

Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 1226 (Correa) – As Amended: May 13, 2014

SENATE VOTE: 34-0

SUBJECT: Political Reform Act of 1974: local campaign finance reform.

SUMMARY: Authorizes the Fair Political Practices Commission (FPPC) to administer and enforce a local campaign finance ordinance upon mutual agreement between the FPPC and a city or county, as specified. Specifically, this bill:

- 1) Expands provisions of law that authorize the FPPC and San Bernardino County and to enter into an agreement for the FPPC to enforce the County's local campaign finance ordinance by permitting the FPPC to enter into a mutual agreement with any city or county to enforce a local campaign finance ordinance. Provides that the FPPC, upon mutual agreement between the FPPC and the city council or board of supervisors of a participating city or county, is authorized to assume primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance ordinance.
- 2) Defines a "participating city or county," for the purposes of this bill, to mean any city or county that enters into a mutual agreement described above.
- 3) Provides that the FPPC shall be the civil prosecutor responsible for the civil enforcement of every local campaign finance ordinance that it enforces pursuant to this bill. Provides that the FPPC, as the civil prosecutor of the participating city's or county's local campaign finance ordinance, is not required to seek authorization from the city attorney or district attorney of a participating city or county to bring a civil or administrative action to enforce the ordinance.
- 4) Permits the FPPC to provide advice and guidance regarding the local campaign finance ordinance and bring civil actions to enforce the civil penalties and remedies of the local campaign finance ordinance that it enforces pursuant to this bill.
- 5) Repeals the January 1, 2018 sunset date on the provision of law that permits the FPPC to enforce San Bernardino County's campaign ordinance, and extends these provisions of law indefinitely.
- 6) Makes other conforming changes.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (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, until January 1, 2018, 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) Authorizes the FPPC, pursuant to the aforementioned agreement, to investigate possible violations of the San Bernardino County campaign finance reform ordinance and bring administrative actions against persons who violate the ordinance, as specified.
- 6) Permits the San Bernardino County Board of Supervisors and the FPPC to enter into any agreements necessary and appropriate for the operation of these provisions, including agreements for reimbursement of state costs with county funds, as specified. Permits the San Bernardino County Board of Supervisors 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 ordinance or any provision thereof.
- 7) 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.

FISCAL EFFECT: According to the Senate Appropriations Committee, all costs to the FPPC will be reimbursed by the city or county that opts to enter into the mutual agreement.

COMMENTS:

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

The Political Reform Act of 1974 (PRA) allows local government agencies to adopt campaign finance ordinances that apply to elections within their jurisdictions. These ordinances may be more stringent than the local restrictions that the PRA imposes. While the Fair Political Practices Commission (FPPC) has broad investigative and administrative authority across the state, it does not assume primary responsibility for local campaign finance ordinances. A county board of supervisors or a city council must monitor these ordinances or create an Ethics Commission with this authority.

SB 1226 enables cities and counties to contract with the FPPC for the administration and enforcement of local campaign finance ordinance. This gives cities and counties the

ability to bring in an experienced, independent, and impartial entity to investigate possible local campaign finance violations and bring administrative action against these violators. This bill allows participating entities to eliminate the potential for bias, favoritism, or conflicting interests by authorizing the FPPC to assume primary responsibility for the administration and enforcement of local campaign finance ordinance.

- 2) San Bernardino County: 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. 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.
- 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 has begun posting 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) 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.

- 5) Is Expansion of the Law to Soon? As mentioned above, last session AB 2146 (Cook), Chapter 169, Statutes of 2012, was implemented into law and permitted San Bernardino County and the FPPC to enter into an agreement for the FPPC to enforce the County's local campaign finance reform ordinance. Among other provisions, AB 2146 also required the FPPC, if it entered into an agreement with the San Bernardino County Board of Supervisors, to report to the Legislature with specified information on or before January 1, 2017. Current law requires the report to include, but not be limited to, the status of the agreement, the estimated annual cost savings, if any, for the County of San Bernardino, a summary of relevant annual performance metrics, as specified, any public comments submitted relative to the operation of the agreement, and any legislative recommendations. The committee is not aware that any report has been submitted from the FPPC to the Legislature. Because this law has only been effect since last year and the FPPC and San Bernardino County have only been in contract for a little over a year, the committee may wish to consider whether it is prudent

to expand the law to allow more participating cities or counties to authorize the FPPC to administer and enforce their local campaign finance ordinances. Would it be premature to expand current law when the Legislature has not received a report detailing the effectiveness of the current agreement between the FPPC and San Bernardino County?

Furthermore, the committee may wish to consider whether such an expansion of the FPPC's workload could negatively impact the ongoing enforcement of the PRA. Because there is no guarantee that local campaign finance ordinances will be consistent with the general framework of the PRA, each additional local ordinance that the FPPC is asked to enforce could add complexity to the FPPCs' work. Moreover, while the added complexity of a single ordinance and a single jurisdiction likely can be handled by the FPPC without much difficulty, this bill allows for the FPPC to enter into similar arrangements with other jurisdictions, adding complexity of tracking and enforcing multiple (potentially inconsistent) ordinances in multiple jurisdictions, which could harm the FPPC's ability to focus on its primary responsibility of enforcing the PRA.

On the other hand, this bill does require a mutual agreement be made between the city council or board of supervisors of the participating city or county and the FPPC. Moreover, this bill gives the FPPC discretion on whether or not they will choose to enter into an agreement with a city or county to administer and enforce its local campaign finance ordinance.

- 6) 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.
- 7) Double-Referral: After this bill was referred to this committee by the Assembly Rules Committee, the Assembly Rules Committee instructed that this bill should be referred to the Assembly Local Government Committee upon approval by this committee. Accordingly, any motion to approve this bill should provide for the bill to be re-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Orange Board of Supervisors (co-sponsor)
Urban Counties Caucus (co-sponsor)

Opposition

None on file.

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