

Date of Hearing: March 27, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 903 (Levine) – As Introduced February 20, 2019

SUBJECT: Political Reform Act of 1974.

SUMMARY: Makes various minor and clarifying changes to the Political Reform Act of 1974 (PRA). Specifically, **this bill:**

- 1) Excludes communications paid for with public moneys by a state or local government agency from a provision of law that otherwise generally provides that communications are not “expenditures” for the purposes of the PRA if those communications are made by the news media, as specified, or are newsletters or periodicals that are regularly published by organizations, as specified.
- 2) Clarifies the circumstances under which elected officers, candidates, and committees are required to file pre-election campaign disclosure statements.
- 3) Requires a public official, when the official is required to disclose the address of a source of income or of a business entity on the official’s statement of economic interests (SEI), as specified, to specify the *street address* of the source of income or business entity.
- 4) Makes technical and conforming changes.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Defines the term “expenditure,” for the purposes of the PRA, to exclude costs incurred for communications that expressly advocate the nomination, election, or defeat of a clearly identified candidate or candidates, or the qualification, passage, or defeat of a clearly identified measure or measures by either of the following:
 - a) A broadcasting station, including a cable or satellite television operation, programmer, or producer, internet website, or a regularly published newspaper, magazine, or other periodical of general circulation, including an internet or electronic publication, that routinely carries news and commentary of general interest, for the cost of covering or carrying a news story, commentary, or editorial.
 - b) A regularly published newsletter or regularly published periodical, other than those specified in a) above, whose circulation is limited to an organization’s members, employees, shareholders, other affiliated individuals, and those who request or purchase the publication, as specified.
- 3) Requires elected officers, candidates, and committees to file pre-election statements under specified circumstances.

- 4) Defines the term “statewide election,” for the purposes of the PRA, as an election for statewide elective office.
- 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 SEIs disclosing their financial interests, including investments, real property interests, and income. Requires a filer who must disclose income on an SEI to report the name and address of each source of income, as specified. Requires a filer who must disclose the filer’s pro rata share of income to a business entity on an SEI to report the name and address of the business entity, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

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

AB 903 requires candidates to release their campaign finances prior to their next election in order to give the public information of possible conflicts of interest. The bill will also bring gender neutrality into the FPPC reporting process by replacing “she, her, him, and he” with the word candidate. AB 903 will indicate that state and local government agencies may not use an exception within the definition of “expenditure” to spend money in support or opposition to a candidate or ballot measure. This bill also establishes a due date to when pre-election reports are to be filed to ensure the public receives information of campaign’s finances prior to voting.

- 2) **Media Exemption in the PRA:** The definitions of the term “contribution” and “expenditure” that are found in the PRA—and in related regulations adopted by the FPPC—contain a “media exemption” that generally allows entities that routinely carry news and commentary of general interest to report on candidates and ballot measures without having that reporting considered to be a reportable contribution or expenditure under the PRA. Similarly, the PRA and related regulations generally exclude the costs incurred for a regularly published newsletter or periodical from the definitions of the terms “contribution” and “expenditure” if the circulation of the publication is limited to individuals who are affiliated with an organization and to subscribers, as specified. The media exemption is designed to protect constitutionally-protected activity by the press from the otherwise generally-applicable campaign finance regulation of the PRA.

This bill specifies that a communication paid for with public money by a state or local government agency is not entitled to the “media exemption” that applies in the definition of the term “expenditure” that is found in the PRA. This provision is intended to ensure that government agencies do not attempt to circumvent existing restrictions on the use of public funds for campaign purposes by claiming that the use of public funds falls into this media exemption, and is not a “expenditure” under the PRA.

- 3) **Pre-election Reporting:** In addition to requiring candidates and committees to file semiannual campaign disclosure reports, the PRA also requires candidates and committees that make contributions or expenditures to support or oppose a candidate or measure

appearing on the ballot at an election to file pre-election campaign disclosure reports for that election under specified circumstances.

The language governing the circumstances under which pre-election reports must be filed, however, is susceptible to multiple interpretations. Part of the confusion stems from the fact that the term “statewide election” is defined in the PRA as an election for statewide elective office, so primary and general elections in presidential election years generally are not considered statewide elections under that definition. To address this confusion, this bill changes the terminology used from “statewide primary or general election” to “state primary or general election” to clarify that the relevant pre-election reporting requirements apply to all regularly-scheduled state primary and general elections, regardless of whether the election features a contest for statewide elective office.

Furthermore, the language describing the circumstances under which pre-election reports must be filed is ambiguous about whether a candidate or committee must file pre-election reports for a state primary or general election if the candidate or committee makes contributions or expenditures relating to a local candidate or measure that is appearing on the ballot at that primary or general election. This bill clarifies the pre-election reporting language to conform to the FPPC’s interpretation and to the legislative intent of that language.

- 4) **Address Disclosure:** In situations where an address is required to be disclosed on a report or statement that is filed pursuant to the PRA, the PRA usually (though not always) requires that a *street* address be disclosed. One of the instances where the PRA requires the disclosure of an address, but does not specify that it must be a *street* address that is disclosed, is when a public official or employee must disclose the name and address of a source of income on an SEI.

One of the primary purposes of requiring public officials and employees to file SEIs is to identify situations where an official or employee may have a conflict of interest in connection with a governmental decision. In order to identify whether a conflict of interest exists for an official or employee, it may be necessary to consider the physical location of entities that are a source of income for that official or employee. Accordingly, this bill requires that public officials and employees provide the *street* address of a source of income when disclosing that source of income on an SEI.

- 5) **Technical Amendment:** Committee staff recommends the following technical amendment:

On page 7, line 18, strike out “statewide” and insert “state”.

- 6) **Arguments in Support:** In support of this bill, the FPPC writes:

AB 903 is important legislation that will clarify in law what the disclosure responsibilities are for political committees and government officials. The public is entitled to essential campaign and ethical information under the [PRA] so voters can be fully informed when holding candidates and officials accountable. Our laws must be clear to ensure proper compliance and to meet the voters' intent under the [PRA].

- 7) **Related Legislation:** AB 902 (Levine), which is also being heard in this committee today, codifies various regulations that have been adopted by the FPPC.

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.

- 8) **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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