

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 831 (Hill) – As Amended: June 18, 2014

SENATE VOTE: 35-1

SUBJECT: Political Reform Act of 1974.

SUMMARY: Makes numerous significant changes to the Political Reform Act of 1974 (PRA). Specifically, this bill:

- 1) Prohibits an elected officer from requesting that a payment be made, and prohibits a person from making a payment at the behest of an elected officer, as specified, to a nonprofit organization that the elected officer knows or has reason to know is owned or controlled by that officer or a family member of the officer. Prohibits an expenditure of campaign funds by an elected officer or committee controlled by an elected officer to a nonprofit organization that the elected officer knows or has reason to know is owned or controlled by the elected officer or a family member of the elected officer.
 - a) Provides, for the purposes of these restrictions, that an elected officer is deemed to have complied with this law if the Fair Political Practices Commission (FPPC) determines that the elected officer made a reasonable effort to ascertain whether a nonprofit organization is owned or controlled by the elected officer or a family member of the elected officer.
 - b) Provides, for the purposes of these restrictions, that a nonprofit organization is owned or controlled by an elected officer or family member of an elected officer if the elected officer or family member, or a member of that person's immediate family, is a director, officer, partner, or trustee of, or holds any position of management with, the nonprofit organization, and is paid for his or her services.
 - c) Defines the term "family member of the elected officer," for the purposes of these restrictions, as the spouse, child, sibling, or parent of the elected officer.
 - d) Provides that the restrictions on payments made at the behest of an elected officer do not apply to payments made to a nonprofit organization that is formed for the purpose of coordinating or performing disaster relief services.
- 2) Requires a nonprofit organization that makes a payment, advance, or reimbursement to a public official for specified travel related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, to disclose to the FPPC the names of donors responsible for funding the payments who knew or had reason to know that their donation would be used for a payment, advance, or reimbursement for the travel. Provides that the nonprofit organization shall not report a donor if the organization has evidence indicating that the donor restricted or otherwise did not intend the donation to be used for such travel. Provides that a donor knows or has reason to know that his or her donation will

be used for the travel under any of the following conditions:

- a) The donor directed the nonprofit organization to use the donation for the travel;
 - b) The donation was made in response to a solicitation for donations for the travel; or,
 - c) The nonprofit organization made payments for this type of travel in the current calendar year or any of the immediately preceding four calendar years.
- 3) Requires a public official, when reporting a gift that is a travel payment, advance, or reimbursement on his or her Statement of Economic Interests (SEI), to disclose the travel destination.
- 4) Prohibits campaign funds from being used to pay for any of the following:
- a) A personal vacation for a candidate; elected officer; immediate family member of a candidate or elected officer; or an officer, director, employee, or member of the staff of a candidate, elected officer, or committee;
 - b) Membership dues for a country club, health club, or other recreational facility;
 - c) Tuition payments;
 - d) Clothing of any kind to be worn by a candidate or elected officer;
 - e) Vehicle use and sports or entertainment tickets not directly related to an election campaign;
 - f) A gift to a spouse, child, sibling, or parent of a candidate, elected officer, or other individual with the authority to approve the expenditure of campaign funds held by a committee, except for a gift of nominal value that is substantially similar to a gift made to other persons and that is directly related to a political, legislative, or governmental purpose; or,
 - g) A utility bill for real property that is owned or leased by a candidate, elected officer, campaign treasurer, or any individual with authority to approve the expenditure of campaign funds, or a member of his or her immediate family.
- 5) Makes technical and conforming changes.
- 6) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Provides that a payment made at the behest of a candidate for state or local elective office is considered a contribution unless the payment is made for purposes unrelated to the candidate's candidacy. Provides that a payment is presumed to be unrelated to a candidate's

candidacy if it is made principally for legislative, governmental, or charitable purposes.

- 2) Requires an elected officer to report any payments principally for legislative, governmental, or charitable purposes made at the behest of the officer within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year in which they are made. Requires this report to be filed with the elected officer's agency and to contain all of the following:
 - a) The name and address of the payor;
 - b) The amount of the payment;
 - c) The date or dates that the payment or payments were made;
 - d) The name and address of the payee;
 - e) A brief description of the goods or services provided or purchased, if any; and
 - f) A description of the specific purpose or event for which the payment or payments were made.
- 3) Prohibits specified elected officers and other public officials from receiving gifts, as defined, in excess of \$440 in value from a single source in a calendar year. Provides that payments for travel that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy are not subject to the gift limit if either of the following is true:
 - a) The travel is in connection with a speech given by the official and the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States; or,
 - b) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
- 4) Requires candidates for, and current holders of, specified elected or appointed state and local offices and designated employees of state and local agencies to file SEIs disclosing their financial interests, including investments, real property interests, and income, including gifts.
- 5) Requires contributions deposited into a candidate's campaign account to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. Provides that an expenditure to seek office is within the lawful execution of this trust if it is reasonably related to a political purpose and an expenditure associated with holding office is within the lawful execution of this trust if it is reasonably related to a legislative or governmental purpose. Provides that expenditures which confer a substantial personal benefit to the candidate or a person who has the authority to approve the

expenditure must be directly related to a political, legislative, or governmental purpose.

- 6) Imposes limitations on the use of campaign funds for certain expenditures, including those relating to automotive expenses, travel expenses, tickets for entertainment or sporting events, personal gifts, and real property expenses.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

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

SB 831 modernizes California's Political Reform Act by increasing transparency of travel related gifts and prohibiting certain types of campaign expenditures.

SB 831 includes all of the following reforms:

1. Prohibits elected officials from contributing campaign funds to nonprofits owned or operated by their family members.
2. Prohibits elected officials from contributing campaign funds to nonprofits operated by another elected official on the same governing body.
3. Prohibits the expenditure of campaign funds for an elected official's mortgage, rent, utility bills, clothing, club memberships, vacations, tuition, tickets for sporting and entertainment events, vehicles, and gifts to family members.
4. Requires non-profits that pay for travel for elected officials and all FPPC filers to disclose to the FPPC the name of the donors responsible for funding the travel. Currently non-profits do not have to disclose the source of travel funding preventing the public from knowing who was behind the gift to the elected official.

These are important reforms that will help improve and modernize California's Political Reform Act.

- 2) Behested Payments: In 1996, the FPPC amended its regulatory definition of the term "contribution" to include any payment made "at the behest" of a candidate, regardless of whether that payment was for a political purpose. As a result, payments made by a third party at the request or direction of an elected officer were required to be reported as campaign contributions, even if those payments were made for governmental or charitable purposes.

The change in regulations by the FPPC, along with a number of advice letters issued by the FPPC interpreting the new definition of "contribution," limited the ability of elected officers to co-sponsor governmental and charitable events. In one advice letter, the FPPC concluded that a member of the Legislature would be deemed to have accepted a campaign contribution

if, at his behest, a third party paid for the airfare and lodging for witnesses to testify at a legislative hearing.

In response to the FPPC's modified definition of "contribution," the Legislature enacted SB 124 (Karnette), Chapter 450, Statutes of 1997, which provided that a payment made at the behest of a candidate for purposes unrelated to the candidate's candidacy for elective office is not a contribution. However, SB 124 required that such payments made at the behest of a candidate who is also an elected officer, when aggregating \$5,000 or more in a calendar year from a single source, be reported to the elected officer's agency. The elected officer must report such a payment within 30 days.

Examples of payments made at the behest of an elected officer that have to be reported under this provision of law include charitable donations made in response to a solicitation sent out by an elected officer or donations of supplies and refreshments made by a third party for a health fair that was sponsored by an elected officer.

- 3) Travel Payment Reporting Threshold & Suggested Amendments: The provisions of this bill that require nonprofit organizations that pay for travel expenses for public officials to disclose the names of donors to the organization do not include a reporting threshold. As a result, a nonprofit organization that reimbursed a public official for a \$25 train ticket so that the official could speak at the organization's annual conference would be required to file a report disclosing the \$25 reimbursement and disclosing donors to the nonprofit organization. The author and the committee may wish to consider establishing disclosure thresholds, so that the reporting obligations created by this bill are limited to nonprofit organizations that make substantial payments for the travel expenses of public officials.

In order to narrow the scope of the reporting requirements in this bill, committee staff recommends that this bill be amended to provide that a nonprofit organization is required to disclose the names of donors responsible for funding travel payments only if the organization makes travel payments of \$10,000 or more in a calendar year, and to provide that the nonprofit organization is required to disclose the names of individual donors who are responsible for funding a travel payment only to the extent that those donors are responsible for \$1,000 or more of the travel payment costs. Additionally, committee staff recommends that this bill be amended to specify that a donor to a nonprofit organization would have a "reason to know" that his or her donation would be used for travel payments based on the fact that the nonprofit organization previously funded such travel payments only if the payments made by the nonprofit organization in the current calendar year, or in any of the previous four calendar years, totaled \$10,000 or more.

- 4) Campaign Expenditure Restrictions & Tuition Payments: As noted above, this bill prohibits campaign funds from being used for expenditures for certain specified items and activities, including personal vacations, country club dues, and gifts for family members. Under existing law, it is likely that the expenditure of campaign funds for these purposes would already be prohibited in most circumstances. That's because, as noted above, campaign expenditures generally must be related to a political, legislative, or governmental purpose, and campaign expenditures that confer a substantial personal benefit to the candidate or to an individual who has the authority to approve the expenditure must be *directly* related to a political, legislative, or governmental purpose. It is difficult to envision a scenario, for

instance, where a personal vacation could be deemed to be *directly* related to a political, legislative, or governmental purpose. Thus, it is unlikely that a personal vacation would be considered an allowable expenditure of campaign funds under existing law. Similarly, even though the PRA does not contain an explicit prohibition against the use of campaign funds for health club dues (as this bill does), the FPPC nonetheless has concluded that such an expenditure is impermissible, and the campaign disclosure manuals prepared by the FPPC for state and local candidates specifically state that "a committee may not pay for the candidate's health club dues."

On the other hand, certain campaign expenditures that would be prohibited by this bill may serve important and direct political, legislative, and governmental purposes. For example, in the past, the FPPC has advised that the expenditure of campaign funds to make tuition payments for leadership programs, educational programs to improve the administrative skills of government executives, and training programs designed to assist women entering the political process were directly related to a political, legislative, or governmental purpose. This bill would prohibit such expenditures, because this bill prohibits the expenditure of campaign funds for tuition payments.

If the author's concern with the expenditure of campaign funds for tuition payments is that public officials may use campaign funds for more general educational programs that are not closely related to the official's duties, the FPPC has concluded that such expenditures are not permissible under the existing law. In 1998, the FPPC advised that a county supervisor could not use campaign funds for the purposes of paying tuition for a master's degree program in international policy studies. Even though the master's degree program included training and coursework in public policy, political science, and the economy, the FPPC concluded that the use of campaign funds for those tuition payments was not directly related to a political, legislative, or governmental purpose, because the benefits of holding the academic degree were primarily personal, rather than political, legislative, or governmental, and the degree was not required for a county supervisor to exercise his duties.

The committee and the author may wish to consider whether it is desirable to prohibit public officials from using campaign funds for the purposes of attending educational and leadership programs that are directly related to political, legislative, or governmental purposes, and that assist officials in more effectively performing their governmental duties and representing their constituents.

- 5) Urgency Clause and Suggested Amendment: As noted above, this bill contains an urgency clause, and would go into effect immediately upon enactment. Given the significant changes that this bill makes to the PRA, however, including creating new restrictions on behested payments and expenditures of campaign funds, and establishing new reporting requirements for travel funded by non-profit organizations, it may be necessary to undertake efforts to educate individuals who are subject to these new laws of the restrictions. Furthermore, given the deadlines for the Governor to act on bills that are approved by the Legislature this year, it is possible that this bill could be signed into law as little as five weeks before the November election. Changing campaign finance rules so close to the date of a statewide election could create confusion, and could hamper the implementation and enforcement of the law.

To address these concerns, committee staff recommends that this bill be amended to remove

the urgency clause.

- 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 initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause

Opposition

None on file.

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