain circumstances. In the last 90 days before an election, candidates for elective state office at that election who raise or spend \$25,000 or more must disclose all contributions of \$1,000 or more within 24 hours. At all other times of the year, those candidates must disclose all contributions of \$5,000 or more within 10 business days.

California’s campaign disclosure rules that apply to other types of political committees similarly are among the strongest in the country, though disclosure rules for other types of committees often are less robust than the rules that apply to candidates. For example, a state general purpose committee that raises millions of dollars to support and oppose candidates for elective state office could be required to file only semi-annual reports, depending on the activity of the committee. In such a situation, large contributions received by the committee could go unreported by the committee for six months or more, even if that committee raised significant funds that were used to effect elections in that six month period.

While requiring more frequent campaign disclosure can improve transparency, it also adds complexity to the state’s already complicated disclosure rules. Accordingly, campaign disclosure rules generally seek to achieve timely and meaningful transparency while ensuring that disclosure rules are not unduly burdensome. Candidates and committees with significant financial resources may be well positioned to handle added complexity, but the burdens of more complicated rules are likely to be most significant for candidates and committees with fewer financial resources. Overly complex reporting rules not only raise the costs of compliance and increase the potential for inadvertent non-compliance, but also can discourage participation in the political process by individuals who are less familiar with those rules, and who do not have access to the resources needed to hire professional campaign treasurers.

California’s campaign disclosure framework seeks to balance these competing concerns. All campaign contributions of \$100 or more are disclosed on periodic campaign disclosure reports, though there can be a delay of many months between the time that a small contribution is made and the time that it is required to be publicly disclosed. Very large campaign contributions to candidates generally must be reported promptly, regardless of when they are made. As an election approaches, candidates must report large contributions even more swiftly.

To ensure that voters have access to comprehensive campaign finance information before they start voting, candidates (and certain other political committees) also file pre-election

reports. Current law requires candidates for elective office to file their first pre-election reports by 40 days before the election. The timing of that report ensures disclosure of campaign contributions and expenditures shortly before elections officials begin mailing ballots to voters (a process that generally begins approximately 29 days before the election).

Requiring candidates and committees to file an additional pre-election report 70 days before the election, as this bill proposes to do, will provide some additional transparency, though the public benefit of that additional transparency likely will be more limited. With the exception of a small number of overseas and military voters who can receive ballots as early as 60 days before an election, voters generally are not casting ballots between the 70th and 40th day before the election. The author of this bill argues that because voters may be receiving campaign advertisements during this time, it would be beneficial for those voters to have access to up-to-date information about campaign contributions and expenditures to help them evaluate those campaign ads.

The content of, and process for filing, the pre-election statements required by this bill are consistent with pre-election statements required by existing law. Accordingly, while requiring a third pre-election report will increase reporting burdens, it likely will not add significant additional complexity to the state's existing disclosure rules.

- 3) **Cal-Access and the Cal-Access Replacement System:** In 1997, the Legislature passed and Governor Pete Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, which required the SOS to develop and implement 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. Cal-Access is now 23 years old, and components of the system are no longer supported by their vendor. As a result the system has periodically crashed and denied public access. Given the limitations of the Cal-Access system, the Legislature has taken steps to replace that system.

In 2016, the Legislature approved and the Governor signed SB 1349 (Hertzberg), Chapter 845, Statutes of 2016, which requires the SOS to develop and certify for public use a new online filing and disclosure system that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format, as specified. As detailed above, this new system is commonly referred to as CARS.

SB 1349 originally required the SOS to make CARS available by February 1, 2019, but also allowed the SOS to extend that date to as late as December 31, 2019, after providing a report that explained the need for the extension and included a plan for completion. Several factors, however, have delayed the completion of the CARS system, and it has not yet been deployed.

According to the SOS, an independent assessment report prepared last year indicated that CARS was not ready for a system launch. After reviewing the report findings, the SOS began the planning process for a CARS project restart. A CARS project roadmap that was prepared as part of the independent assessment suggests that it is unlikely that the CARS system will be fully deployed before 2025 at the earliest.

The limitations of the existing Cal-Access system have created challenges for updating California's campaign disclosure laws. Last year, for example, legislation to impose new

campaign disclosure requirements on limited liability companies (LLCs) that make contributions and expenditures (SB 686 (Glazer), Chapter 321, Statutes of 2021) was amended in a manner that likely will delay the public disclosure of certain reports filed by LLCs because the Cal-Access system could not be modified to accommodate these new types of campaign reports. Once CARS is deployed, it theoretically will be easier to accommodate changes to the state's disclosure laws with that system than with the Cal-Access system.

- 4) **Can We Have Our Cake and Eat It Too?** As described in more detail in comment #2 above, improving transparency in campaign disclosure laws often comes at the expense of additional complexity in those laws. Similarly, reducing complexity can sacrifice transparency. One frequently recommended overhaul of California's campaign disclosure schedules potentially offers the opportunity to improve transparency while reducing complexity.

Specifically, two commissions tasked with studying California campaign finance laws (the Bipartisan Commission on the Political Reform Act of 1974, which issued its report in 2000, and the FPPC's Chairman's Advisory Task Force on the Political Reform Act which issued its report in 2011) recommended that the state consider moving to quarterly campaign disclosure reporting instead of semi-annual reporting, while reducing the number of special reports (including the number of pre-election reports) required to be filed. Both commissions concluded that such a reporting system would provide for timelier disclosure while reducing complexity for filers. Eight years ago, the Legislature approved a bill (which is described in more detail below) that sought to implement those recommendations. Due to concerns about the limitations of the Cal-Access system, however, that bill included a provision that would have delayed its implementation until Cal-Access was replaced. That bill ultimately was vetoed. Once the CARS system is deployed, this type of campaign filing overhaul may be more practicable. By requiring certain candidates, committees, and slate mailer organizations to file an additional pre-election report, this bill moves in the opposite direction from the long-discussed proposal to overhaul filing schedules.

- 5) **Third Pre-Election Report:** Under existing law, at statewide primary elections that are held in March, the first pre-election report is due in late-January and the second pre-election report is due in late-February. For statewide primary elections held in June, the pre-election reports are due in late-April and late-May. For statewide general elections held in November, the pre-election reports are due in late-September and late-October.

This bill proposes to add a third pre-election report that is due 70 days before the relevant election. This report would be due in late-December for primary elections held in March, in late-March for primary elections held in June, and in late August for general elections held in November. In the case of a March primary election, the new pre-election report required to be filed in late-December under this bill would be almost entirely duplicative of the semi-annual report that the committee is required to file at the end of January covering the committee's activity through the end of December. The FPPC has the authority under existing law to permit candidates and committees to combine statements and reports required by the PRA. It is unclear whether the FPPC would exercise that discretion in the case of a pre-election report that is due in late-December, however, since doing so would delay the disclosure of the information on that report by more than a month, effectively negating the purpose of the third pre-election report.

- 6) **\$5,000 Reports:** As detailed above, existing law requires specified candidates for elective state office to disclose any contribution of \$5,000 or more within 10 business days of receiving such a contribution (unless that contribution is disclosed more promptly under other provisions of law). These filings commonly are referred to as \$5,000 reports.

Since the maximum amount that a person generally can contribute to candidates for state Senate or Assembly is less than \$5,000 per election, the requirement to file \$5,000 reports has had a limited impact on candidates for those offices. Candidates for the Legislature are required to file \$5,000 reports in a small number of circumstances (for example, if they receive contributions of \$5,000 or more from a small contributor committee, which are subject to higher contribution limits), but most contributions received by Senate and Assembly candidates are below the amount that triggers a \$5,000 report.

As described above, however, existing state law requires the FPPC to adjust the campaign contribution limits every two years to reflect changes in the CPI. The contribution limits will next be adjusted at the end of this year, with the adjusted limits in effect in 2023 and 2024. Because the current limit on contributions from a person (other than a small contributor committee or political party committee) to a candidate for Legislature is \$4,900, the adjusted contribution limits that will go into effect in January 2023 almost certainly will exceed \$5,000 per contributor per election.

As a result, any contribution of the legal maximum to a candidate for Legislature that is made beginning in 2023 almost certainly will trigger a requirement for that contribution to be disclosed within 10 business days on a \$5,000 report (unless the contribution is disclosed more quickly under other provisions of law). Consequently, campaign contributions to members of the Legislature likely will be required to be disclosed much more promptly beginning in 2023 even without any changes to existing law.

- 7) **Previous Legislation:** SB 1442 (Lara) of 2014 would have required the development of a new Internet-based campaign filing and public disclosure system, and would have required state candidates and campaign committees to file quarterly campaign disclosure reports instead of semi-annual disclosure reports beginning January 1 of the year following the year in which that new filing and disclosure system became operational. In light of the new quarterly reporting requirements, SB 1442 also would have reduced the number of pre-election reports, from two to one, that were required to be filed by committees that filed quarterly reports under the bill. SB 1442 was vetoed by Governor Brown. In his veto message, the Governor wrote, “This bill would consolidate the semi-annual and pre-election campaign finance reports to a quarterly filing schedule. This change would be contingent upon the development and launch of a new online filing system. While the goal of reducing reports is laudable, until we have the technology in place, it is premature to make adjustments to the reporting schedule.”
- 8) **Arguments in Support:** The sponsor of this bill, Govern for California, writes in support:

Current law requires candidates and other committees to report campaign contributions via semi-annual reports on January 31st and July 31st, and contributions over \$5,000 must be reported within 10 days. 90 days prior to a primary or general election, contributions over \$1,000 must be reported within 24 hours of receipt. Additionally, 40 days prior to each election, candidates and

committees must file two pre-election reports. Unfortunately, many contributions are received outside the 90-day period and/or are under the \$5,000 threshold, including the current \$4,900 maximum. As a result, any contributions received just after December 31st or June 30th are not reported until the first pre-election report is submitted 40 days prior to the election.

SB 1352 seeks to expand the principles behind 24-hour reporting and pre-election reports by adding a new report 70 days prior to the election. Specifically, this new pre-election report will ensure that contributions made in an election year are disclosed 30 days sooner than under current law. With this new report, the public and voters will be able to better understand who is funding campaign advertisements and mailers. We believe that this simple addition, in combination with the potential increase in the legislative candidate contribution limit to more than \$5,000, will improve the overall disclosure of campaign contributions.

- 9) **Seeing Double:** As currently in print, this bill amends two different versions of Section 84200.8 of the Government Code—one that was last amended in 1986 (found in section 1 of the bill), and the other that was last amended in 2018 (found in section 2 of the bill). This bill additionally provides that the changes made by section 2 of the bill will not become operative “until the date that the Secretary of State certifies an online filing and disclosure system pursuant to paragraph (7) of subdivision (b) of Section 84602 of the Government Code.”

The fact that there are two different versions of Section 84200.8 of the Government Code and that the changes made to one of those versions will not become immediately operative does not mean that there will be a delay before the provisions of this bill go into effect. Instead, the duplicative code sections (and the delayed operation of one of those code sections) reflect a technical mechanism to allow certain changes to state law to go into effect when CARS, as described in more detail above in comment #3, is deployed.

Specifically, in 2018, the Legislature approved and Governor Brown signed SB 1239 (Hertzberg), Chapter 662, Statutes of 2018, which made numerous substantive and technical changes related to the procedures associated with filing campaign and lobbying reports in anticipation of the deployment of CARS. Because CARS was in development at the time, SB 1239 made changes to campaign and lobbying disclosure rules that were incorporated into the design of CARS, but specified that those changes would not go into effect until the SOS certified that CARS was functional and met the requirements of state law. As a result, various provisions of the PRA—including Section 84200.8 of the Government Code—exist in two different versions: one version that is operative now, and a second version that will become operative when the SOS certifies the CARS system (at which point, the currently operative version of the section will become inoperative). In order to ensure that the changes proposed by this bill go into effect on January 1, 2023 and remain in effect after CARS is deployed, this bill amends both versions of Section 84200.8 of the Government Code.

- 10) **Prior Version of This Bill:** As approved by the Senate, this bill would have changed the monetary and deadline requirements for reporting purposes for candidates for elective state office and committees primarily formed to support or oppose a candidate for state elective office for any time prior to the 90 days leading up to and including election day, as specified. Last week, this bill was gutted-and-amended to delete those provisions of the bill and to add the current contents. Although the contents of the current version of this bill are somewhat

related to the issue that the prior version sought to address, the current version of this bill takes a completely different policy approach. Accordingly, prior votes on this bill are not relevant to the current version, and in accordance with the committee's longstanding policy, letters of support or opposition that were submitted to prior versions of this bill are not reflected in this analysis.

- 11) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. 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

Govern for California (sponsor)

Opposition

None on file.

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