

Date of Hearing: July 3, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 1001 (Yee) – As Amended: June 21, 2012

SENATE VOTE: 28-9

SUBJECT: Political Reform Act of 1974: lobbyists and committees: fees.

SUMMARY: Imposes fees on specified committees that are required to file disclosure reports pursuant to the Political Reform Act (PRA), increases fees on lobbying firms and lobbyist employers, and requires the new fee revenue to be used for the online and electronic disclosure of reports filed pursuant to the PRA. Specifically, this bill:

- 1) Requires each committee that qualifies as a committee by virtue of having received contributions totaling \$1,000 or more in a calendar year (known as a recipient committee) to pay a fee of \$50 per year to the Secretary of State (SOS) until the committee is terminated. Requires the fee to be paid no later than 15 days after the committee files its statement of organization, and no later than January 15 in subsequent years. Provides that a committee that is created and pays its initial fee in the last three months of a calendar year is not subject to the annual fee for the following calendar year.
- 2) Provides that a committee that existed prior to January 1, 2013 shall pay the fee for the 2013 calendar year no later than February 15, 2013, unless the committee terminates prior to January 31, 2013, in which case it is not required to pay the fee.
- 3) Provides that a recipient committee that fails to timely pay the fee required by this bill is subject to a penalty equal to three times the amount of the fee.
- 4) Increases the fee required to be paid by each lobbying firm and lobbyist employer from a maximum of \$25 per year to a set amount of \$50 per year for each lobbyist required to be listed on the registration statement.
- 5) Creates the Political Disclosure, Accountability, Transparency, and Access Fund (PDATA Fund) in the State Treasury. Requires the fees collected from recipient committees and one-half of the fees collected from lobbying firms and lobbyist employers pursuant to this bill to be deposited into the PDATA Fund. Requires the other half of the fees collected from lobbying firms and lobbyist employers to be deposited in the General Fund (GF).
- 6) Provides that moneys deposited in the PDATA Fund are subject to appropriation by the Legislature for the maintenance, repair, and improvement of the online or electronic disclosure program implemented by the SOS pursuant to existing law.
- 7) Permits the SOS to use moneys deposited in the PDATA Fund for the purposes of implementing this bill.

- 8) Provides that any expenditure from the PDATA Fund for the maintenance, repair, and improvement of the online or electronic disclosure program implemented by the SOS is subject to the project approval and oversight process established by the California Technology Agency pursuant to existing law.

EXISTING LAW:

- 1) Requires the SOS, in consultation with the Fair Political Practices Commission (FPPC), to provide online and electronic filing processes for use by specified political committees, lobbyists, lobbying firms, and lobbyist employers. 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 pursuant to the PRA 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) Requires that lobbying firms and lobbyist employers register with the SOS, and authorizes the SOS to charge each lobbying firm and lobbyist employer a fee of up to \$25 per year for each lobbyist required to be listed on its registration statement.
- 6) Prohibits a fee or charge from being collected by any officer for the filing of any report or statement pursuant to the PRA or for the forms upon which those reports or statements are required to be prepared.

FISCAL EFFECT: According to the Senate Appropriations Committee, total costs of approximately \$80,000 annually and approximately \$490,000 in new fee revenue.

- The SOS indicates the need for one additional personnel year to administer the new filing fee imposed on political committees at an estimated cost of \$83,138 annually.
- Approximately \$490,000 in revenue from the increased fees on lobbyists and the new fee imposed on committees to the PDATA Fund.
- Unknown revenue from late filing penalties collected from committees that do not meet the filing deadlines, deposited into the PDATA Fund.

There are approximately 7,800 recipient committees that will be required to pay a new \$50 annual fee to the SOS which will result in potential new revenue of up to \$390,000 each year. Additionally, the bill will result in about \$100,000 in revenue from higher filing fees paid by lobbyists every two years. SB 1001 directs the money to the PDATA Fund.

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

Existing law, pursuant to the Political Reform Act of 1974, requires the Secretary of State, in consultation with the Fair Political Practices Commission, to provide online and electronic filing processes for use by specified political committees, lobbyists, lobbying firms, and lobbyist employers. Those processes must enable a user to comply with all relevant disclosure requirements. The SOS must also make all the data filed available on the Internet for public viewing in an easily understood format. This online reporting and disclosure system is commonly referred to as the Cal-Access system. Cal-Access has had a slew of technical issues recently that have resulted in a lack of access to this information by the public. This information is essential to ensuring transparency and accountability in affairs that directly impact the people of this state. While the SOS has the funding to maintain the existing hardware and software, because of the nature of the antiquated and uncommon technology used, finding parts and qualified people to do the maintenance on such outdated equipment has been increasingly difficult. This bill seeks to raise additional funds to be used on the maintenance, repair, and improvement of the state's online reporting and disclosure system website to ensure that this information is continuously available as it was intended to be.

2) 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.

- 3) Does This Bill Further the Purposes of the Political Reform Act? 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.

It could be argued that the provision of this bill that requires the SOS to charge an annual fee to each committee that is required to file a statement of organization does not further the purposes of the PRA, and therefore cannot be adopted by the Legislature without approval by the voters. Among the provisions of Proposition 9 in 1974 was a prohibition against any fee or charge being collected by any officer for the filing of any report or for the forms upon which reports are to be prepared. Because the fee that is required by this bill appears to conflict with that provision of the PRA, it could be argued that this change does not "further the purposes" of the PRA.

On the other hand, one of the purposes of the PRA is to provide for receipts and expenditures in election campaigns to be "fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." To the extent that the passage of this bill leads to the development of a new campaign disclosure system, or hastens the development of such a system, this bill could improve the disclosure of receipts and expenditures in campaigns, in furtherance of the purposes of the PRA.

- 4) First Amendment Concerns: The provisions of this bill which impose annual fees on certain candidates and committees and that increase fees charged to lobbyist employers and lobbying firms may be susceptible to a challenge on the grounds that these fees represent an improper burden on the freedom of speech, association, and the right to petition the government for redress of grievances, in violation of the United States and California Constitutions.

State and federal courts have repeatedly held that the giving and spending of campaign money involves the exercise of free speech, and have held that lobbying is a form of speech, association, and petition that is protected by the First Amendment to the United States

Constitution. Courts have suggested that regulatory fees imposed on activities protected by the First Amendment may be permissible, but only if those fees are used solely for the purposes of administering the law or ordinance in question, and only if the fees do not exceed an amount necessary to defray the government's expenses in regulating the activity. (See, for instance, *Cox v. New Hampshire* (1941), 312 U.S. 569; *Murdock v. Pennsylvania* (1943), 319 U.S. 105; *Moffett v. Killian* (D. Conn. 1973), 360 F.Supp. 228.)

As discussed above, the fee revenue derived from this bill is to be used exclusively for the maintenance, repair, and improvement of the online or electronic disclosure program that is maintained by the SOS. It could be argued, then, that the fees imposed by this bill are being used solely for the purposes of administering and enforcing the state's campaign and lobbying disclosure laws. However, to the extent that the fee revenues generated by this bill are used for other purposes, or exceed the costs of administering and enforcing the law, the fees proposed by this bill could be susceptible to challenge.

- 5) Should Local Campaign Committees Be Charged a Fee? Under existing law, candidates for local offices and other recipient committees that participate primarily in local (i.e., non-state) elections do not file campaign reports with the SOS, and therefore, the Cal-Access web site typically does not include campaign disclosure reports from those entities. Nonetheless, some local jurisdictions have set up their own online campaign disclosure systems, or have posted images online of campaign reports filed in the jurisdiction. Additionally, as detailed below, this committee has considered and approved legislation earlier this year to encourage the further development of electronic disclosure systems at the local level.

Even though these candidates and committees do not file disclosure reports with the SOS, they are required to file a statement of organization with the SOS within 10 days of qualifying as a committee. As a result, those committees and candidates would be required to pay the fees that would be imposed by this bill, even though the disclosure reports filed by those entities are not included in the online database maintained by the SOS. The committee may wish to consider whether it is equitable or appropriate to charge a fee to local candidates and committees for the maintenance and development of a campaign disclosure system that does not include the disclosure reports filed by those entities.

On the other hand, one reform that has been discussed in the Legislature in the past to provide the public with greater access to campaign finance documents is requiring *all* candidates and committees in California to file campaign reports online or electronically with the SOS. Such a policy would allow the state to have a single electronic campaign finance database that would provide "one-stop" campaign finance information for state and local candidates and committees. That reform has not been seriously pursued, however, in part because the Cal-Access system does not have the capability to accommodate the filings of local campaign disclosure reports. To the extent that the additional fee revenue derived from local candidates and committees allows for a more robust system to be designed to replace the Cal-Access system, it may be more practical to pursue the option of requiring all candidates and committees, including local candidates and committees, to file campaign reports online or electronically with the SOS, thereby providing broader access to this information.

- 6) Arguments in Support: In support of this bill, the California Newspaper Publishers Association writes:

In an election year, it is essential for journalists to have dependable, instant access to information about candidates for public office and those who contribute to their campaigns. Consistent access to the Cal-Access database allows journalists to obtain this important information quickly in order to provide voters with accurate and complete information. Even a slight interruption in access to this database may impede a journalist from reporting vital information in a breaking story.

- 7) Arguments in Opposition: In opposition to this bill, the Howard Jarvis Taxpayers Association (HJTA) writes:

HJTA is certainly aware of the recent server problems experienced by the Secretary of State's office. However, targeting lobbyists is a punitive measure that will hit non-profit associations especially hard in a difficult recession. The Secretary of State has alternative means to fund its essential functions including business incorporation fees and notary services. It should also try better management. The office, like all of government, should learn to live within its means without banking on the prospect of higher taxes and fees.

- 8) Related Legislation: AB 2452 (Ammiano), which is pending on the Senate Floor, permits local government agencies to require elected officials, candidates, and campaign committees to file campaign disclosure reports online or electronically, subject to certain conditions. AB 2452 was approved by this committee by a 7-0 vote and was approved on the Assembly Floor by a 77-0 vote.

SB 1553 (Lowenthal), which is pending in the Assembly Appropriations Committee, establishes a pilot project whereby the City of Long Beach may permit the electronic filing of campaign disclosure statements. SB 1553 was approved by this committee by a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause (sponsor)
California Newspaper Publishers Association
Fair Political Practices Commission
Institute of Governmental Advocates
Sunshine Ordinance Task Force of the City and County of San Francisco

Opposition

Howard Jarvis Taxpayers Association

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