

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
SB 1360 (Umberg) – As Amended June 22, 2022

SENATE VOTE: 34-3

SUBJECT: Elections: disclosure of contributors.

SUMMARY: Changes the text and formatting of required disclosures on petitions and electronic media and video campaign advertisements, as specified. Specifically, **this bill:**

- 1) Provides that an advertisement that is required to include a disclosure of the top contributors to the committee paying for the advertisement must precede the names of the top contributors with the words “Ad Committee’s Top Funders” or “Ad Committee’s Top Funder,” instead of the words “committee major funding from,” except as specified.
- 2) Allows a committee to shorten its name in a disclosure that is required to appear on an advertisement paid for by the committee if the advertisement is a video advertisement that is disseminated over the internet; a print advertisement that is larger than those designed to be individually distributed, as specified; an electronic media advertisement that is a graphic or image, as specified; or a text message advertisement, as specified. Permits the committee’s name to be shortened by doing either of the following:
 - a) Displaying only enough of the first part of the committee’s name to uniquely identify the committee, including the name of any committee sponsors, as specified; or,
 - b) If the advertisement is paid for by a committee and is required to include the top contributors to the committee in the advertisement, as specified, displaying the words “Committee ID” followed by the committee’s identification number.
- 3) Makes a number of formatting changes to the disclosures required on a campaign advertisement disseminated as a video, including over the Internet, including the following:
 - a) Specifies the type color for displaying certain disclosures and prohibits the names of top contributors from having their type condensed in all circumstances, as specified.
 - b) Requires a specified disclosure that an advertisement is paid for by an independent expenditure (IE) to appear outside and immediately above the disclosure area in which the committee’s name and top contributors are disclosed.
- 4) Makes various changes to the disclosures required on an electronic media campaign advertisement that is a graphic or image, as specified, including the following:
 - a) Repeals a requirement that such advertisements include the text “Who funded this ad?,” “Paid for by,” or “Ad Paid for by,” as specified, with the text being a link to a website that includes more detailed disclosures, and instead requires the advertisement to include a disclosure of the name of the committee that paid for the advertisement and the single

top contributor to the committee if required, as specified, except as follows:

- i) Provides that if the advertisement is an image that is smaller than a typical large banner leaderboard-type advertisement, the graphic or image may instead include only the text “Who funded this ad?,” as specified.
 - ii) Provides that if including “Who funded this ad?” would take up more than 10 percent of the graphic or image, the graphic or image does not need to include a disclosure.
 - b) Requires all such advertisements to include a link to a website containing a full disclosure of the committee’s name, the three top contributors to the committee when required, and a disclosure that the advertisement is an IE when required unless the advertisement itself includes all that information, as specified.
 - c) Specifies the color of the background for the disclosure area and prohibits the names of top contributors from having their type condensed in all circumstances, as specified.
 - d) Narrows a rule that allows social media posts, comments, and similar communications paid for by a committee to omit disclosures if the committee includes those disclosures in its profile, landing page, or similar location such that the rule applies only to advertisements posted by the committee itself. Requires similar social media communications that are paid for by a committee but posted by a third party to comply with the disclosure rules that otherwise apply to those types of advertisements.
- 5) Prohibits any text or image that is not required to appear in the area on a campaign advertisement that discloses the name of the committee and its top contributors from being included in that area, except as specified.
 - 6) Permits a disclosure statement required by a local ordinance that is substantially similar to a statement required by specified provisions of the Political Reform Act (PRA) to be merged into a single statement.
 - 7) Requires specified public notices that appear on state and local initiative petitions to appear on state and local referendum and recall petitions. Amends those public notices as follows:
 - a) Deletes a requirement that a specified notice appear on any petition that does not include an Official Top Funders disclosure, as specified.
 - b) Requires the following notice, as specified, to be included on petitions that include an Official Top Funders disclosure: “SIGN ONLY IF IT IS THE SAME MONTH SHOWN IN THE OFFICIAL TOP FUNDERS OR YOU SAW AN ‘OFFICIAL TOP FUNDERS’ SHEET FOR THIS MONTH.”
 - 8) Requires a state or local initiative, referendum, or recall petition that does not include an Official Top Funders disclosure on the petition itself to include the following text, as specified, on the portion of the petition where voters sign the petition, below the signer’s printed name and above the signer’s signature: “DO NOT SIGN UNLESS you have seen Official Top Funders sheet and its month is still valid.”

- 9) Makes various other minor changes to formatting requirements for specified public notices related to the initiative, referendum, and recall process, and for specified disclosures that are required to appear on campaign advertisements.
- 10) Makes various findings and declarations.
- 11) Makes technical and conforming changes.
- 12) Contains a severability clause.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Defines “advertisement,” for the purposes of the PRA, as any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures, except as specified.
- 3) Requires advertisements that support or oppose candidates or ballot measures to include disclosure statements in specified circumstances. Requires these disclosures to comply with certain formatting, display, legibility, and audibility requirements.
 - a) Requires an advertisement supporting or opposing a candidate that is paid for by an IE to include a statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate, as specified.
 - b) Defines “top contributors,” for the purposes of these disclosure statements, as the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more.
 - c) Requires generally that an advertisement supporting or opposing a candidate or ballot measure paid for by a committee, other than a political party committee or a candidate’s own campaign committee, include the words “committee major funding from” followed by the names of the committee’s top contributors, as defined above. Prescribes requirements regarding the form, content, and presentation of the top contributors disclosures on advertisements, which vary significantly based on the medium of the advertisement, as specified.
- 4) Prescribes requirements regarding the form, content, and presentation of initiative, referendum, and recall petitions.
- 5) Requires state and local initiative petitions to contain the following notices, as specified:
 - a) For petitions that do not include the Official Top Funders disclosure on the petition: “YOU HAVE THE RIGHT TO SEE AN ‘OFFICIAL TOP FUNDERS’ SHEET.”
 - b) “THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.”

- 6) Requires, when a campaign committee pays for the circulation of a state or local initiative, referendum, or recall petition, as specified, that an “Official Top Funders” disclosure be made on the petition itself, or on a separate sheet that is presented to prospective petition signers. Requires the disclosure to identify the committee’s name, any qualifying top contributors, the month and year during which the Official Top Funders disclosure is valid, and an address to a webpage that includes the most recent Official Top Funders disclosure, as specified. Requires the disclosure to include the three highest contributors whose cumulative contributions are \$50,000 or more, as specified.

FISCAL EFFECT: According to a Senate Appropriations Committee analysis of a prior version of this bill that is very similar to the version in print, the FPPC indicates that it would incur first-year costs of \$170,000, and \$163,000 annually thereafter, to implement the provisions of the bill (General Fund). State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

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

Previous elections have highlighted tactics used by some campaign committees to avoid the transparency required by current California law on ads about ballot measures and independent expenditures and on initiative, referendum, and recall petitions. People shouldn’t have to pause their TVs or computers, squint, or run to the kitchen for their glasses to determine who is funding political ads.

Transparency in our political process is more important than ever and voters deserve to be treated respectfully.

On many television ads, long committee names are used that look like huge chunks of text that are hard to distinguish from the top funders of the committee during the five seconds the disclosure is displayed on the ad. Additionally, some campaigns take advantage of the fact that online image ads are the only major format of political advertising that isn’t currently required to disclose any top funders on the ad to deluge voters with ads that hide who paid for them.

Therefore, SB 1360 updates the formatting requirements of disclosure text on television, video, and online graphic advertisements to address these problems and to make it easier to read who’s paying for them. It also ensures that voters who are being approached to sign initiative, referendum, and recall petitions know they must be shown the top funders paying for their circulation, which many paid signature gatherers have not been showing voters despite requirements in current law.

- 2) **“Disclose Act” and Related Previous Legislation:** Five years ago, the Legislature approved and Governor Brown signed AB 249 (Mullin), Chapter 546, Statutes of 2017, which significantly changed the content and format of disclosure statements required on specified campaign advertisements in a manner that generally required such disclosures to be more prominent. AB 249 also established new requirements for determining when contributions are considered to be earmarked, and imposed new disclosure requirements for earmarked contributions to ensure that committees are able to determine which contributors must be

listed on campaign advertisements. AB 249 is commonly known as the "Disclose Act." The passage of AB 249 marked the culmination of seven years of debate and negotiation over similar legislation. AB 249 took effect on January 1, 2018.

Since the enactment of AB 249, there have been several other bills that have modified the content and format of the disclosure statements created by that bill. AB 2155 (Mullin), Chapter 777, Statutes of 2018, made various changes to the Disclose Act that generally were minor, clarifying, or technical in nature, or otherwise were consistent with disclosure examples that were provided by supporters when AB 249 was being considered by the Legislature. AB 2188 (Mullin), Chapter 754, Statutes of 2018, required online platforms that sell political ads to make specified information about those political ads available to the public, and made various changes to the required format for disclosures on electronic media ads. AB 201 (Cervantes), Chapter 555, Statutes of 2019, required a text message that supports or opposes a candidate or ballot measure to disclose the name of the candidate or committee that paid for the text message and, in certain circumstances, the top contributors to the committee. AB 864 (Mullin), Chapter 558, Statutes of 2019, made numerous, mostly technical changes to the Disclose Act and other provisions of state law governing the content and format of disclosure statements that are required to appear on communications disseminated by candidates and committees.

Last session, the Disclose Act's approach was extended to apply to initiative, referendum, and recall petitions with the passage of SB 47 (Allen), Chapter 563, Statutes of 2019. SB 47 generally requires that individuals who are asked to sign state or local initiative, referendum, or recall petitions be provided with information about the committee that is paying for the petition to be circulated, if any, and the top campaign contributors to that committee, as specified. Those disclosures, which must comply with various formatting and legibility requirements, are referred to as an "Official Top Funders" disclosure. SB 47 permits the Official Top Funders disclosure to appear on the petition itself, or on a separate sheet that is required to be shown to individuals who are asked to sign the petition.

Last year, this committee considered SB 752 (Allen), which included many of the changes to state law that are proposed by this bill. SB 752 also proposed substantive changes to existing law that are not included in this bill. Notably, SB 752 proposed to lower the contribution thresholds at which a contributor to a political committee may be required to be identified on political ads paid for by that committee, or on petitions that the committee pays to circulate. Additionally, SB 752 proposed to make changes to the format of required disclosures on political advertisements that are transmitted via text message. SB 752 was approved by this committee on a 6-0 vote, but was held on the Assembly Appropriations Committee's suspense file.

- 3) **Regular Changes to New and Complex Disclosure Rules:** As detailed above, since AB 249 was approved, there have been at least four subsequent bills enacted into law that changed the disclosure rules it created. This bill would be the fifth bill to change those rules in five years. This bill additionally proposes to change the petition disclosure rules enacted through SB 47 less than three years ago.

Many of the changes previously made to AB 249 were technical clean-up, or were attempts to address unanticipated issues and to respond to perceived efforts to evade the intent of the original legislation, a description that similarly describes many of the changes proposed by

this bill. Nonetheless, effective compliance depends on familiarity with and understanding of the law. Such a familiarity and understanding can take time to develop, particularly after a significant overhaul of the law like that of AB 249. Notwithstanding the understandable desire to address actual or perceived abuses of newly-enacted rules, making frequent changes to complex rules so soon after enactment can hinder compliance and enforcement.

- 4) **Arguments in Support:** A letter submitted by a coalition of groups including the California Clean Money Campaign, the sponsor of this bill, states:

SB 1360 includes additional modest amendments to the format of California DISCLOSE Act disclosures to simplify compliance and make disclosures more reasonable, including addressing line height requirements for online video ads that are taller than they are wide and allowing committee names on online ads, text messages, billboards, and yard signs to be shortened to save space as long as they are still uniquely identifiable.

SB 1360 is crucial for ensuring that disclosures for political advertisements and initiative, referendum, and recall petitions show voters the relevant top funders in a reasonable fashion that fulfills the original intent of the legislature and gives voters the information they need to make more informed decisions.

- 5) **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)
 California Broadcasters Association (prior version)
 California Church Impact
 California Common Cause
 Californians for Disability Rights
 Consumer Watchdog
 Courage California
 Democrats of Rossmoor (prior version)
 Endangered Habitats League
 Indivisible CA: StateStrong
 Initiate Justice
 League of Women Voters of California (prior version)
 Maplight
 Money Out Voters In
 Progressive Democrats of America, California
 Public Citizen, Inc.
 RootsAction.org
 Sonoma County Democratic Party (prior version)

Voices for Progress

Opposition

None on file.

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