

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 1083 (Eggman) – As Amended March 26, 2015

SUBJECT: Political Reform Act of 1974: local enforcement.

SUMMARY: Permits the City Council of the City of Stockton 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 Stockton. Specifically, **this bill:**

- 1) Provides that, upon mutual agreement between the FPPC and the City Council of the City of Stockton, 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 Stockton. 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 Stockton that is enforced by the FPPC to comply with the PRA.
- 3) 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 will be enforced by the FPPC.
- 4) Permits the City Council of the City of Stockton 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 Stockton 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 Stockton terminates the agreement.
- 6) Permits the City Council of the City of Stockton 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 on or before January 1, 2019, 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 Stockton.
- 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 Stockton;
 - c) A summary of relevant annual performance metrics, including measures of utilization, enforcement, and customer satisfaction;
 - d) Public comments submitted to the FPPC or the City of Stockton relative to the operation of the agreement; and,
 - e) Legislative recommendations.
- 9) Contains a January 1, 2020 sunset date.
- 10) Makes legislative findings and declarations as to the necessity of a special statute for City of Stockton 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, 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: Unknown

COMMENTS:

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

This bill seeks to amend the Political Reform Act of 1974 in order to authorize the Fair Political Practices Commission (FPPC) to enter into an agreement with the City of Stockton to enforce campaign contribution limits. There is an ongoing, national debate about the role money plays in campaigns, and particularly the effect that large contributions have on candidates once they are elected. Candidates for elected office typically rely on money to fund effective campaigns; the amount and source of those donations can vary greatly. The City of Stockton currently imposes no limits on donations by individuals to campaigns for city offices, so the City Council is considering the adoption of a municipal ordinance setting individual campaign donation limits. The city does not have the resources to oversee and enforce such [an] ordinance, but the FPPC has, through past legislation, arranged with the County of San Bernardino to do just that. This bill would simply allow the City of Stockton to make the same mutual arrangement with the FPPC.

- 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. According to the FPPC, San Bernardino County and the FPPC have entered into a new two-year mutual agreement.

- 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) **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, in 2012, AB 2146 (Cook) became law to permit 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. According to the FPPC, a report has not been submitted to the Legislature yet. 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 the City of Stockton's local campaign finance ordinance will be consistent with the general framework of the PRA, this additional local ordinance that the FPPC is asked to enforce could add complexity to the FPPC's work. Conversely, this bill only expands current law to add the City of Stockton's local campaign finance ordinance and gives the FPPC discretion on whether or not they will choose to enter into an agreement with the City Council of the City of Stockton to 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) **Related Legislation:** AB 910 (Harper), which is pending in this committee, authorizes 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.
- 8) **Previous Legislation:** 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.

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

- 9) **Double-Referral:** This bill is double referred to the Assembly Local Government Committee. Due to impending committee deadlines, if this bill is approved in this committee today, it is scheduled to be heard in the Assembly Local Government Committee this afternoon. However, if this bill is amended in committee today, it will not be able to be heard in the Assembly Local Government Committee before this week's deadline for policy committees to hear and report fiscal bills. In light of this fact, if it is the committee's desire to approve this bill with amendments, committee staff recommends that this bill be passed out of committee with the author's commitment to take those amendments subsequent to passage by this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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