

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 1442 (Lara, et al.) – As Amended: May 12, 2014

SENATE VOTE: 34-0

SUBJECT: Political Reform Act of 1974: campaign statements.

SUMMARY: Requires most state candidates and campaign committees to file periodic campaign reports every calendar quarter, instead of semi-annually. Requires the development of a new Internet-based campaign filing and public display system. Specifically, this bill:

- 1) Requires elected state officers, candidates for elective state office, and recipient committees that are primarily formed to support or oppose a candidate for elective state office or one or more statewide ballot measures to file quarterly campaign statements, instead of semi-annual campaign statements, in accordance with the following schedule:
 - a) No later than April 7 for the period commencing January 1 and ending March 31;
 - b) No later than July 31 for the period commencing April 1 and ending June 30;
 - c) No later than October 7 for the period commencing July 1 and ending September 30; and,
 - d) No later than January 31 for the period commencing October 1 and ending December 31.
- 2) Requires an independent expenditure committee or major donor committee that is primarily formed to support or oppose a candidate for elective state office or one or more statewide ballot measures to file quarterly campaign statements, pursuant to the schedule outlined above, unless the committee has not made contributions or independent expenditures during the reporting period. However, because independent expenditure committees and major donor committees cannot, by definition, be primarily formed to support or oppose a candidate for elective state office or one or more statewide ballot measures, this appears to be a drafting error.
- 3) Eliminates requirements for committees to file certain special reports, including supplemental preelection statements, supplemental independent expenditure reports, odd-numbered year reports, and state ballot measure contribution and independent expenditure reports.
- 4) Requires contributions and independent expenditures of \$1,000 or more that are made on election day to be reported within 24 hours of the time that the contribution or expenditure is made.
- 5) Requires the Secretary of State (SOS), in consultation with the Fair Political Practices Commission (FPPC), to develop a statewide Internet-based system for the electronic filing and public display of all records filed pursuant to the Political Reform Act (PRA), including,

but not limited to, statements of organization, campaign statements, reports, registrations, and certifications filed by or for any of the following:

- a) An officeholder account or legal defense fund;
 - b) A committee that is primarily formed to support one or more candidates for elective state office or one or more statewide ballot measures, including, but not limited to, major donor and independent expenditure committees;
 - c) A slate mailer organization;
 - d) A lobbyist, lobbying firm, or lobbyist employer; and,
 - e) A multipurpose organization that is required to file any report pursuant to the PRA.
- 6) Requires the electronic filing and public display system described above to provide both of the following:
- a) Search capabilities that are data-driven and user-friendly for members of the public; and,
 - b) Regular availability of all filings in a raw, machine-readable data format that may be downloaded by members of the public.
- 7) States the intent of the Legislature to enact legislation that would provide for monthly filing of campaign statements, instead of the quarterly filing established by this bill, after the SOS implements the electronic filing and public display system required by this bill.
- 8) Makes conforming and technical changes.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires candidates, political committees, and slate mail organizations to file specified periodic and activity-based campaign finance reports, including semiannual statements, pre-election statements, supplemental pre-election statements, and late contribution/expenditure reports that include specified campaign finance information.
- 3) Defines "late contribution" as either of the following:
 - a) A contribution, including a loan, that totals \$1,000 or more in the aggregate and that is made to or received by a candidate, controlled committee, or committee primarily formed or existing primarily to support or oppose a candidate or measure within 90 days before the date of the election at which candidate or measure is to be voted on; or,

- b) A contribution, including a loan, that totals \$1,000 or more in the aggregate and that is made to or received by a political party committee within 90 days before a state election.
- 4) Defines "late independent expenditure" as an independent expenditure that totals \$1,000 or more in the aggregate and that is made for or against a specific candidate or measure involved in an election within 90 days before the date of the election.
- 5) Requires a "late contribution" or a "late independent expenditure," as defined, to be publicly reported within 24 hours of the time that it is made or received, as specified.
- 6) Requires the SOS, in consultation with the FPPC, to provide an online and electronic filing system for use by specified state candidates, committees, lobbyists, lobbying firms, and lobbyist employers. This online reporting and disclosure system is commonly referred to as the Cal-Access system. Requires the SOS to make all the data filed using the system available on the Internet for public viewing in an easily understood format and to provide a means 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.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- First year costs of \$156,000 and annual ongoing costs of \$146,000 to the SOS (General Fund).
- Annual costs of \$147,000 to the FPPC (General Fund).

The SOS will require 2 personnel years (PYs) for Program Technician III positions at a cost of \$156,000 in the first year and \$146,000 ongoing resulting from increased workload associated with the more frequent filing of the reports, as well as compliance and fine enforcement.

The FPPC indicates the need for 1/2 PY for an Attorney I position and 1 PY for a Political Reform Consultant to handle new regulations, increased requests for advice, and for the revisions of forms and campaign manuals.

Preliminary estimates for implementing an online filing system for campaign disclosure reports is \$10 million to \$15 million.

COMMENTS:

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

This bill is a part of a package of bills that are aimed at strengthening the relationship between the citizens of California and their state government – the California Accountability in Public Service Act (CAPS Act). Recent events have raised significant questions about the transparency and accountability of rules and political practices in state government. This package of bills is the most significant change to political practices in California in at least twenty years. SB 1442 is a part of the CAPS Act and replaces semi-annual reporting statements with quarterly filing reports. This doubles the amount of disclosure currently provided to the public. This will streamline and consolidate the current reporting

process without losing transparency. Specifically, it makes the following changes to reporting:

- Replaces Semi-Annual Statements with Quarterly Filing Reports – doubles the amount of disclosure currently provided to [the] public.
- Reducing total amount of statements to four, making compliance easier – resulting in greater disclosure.
- Reducing complexity while increasing disclosure.
- Keeps 24 Hour Reporting for contributions over \$1,000 in the 90-day pre-election period, so large contributions will continue to be disclosed immediately.
- Keeps one pre-election report closest to the election.

Transparency is one key to restoring public trust in government. The current campaign filing system does not provide enough timely disclosure of campaign activity and the number of reports required makes it more difficult for the public to access the information. A new system based on quarterly filing for state officials accomplishes increased disclosure with fewer reporting statements.

Additionally, SB 1442 requires the Secretary of State to consult with the FPPC to develop an online campaign reporting system. An online system will improve the ease of reporting, occurrence of reporting and allow the public to easily access reports. A user-friendly, online reporting system is an important component to ensuring that state government is transparent and accountable to the public. Once such a system is developed, it is the intent to [move to] monthly filing of campaign statements.

- 2) Filing Schedules, State Committees, and Suggested Amendments: Under existing law, candidates and committees generally are required to file regular campaign disclosure reports semi-annually. Candidates generally are required to file two pre-election campaign statements for any election where they will appear on the ballot, and certain non-candidate committees similarly must file pre-election reports. When candidates and committees are required to file these pre-election reports, they generally must also file late contribution reports, and late independent expenditure reports, disclosing within 24 hours any contributions made or received and independent expenditures made of \$1,000 or more in the last 90 days before the election (election cycle). Candidates and committees can also be required to file additional special campaign reports at other times of the year, based on the particular campaign finance activity of the candidate or committee.

This bill seeks to require elective state officers, candidates for elective state office, and other state committees to file quarterly reports, instead of semi-annual reports, while reducing the number of pre-election reports to one such report per election (the new quarterly reports would, in effect, replace the first pre-election report that is required to be filed under existing law). For many state candidates and committees, this change will result in a small increase in the number of reports that must be filed over a given period of time. Some state candidates and committees will file fewer campaign reports under this bill, however, due to the

elimination of certain special activity-based reports. Local candidates and committees would continue to file semi-annual reports and two pre-election reports per election.

Due to drafting errors, however, this bill does not currently require *all* state committees to file quarterly reports. Instead, as currently drafted, state general purpose committees would continue to file semi-annual reports, but would not be required to file *any* pre-election reports. Committee staff recommends that this bill be amended to correct those drafting errors to ensure that all state committees are subject to quarterly reporting.

- 3) Periodic and Activity Based Reports and Suggested Amendments: Under the PRA, there are two general types of reporting requirements. The first type of report is referred to as a periodic report. Periodic reports must be filed according to a specified time schedule for all similarly-situated candidates and committees, regardless of the amount of campaign activity during the period of time covered by the report. These reports generally include all campaign activity (contributions, loans, expenditures, etc.) that occurred over a specified period of time. Semi-annual reports and preelection reports are two examples of periodic reports that are required under the PRA.

The second type of report that the PRA requires is an activity-based report. An activity-based report is triggered when a candidate or committee has campaign activity that meets or exceeds a specific dollar threshold. Late contribution reports and late independent expenditure reports are examples of activity-based reports.

This bill seeks to eliminate a number of special activity-based reports in an effort to streamline the campaign reporting process. Among the reports that would be eliminated by this bill are supplemental preelection statements, special odd-numbered year reports, and supplemental independent expenditure reports. Because this bill requires state candidates and committees to file quarterly reports, and because previous legislation has expanded the circumstances under which 24 hour reporting is required for contributions and independent expenditures, these special activity-based reports largely can be eliminated without sacrificing disclosure or transparency.

There is one type of report that this bill proposes to eliminate (special state ballot measure contribution and expenditure reports), however, that could result in a loss of timely disclosure of campaign activity in connection with the qualification of proposed state ballot measures. AB 1759 (Umberg), Chapter 438, Statutes of 2006, required specified campaign committees to file an electronic report within 10 business days of making contributions or independent expenditures of \$5,000 or more to support or oppose the qualification or passage of a single state ballot measure. This reporting requirement was enacted, in part, in response to a situation where a state general purpose committee made close to \$900,000 in contributions to two committees that were seeking to qualify state ballot measures. Because of the timing of those contributions, the committee making the contributions was not required to disclose its donors until after those measures had qualified for the ballot.

Because the reporting requirements created by this bill may not ensure the timely disclosure of information that would otherwise be required to be reported pursuant to AB 1759, committee staff recommends that this bill be amended so that the special reporting

requirements that were enacted by AB 1759 not be eliminated.

- 4) 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.

- 5) Suggested Technical Amendments: In addition to the amendments outlined above, committee staff recommends the following technical amendments to this bill:

On page 4, line 34, strike out "or quarterly"

On page 4, line 36, strike out "84200.3, 84200.8," and insert:

84200.8

On page 11, line 2, after "(e)" insert:

of this section and subdivision (h) of Section 84605

On page 11, line 33, after "and" insert:

, except as provided by subdivision (j) of Section 84615,

On page 11, line 39, after the first "and" insert:

, except as provided by subdivision (j) of Section 84615,

On page 12, lines 32 to 33, strike out "held on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year"

On page 14, line 8, after "filed" insert:

with the Secretary of State

On page 14, strike out lines 29 through 39, inclusive, and on page 15, strike out lines 1 through 30, inclusive.

- 6) Previous Legislation: SB 3 (Yee & Lieu) of 2013, would have required the SOS, not later than December 31, 2014, to develop a FSR to outline the technology requirements and the costs of a new statewide electronic campaign filing and disclosure system, among other provisions. SB 3 was vetoed by Governor Brown. In his veto message, the Governor argued that other provisions of the bill were "costly and unnecessary," but also acknowledged that the current campaign filing and disclosure system needed to be upgraded.
- 7) 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 Common Cause
California Forward Action Fund

Opposition

None on file.

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