

Date of Hearing: March 27, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 902 (Levine) – As Introduced February 20, 2019

SUBJECT: Political Reform Act of 1974: Fair Political Practices Commission: regulations.

SUMMARY: Codifies various regulations that have been adopted by the Fair Political Practices Commission (FPPC). Specifically, **this bill:**

- 1) Codifies an FPPC regulation that specifies that when the deadline for filing statements or reports that are required to be filed pursuant to the Political Reform Act (PRA) falls on a Saturday, Sunday, or official state holiday, that the deadline shall be extended to the next regular business day, with the exception of specified reports filed immediately before an election and specified reports that are required to be filed within 24-hours disclosing the making of independent expenditures.
- 2) Codifies an FPPC regulation that specifies that the failure of a filing officer or filing official to comply with a duty or to provide notice of a filing or disclosure obligations does not affect a person's duty to file statements and reports disclosing information as required by the PRA, or any enforceable conflict of interest code.
- 3) Codifies a longstanding FPPC interpretation that the term "candidate," for the purposes of the PRA, includes an elected officeholder.
- 4) Codifies an FPPC regulation that specifies the circumstances under which contributions are aggregated under the PRA for the purposes of contribution limits and reporting purposes, and repeals a similar existing statute that establishes contribution aggregation rules that apply solely for the purposes of contribution limits for elective state office.
- 5) Codifies the following FPPC regulations relating to lobbying coalitions:
 - a) A regulation that defines a "lobbying coalition" as a group of 10 or more persons formed primarily to influence legislative or administrative action, whose members make payments to the coalition for sharing the expenses of employing a lobbyist or contracting for the services of a lobbying firm.
 - b) A regulation that specifies that a bona fide federation, confederation, or trade, labor, or membership organization is *not* a lobbying coalition if it is ongoing in nature and its membership services are not limited to influencing legislative or administrative action.
 - c) A regulation that provides that a person making payments to a lobbying coalition does not qualify as a lobbying firm or lobbyist employer as a result of those payments.
 - d) A regulation that provides that a lobbying coalition is subject to the same registration and filing requirements as a lobbyist employer.

- 6) Codifies an FPPC regulation that defines the term “spouse” to include registered domestic partners that are recognized under state law.
- 7) Codifies an FPPC regulation that permits committees, pursuant to the PRA, to designate an assistant treasurer, and that permits an assistant treasurer to sign and verify a campaign statement on behalf of the committee if the assistant treasurer uses reasonable diligence to prepare and review the statement and signs to that effect under penalty of perjury, as specified.
- 8) Recasts a provision of law that requires a committee to notify a contributor from which the committee receives contributions of \$5,000 or more that the contributor may be required to file campaign reports, in order to improve readability. Codifies an FPPC regulation that the \$5,000 threshold contained in that law applies when the contributor has received an amount totaling \$5,000 or more from a contributor *in a calendar year*.
- 9) Codifies an FPPC regulation that requires a public official, when that official is required to disclose an interest in real property that is a leasehold interest on a statement or report required by the PRA, to disclose the following information:
 - a) That the interest is a leasehold interest;
 - b) The number of years remaining on the lease;
 - c) The leased property’s address or other precise location;
 - d) The exact date the lease became effective or terminated if the lease became effective or terminated during the period covered by the statement; and,
 - e) The value of the leasehold interest, as specified.
- 10) Codifies an FPPC regulation that specifies any person who makes a gift to an official is the source of a gift unless that person is acting as an intermediary or agent. Recasts a provision of law that requires a person who makes a gift of \$50 or more in a calendar month on behalf of another person, or while acting as the intermediary or agent of another person, to disclose specified information to the recipient of the gift about the identity of the person and of the actual donor of the gift. Clarifies that this provision applies to gifts made to employees designated under a conflict of interest code and specified public officials.
- 11) Codifies an FPPC regulation that specifies that a gift is considered both “received” and “accepted” when the public official, or the official’s immediate family member, knowingly takes actual possession of the gift, is provided the benefit of the gift, or takes any action exercising direction or control of the gift.
- 12) Codifies an FPPC regulation that specifies the scope of an audit or investigation that is required to be conducted pursuant to the PRA as follows:

- a) Requires an audit or investigation of a candidate, controlled committee, or committee primarily supporting or opposing a candidate to cover all campaign statements and reports filed for the primary and general election, or a special or runoff election, as well as any previous campaign statements or reports filed since the last election for that office, except as specified.
- b) Requires an audit or investigation of a committee primarily supporting or opposing a measure to cover all campaign statements and reports filed by the committee in connection with the measure.
- c) Requires an audit or investigation for any other committee to cover all campaign statements and reports filed during the previous two calendar years.

13) Makes clarifying, technical, and conforming changes.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA
- 2) Permits the FPPC to adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the PRA, and to govern the procedures of the FPPC.
- 3) Defines “filing officer,” for the purposes of the PRA, as the office or officer with whom any statement or report is required to be filed.
- 4) Provides, for the purposes of contribution limits that are applicable to candidates for elective state office, that the contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual. Provides that if two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated. Provides that contributions made by entities that are majority owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their decisions to make contributions.
- 5) 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 statements of economic interests (SEIs) disclosing their financial interests, including investments, real property interests, and income, including gifts. Requires the SEI to include a disclosure of the name, address, and business activity of each source of gifts aggregating \$50 or more in a calendar year.
- 6) Prohibits elected state and local officers, candidates for elective state or local office, members of state boards and commissions, and designated employees of state or local government agencies from accepting gifts from a single source in a calendar year with a total value of more than \$500, with certain limited exceptions. Requires the FPPC to adjust this

gift limit on January 1 of each odd-numbered year to reflect changes in inflation, as specified.

- 7) Requires every committee, pursuant to the PRA, to have a treasurer. Requires a report or statement filed by a recipient committee, as specified, to be signed and verified by the treasurer.

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

COMMENTS:

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

AB 902 will codify regulations promulgated by the Fair Political Practices Commission. These regulations include the limiting prohibitions of gifts to public officials, candidate filing, and lobbyist requisition requirements. It also clarifies the meaning of the word “spouse” to include registered domestic partners. The codification of the FPPC regulations is essential to protecting and serving the public interest.

- 2) **Flexibility vs. Clarity and Authority:** While both regulations and statutes have the force of law, regulatory agencies (including the FPPC) only may adopt regulations that are consistent with statute. While regulations often are necessary to implement, interpret, or otherwise carry out the provisions of a statute, regulations cannot override or otherwise conflict with the statute that those regulations are designed to implement or interpret.

By codifying several longstanding FPPC regulations, this bill may improve the clarity of how various provisions of the PRA have long been interpreted and enforced. On the other hand, codifying these regulations means that the FPPC will not have the flexibility to change those interpretations through its regulatory process, and any future change to these provisions will require legislation that is subject to the generally-applicable restrictions on amending the PRA (see Comment #6 below).

- 3) **Technical Amendments:** This bill repeals Section 85311 of the Government Code, and moves the relevant content to a new Section 82015.5 of the Government Code. To conform to this proposed change, committee staff recommends that this bill be amended to make a corresponding change to a cross-reference to Section 85311 of the Government Code that is found in paragraph (3) of subdivision (b) of Section 84223 of the Government Code.

Among other provisions, this bill recasts Section 86100 of the Government Code to improve readability. The rewritten version of that section, however, excludes a provision of law found in the current version of Section 86100 that requires lobbying firms and lobbyist employers to file their registration statements by online or electronic means. Committee staff recommends a technical amendment to add this existing requirement to the revised version of Section 86100 of the Government Code that this bill proposes to create.

- 4) **Arguments in Support:** The sponsor of this bill, the FPPC, writes in support:

The [PRA] authorizes the [FPPC] to adopt, amend, or rescind regulations to carry out the purposes and provisions of the [PRA] and to govern the procedures of the [FPPC]. Long-standing and generally accepted regulations become essential to proper administration of the [PRA]. The provisions of AB 902 will go a long way to ensuring the proper understanding of the [PRA] and improve compliance with the requirements of this important campaign finance, lobbying, and government ethics law.

- 5) **Related Legislation:** AB 903 (Levine), which is also being heard in this committee today, makes various minor and clarifying changes to the PRA.

AB 909 (Gallagher), which is also being heard in this committee today, requires a treasurer or assistant treasurer of a campaign committee to sign a statement acknowledging that the person must comply with duties imposed by the PRA and regulations adopted by the FPPC, and that a failure to do so could result in criminal, civil, or administrative penalties.

AB 946 (Elections & Redistricting Committee), which is also being heard in this committee today, makes various minor and technical changes to the PRA.

- 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

Fair Political Practices Commission (sponsor)

Opposition

None on file.

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