

Date of Hearing: June 14, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 267 (Pan) – As Amended March 21, 2017

**SENATE VOTE:** 37-0

**SUBJECT:** Political Reform Act of 1974: City of Sacramento.

**SUMMARY:** Permits the City of Sacramento and the Fair Political Practices Commission (FPPC) to enter into an agreement that provides for the FPPC to enforce a local campaign finance ordinance passed by the City Council of the City of Sacramento. Specifically, **this bill:**

- 1) Provides that, upon mutual agreement between the FPPC and the City Council of the City of Sacramento, the FPPC is authorized to assume primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance ordinance passed by the City Council of the City of Sacramento. Provides that the FPPC is authorized to be the civil prosecutor responsible for the civil enforcement of such an ordinance. Provides that as the civil prosecutor, the FPPC may do both of the following:
  - a) Investigate possible violations of the local campaign finance reform ordinance; and,
  - b) Bring administrative actions in accordance with the Political Reform Act (PRA) and the administrative adjudication provisions of the Administrative Procedure Act.
- 2) Requires any local campaign finance reform ordinance of the City of Sacramento that is enforced by the FPPC to comply with the PRA.
- 3) Requires the City Council of the City of Sacramento to consult with the FPPC prior to adopting and amending any local campaign finance reform ordinance that will be enforced by the FPPC.
- 4) Permits the City Council of the City of Sacramento and the FPPC to enter into any agreements necessary and appropriate to carry out the provisions of this bill, including agreements pertaining to any necessary reimbursement of state costs with city funds for costs incurred by the FPPC in administering, implementing, or enforcing a local campaign finance reform ordinance pursuant to this bill.
- 5) Prohibits an agreement entered into pursuant to the provisions of this bill from containing any form of a cancellation fee, liquidated damages provision, or other financial disincentive to the exercise of the right to terminate the agreement, except that the FPPC may require the City Council of the City of Sacramento to pay the FPPC for services rendered and any other expenditures reasonably made by the FPPC in anticipation of services to be rendered pursuant to the agreement if the City Council of the City of Sacramento terminates the agreement.
- 6) Permits the City Council of the City of Sacramento or the FPPC to terminate, at any time, by ordinance or resolution, any agreement made pursuant to this bill for the FPPC to administer,

implement, or enforce a local campaign finance reform ordinance or any other provisions thereof.

- 7) Requires the FPPC, if an agreement is entered into pursuant to the provisions of this bill, to report to the Legislature regarding the performance of that agreement within four years of the date on which the agreement was entered, and submit that report in compliance with current law. Requires the FPPC to develop the report in consultation with the City Council of the City of Sacramento.
- 8) Requires the report to include, but not be limited to, all of the following:
  - a) The status of the agreement;
  - b) The estimated annual cost savings, if any, for the City of Sacramento;
  - c) A summary of relevant annual performance metrics, including measures of use, enforcement, and customer satisfaction;
  - d) Public comments submitted to the FPPC or the City of Sacramento relative to the operation of the agreement; and,
  - e) Legislative recommendations.
- 9) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.
- 10) Makes legislative findings and declarations as to the necessity of a special statute for the City of Sacramento due to the need to avoid an appearance of corruption in the city's electoral process.

**EXISTING LAW:**

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires a local government agency that adopts or amends a local campaign finance ordinance to file a copy of the ordinance with the FPPC.
- 3) Prohibits a local government agency from enacting a campaign finance ordinance that imposes campaign reporting requirements that are additional to or different from those set forth in the PRA for elections held in its jurisdiction unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification or passage of a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.
- 4) Authorizes the FPPC, upon mutual agreement between the FPPC and the San Bernardino County Board of Supervisors, to have primary responsibility for the impartial, effective

administration, implementation, and enforcement of a local San Bernardino County campaign finance reform ordinance. Requires the San Bernardino County Board of Supervisors to consult with the FPPC prior to adopting and amending any local campaign finance reform ordinance that is subsequently enforced by the FPPC.

- 5) Allows the FPPC, until January 1, 2020, upon mutual agreement between the FPPC and the City Council of the City of Stockton, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local City of Stockton campaign finance reform ordinance. Requires the City Council of the City of Stockton to consult with the FPPC prior to adopting and amending any local campaign finance reform ordinance that is subsequently enforced by the FPPC.
- 6) Authorizes the FPPC, pursuant to the aforementioned agreements, to investigate possible violations of the San Bernardino County or the City of Stockton campaign finance reform ordinances and bring administrative actions against persons who violate the ordinances, as specified.
- 7) Permits the San Bernardino County Board of Supervisors and the City Council of the City of Stockton to enter into any agreements with the FPPC that are necessary and appropriate for the operation of these provisions, including agreements for reimbursement of state costs with county or city funds, as specified. Permits the San Bernardino County Board of Supervisors, the City Council of the City of Stockton or the FPPC, at any time, by ordinance or resolution, to terminate any agreement for the FPPC to administer, implement, or enforce the local campaign finance reform ordinances or any provisions thereof.
- 8) Requires the FPPC to report to the Legislature with specified information on or before January 1, 2017, if the FPPC enters into such an agreement with the San Bernardino County Board of Supervisors.
- 9) Requires the FPPC to report to the Legislature with specified information on or before January 1, 2019, if the FPPC enters into such an agreement with the City Council of the City of Stockton.

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

**COMMENTS:**

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

SB 267 seeks to authorize the City of Sacramento and the FPPC to enter into a voluntary contract for enforcement of Sacramento's local campaign finance ordinance. SB 267 will help reduce costs for the City, while also ensuring that enforcement and compliance of the City's campaign finance ordinance is carried out in an effective and professional manner.

- 2) **San Bernardino County and the City of Stockton:** In 2012, the Legislature passed and the Governor signed AB 2146 (Cook), Chapter 169, Statutes of 2012, which permitted San Bernardino County and the FPPC to enter into an agreement that provides for the FPPC to enforce the County's local campaign finance reform ordinance, until January 1, 2018. Prior

to this, the FPPC did not enforce any local campaign finance ordinances. According to previous analyses, the County of San Bernardino, which had been the subject of several high-profile corruption cases, was in the process of developing a campaign finance ordinance. Rather than appoint an ethics commission, which could present financial as well as conflict of interest challenges, the County proposed to contract with the FPPC to enforce their local campaign finance ordinance. Moreover, the County determined that it was in the best interest of the County to retain the services of the FPPC to provide for the enforcement and interpretation of San Bernardino County's local campaign finance ordinance as the FPPC has special skills, knowledge, experience, and expertise in the area of enforcement and interpretation of campaign laws necessary to effectively advise, assist, litigate, and otherwise represent the County on such matters. As a result, the FPPC and San Bernardino County entered into a mutual agreement, from January 1, 2013 through December 31, 2014, for the FPPC to provide the County campaign enforcement and interpretation services for the impartial, effective administration, implementation, and enforcement of the San Bernardino's campaign finance reform ordinance. Subsequently, San Bernardino County and the FPPC entered into another two-year mutual agreement covering the period from January 1, 2015 through December 31, 2016, and recently entered into a new two-year agreement covering the period from January 1, 2017 through December 31, 2018.

As required by law, the FPPC submitted a report to the Legislature on March 24, 2016. According to the report, the agreement between the FPPC and the San Bernardino County resulted in substantial savings when compared to the cost of other public ethics commissions and aided in enforcement proceedings by removing any semblance of conflict of interest. The report concluded by stating that the partnership between the FPPC and the San Bernardino County has been successful and both the FPPC and San Bernardino County supported removing the January 1, 2018 sunset date from the statute. Consequently, the Legislature passed and the Governor signed AB 2558 (Steinorth), Chapter 202, Statutes of 2016, which removed the sunset date.

Last session, the Legislature passed and the Governor signed AB 1083 (Eggman), Chapter 186, Statutes of 2015, which authorized the City Council of the City of Stockton and the FPPC to enter into an agreement that provides for the FPPC to enforce a local campaign finance ordinance passed by the City Council of the City of Stockton, as specified. According to the FPPC, no steps have been taken to enter into an agreement with the City of Stockton at this time.

- 3) **Local Campaign Ordinances and the PRA:** Under existing law, local government agencies have the ability to adopt campaign ordinances that apply to elections within their jurisdictions, though the PRA imposes certain limited restrictions on those local ordinances. For instance, SB 726 (McCorquodale), Chapter 1456, Statutes of 1985, limited the ability of local jurisdictions to impose campaign filing requirements that differed from those in the PRA, permitting such requirements only when they applied solely to candidates and committees whose activity is restricted primarily to the jurisdiction in question. This provision sought to avoid the necessity of a candidate or committee active over a wider area being required to adhere to several different campaign filing schedules. Similarly, AB 1430 (Garrick), Chapter 708, Statutes of 2007, prohibited local governments from adopting rules governing member communications that are different than the rules that govern member communications at the state level.

Aside from these restrictions, however, local government agencies generally have a significant amount of latitude when developing local campaign finance ordinances that apply to elections in those agencies' jurisdictions. Any jurisdiction that adopts or amends a local campaign finance ordinance is required to file a copy of that ordinance with the FPPC, and the FPPC posts those ordinances on its website.

Several cities and counties have adopted campaign finance ordinances, some of which are very extensive. In some cases, those ordinances include campaign contribution limits, reporting and disclosure requirements that supplement the requirements of the PRA, temporal restrictions on when campaign funds may be raised, and voluntary public financing of local campaigns, among other provisions. In many cases, local campaign finance ordinances are enforced by the district attorney of the county or by the city attorney. In at least a few cases, however, local jurisdictions have set up independent boards or commissions to enforce the local campaign finance laws.

The FPPC does not currently enforce any local campaign finance ordinances other than San Bernardino County's. The FPPC can and does, however, bring enforcement actions in response to violations of the PRA that occur in campaigns for local office, even in cases where the local jurisdiction brings separate enforcement actions for violations of a local campaign finance ordinance.

- 4) **Expansion of the Law:** As mentioned above, while the FPPC has the authority to enter into mutual agreements to enforce two local campaign finance ordinances, it is currently only in agreement to enforce San Bernardino County's local campaign finance ordinance. At the time that the Legislature was considering AB 2146 (Cook) to authorize the FPPC and San Bernardino County to enter into a mutual agreement for the FPPC to enforce San Bernardino County's local campaign finance ordinance, San Bernardino was in the process of developing a campaign finance ordinance. In the end, however, San Bernardino County only approved a campaign contribution limit law and decided it was in the best interest of the County to retain the services of the FPPC to provide for the enforcement and interpretation of the County's local campaign finance ordinance.

According to background information provided to the committee, the City of Sacramento currently has a campaign finance ordinance and recently approved a package of ethics reforms to update the city's campaign finance ordinance. This is particularly important as the City of Sacramento already has an extensive campaign finance ordinance in place, unlike San Bernardino County. Consequently, the committee may wish to consider whether adding the City of Sacramento's local campaign finance ordinance could add complexity to the FPPC's work, especially if the local ordinance is inconsistent with the general framework of the PRA. Moreover, the committee may wish to consider whether such an expansion of the FPPC's workload could negatively impact the ongoing enforcement of the PRA. On the other hand, this bill only gives the FPPC *discretion* to enter into an agreement with the City Council of the City of Sacramento to enforce its local campaign finance ordinance, and if the FPPC is concerned that the enforcement of such an ordinance would negatively impact its ability to enforce and administer the PRA, the FPPC could decline to enter into an agreement with the City of Sacramento.

- 5) **Sunset Date and Suggested Amendment:** The previous bills that authorized the FPPC to enter into an agreement to enforce a local campaign finance ordinance for either San

Bernardino County or the City of Stockton both contained sunset dates. The sunset date serves as a mechanism for the Legislature to review and evaluate whether the partnership between the entities is successful and to assess whether future expansion of this policy should be considered. Contrary to those bills, this bill does not contain a sunset date. Additionally, unlike the previous bills, this bill does not contain a specific date by which the FPPC is required to submit a report to the Legislature and instead requires the report to be submitted within four years of an agreement with the City of Sacramento. Committee staff recommends amending the bill to add a sunset date and add a specific date by which the FPPC must submit a report to the Legislature, similar to provisions that were included in previous bills. Committee staff recommends adding a sunset date of January 1, 2023, and a January 1, 2022 date by which the report must be submitted to the Legislature.

- 6) **Criminal, Civil, and Administrative Enforcement of the PRA and Local Campaign Ordinances:** Violations of the PRA are subject to administrative, civil, and criminal penalties. Generally, the Attorney General (AG) and district attorneys have responsibility for enforcing the criminal provisions of the PRA, though any elected city attorney of a charter city also has the authority to act as the criminal prosecutor for violations of the PRA that occur within the city. The FPPC, the AG, district attorneys, and elected city attorneys of charter cities all have responsibility for enforcement of the civil penalties and remedies provided under the PRA, depending on the nature and location of the violation, while any member of the public also has the ability to file a civil action to enforce the civil provisions of the PRA, subject to certain restrictions. The FPPC has the sole authority to bring administrative proceedings for enforcement of the PRA. When the FPPC determines on the basis of such a proceeding that a violation of the PRA has occurred, it can impose monetary penalties of up to \$5,000 per violation, in addition to ordering the violator to cease and desist violation of the PRA and to file any reports, statements, or other documents or information required by the PRA.

In the case of local campaign ordinances, there is no single approach as to the types of penalties that are available for the violations of those ordinances. Many local ordinances provide for misdemeanor or civil penalties for violations, while some ordinances do not establish any penalties for violations. In some local jurisdictions that have independent boards or commissions to enforce the local campaign finance ordinances, those boards or commissions have the authority to bring administrative enforcement proceedings, similar to the authority the FPPC has under the PRA.

- 7) **Previous Legislation:** AB 2558 (Steinorth), Chapter 202, Statutes of 2016, removed the January 1, 2018, sunset date from a provision of law that authorizes the FPPC to enforce San Bernardino County's local campaign finance reform ordinance, as specified.

AB 1083 (Eggman), Chapter 186, Statutes of 2015, authorized the City of Stockton to enter into an agreement with the FPPC to enforce a local campaign finance ordinance, as specified.

AB 910 (Harper) of 2015, would have authorized the FPPC to administer and enforce a local campaign finance ordinance for any city or county, upon mutual agreement between the FPPC and the local agency, as specified. That bill was never heard in this committee.

SB 1226 (Correa) of 2014, would have authorized any city or county to enter into an agreement with the FPPC to administer and enforce a local campaign finance ordinance.

That bill was gutted and amended in the Assembly Appropriations Committee.

AB 2146 (Cook), Chapter 169, Statutes of 2012, permitted San Bernardino County and the FPPC to enter into an agreement that provides for the FPPC to enforce the County's local campaign finance ordinance, 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.
- 9) **Double-Referral:** This bill is double-referred to the Assembly Local Government Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Common Cause  
City of Sacramento  
League of Women Voters of California

##### **Opposition**

None on file.

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