

Date of Hearing: March 27, 2019

**ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING**

Marc Berman, Chair

AB 909 (Gallagher) – As Amended March 19, 2019

*AS PROPOSED TO BE AMENDED*

**SUBJECT:** Political Reform Act of 1974: statements of acknowledgment.

**SUMMARY:** Requires a person identified as a treasurer or assistant treasurer on a statement of organization filed in accordance with the Political Reform Act of 1974 (PRA) to sign a statement acknowledging they must comply with the duties stated in the PRA and regulations by the Fair Political Practices Commission (FPPC), as specified. Specifically, **this bill:**

- 1) Requires a person identified as a treasurer or assistant treasurer on a statement of organization, or an amendment filed pursuant to existing law, to sign a statement acknowledging the following:
  - a) By serving as a treasurer or assistant treasurer, the person must comply with all applicable duties stated in the PRA and the regulations of the FPPC.
  - b) A violation of these duties could result in criminal, civil, or administrative penalties.
- 2) Requires the statement of acknowledgment to be filed with the Secretary of State (SOS) at the same time as the statement of organization or an amendment filed pursuant to existing law that identifies a new treasurer or assistant treasurer.
- 3) Requires these provisions to become operative on July 1, 2020.

**EXISTING LAW:**

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires every committee to have a treasurer.
- 3) Prohibits an expenditure from being made by or on behalf of a committee without the authorization of the treasurer or that of their designated agents.
- 4) Prohibits a contribution or expenditure from being accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of the treasurer.
- 5) Requires the statement of organization for a campaign committee to include the full name, street address, and telephone number (if any), of the campaign's treasurer.
- 6) Provides that a treasurer may be held liable for a violation of the PRA for failing to abide by the treasurer's duties, as specified.

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

**COMMENTS:**

1) **Author's Amendments:** As currently in print, this bill requires a person identified as a treasurer or assistant treasurer on a statement of organization to sign a statement acknowledging they must comply with the duties stated in the PRA and regulations by the FPPC, as specified. After the committee's deadline for pre-committee author amendments, the author proposed an amendment to delay the bill's operative date to July 1, 2020 to allow for the implementation and administration of the new Cal-Access replacement system scheduled to be launched in December 2019. This analysis reflects those proposed author's amendments.

2) **Purpose of the Bill:** According to the author:

While many committees use professional political treasurers who understand FPPC requirements and the liabilities inherent to the position, there are committees, especially at the local level, where volunteer treasurers are used. These volunteer treasurers may not be aware of how to stay in compliance with FPPC regulations, the duties of a treasurer, or the liabilities assigned to treasurers.

When errors occur and penalties are imposed, these volunteer treasurers are often shocked to find themselves liable. While many of these volunteer treasurers frequently return to compliance, correcting these mistakes uses valuable FPPC resources and affects the reputations of the treasurers.

By requiring political treasurers to sign a statement of acknowledgement, AB 909 will educate these treasurers and prevent them from unknowingly assuming a significant amount of liability. Additionally, by educating these treasurers, AB 909 will reduce the number of incidents in which these new treasurers accidentally fail to comply with FPPC regulations, preventing valuable FPPC resources from being unnecessarily tied up.

3) **Treasurer Responsibilities:** The PRA provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures, as defined, and imposing other reporting and recordkeeping requirements on campaign committees, as defined. The PRA requires every committee to have a treasurer and prohibits a contribution or expenditure from being accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of the treasurer.

The PRA requires certain committees to file a statement of organization (Form 410) that includes, among other information, the full name, street address, and telephone number of the treasurer.

FPPC regulations require a committee treasurer to sign and verify all reports and statements filed, as specified. The verification is signed under penalty of perjury and indicates that the signer has used all reasonable diligence in preparing the statement and to the best of their knowledge; the statement is both true and complete. FPPC regulations specifically require a

treasurer to comply with the following duties:

- Establish a system of recordkeeping sufficient to ensure that contributions and expenditures are recorded promptly and accurately in compliance with the PRA's recordkeeping and disclosure requirements.
- Maintain campaign records personally or monitor records kept by others.
- Take steps to ensure all of the PRA's requirements are met regarding receipt, expenditure, and reporting of campaign funds.
- Prepare campaign statements personally or carefully review the statements and underlying records prepared by others.
- Correct any inaccuracies or omissions, and inquire about any information that would cause a person of reasonable prudence to question the accuracy of the campaign statements.

FPPC regulations further state that a treasurer may be liable for a violation of the PRA for failing to abide by their duties specified in the PRA and FPPC regulations.

Additionally, existing regulations permit an assistant treasurer to be designated on the statement of organization, and in the event that the treasurer is unavailable, the assistant treasurer is required, like the treasurer, to use reasonable diligence in preparing and reviewing any campaign statements that they sign, and must certify to that effect under penalty of perjury. Regulations state that for statements signed by the assistant treasurer, both the treasurer and the assistant treasurer are liable for any violations pertaining to that report.

- 4) **Previous Legislation:** In August 2010, then-chairman of the FPPC, Dan Schnur, established a 25-member Advisory Task Force charged with proposing regulatory and statutory changes to the PRA. One of the changes recommended by the task force was to require online training of campaign treasurers, to better ensure that they are aware of basic reporting rules and legal prohibitions. SB 3 (Yee & Lieu) of 2013, among other provisions, would have required all persons who are serving as campaign treasurers to undergo training at least every two years, and permitted the FPPC to charge up to \$50 to each person who takes the training. The training requirement would have applied to everyone who serves as a treasurer for a committee that is organized under the PRA, regardless of whether the committee is a state or local committee, and regardless of the amount of campaign activity by the committee.

SB 3 was vetoed by Governor Brown. The veto message stated that requiring the FPPC to create an additional online training course for campaign treasurers would be a costly and unnecessary addition to the extensive training and outreach that the FPPC already provides.

- 5) **Outreach to Treasurers:** According to the FPPC, while there is no mandatory training for committee treasurers the FPPC does provide extensive resources, such as manuals and training videos, to help educate treasurers of their responsibilities under the PRA. As mentioned above in the author's statement, the acknowledgement is meant to help inform all treasurers, especially volunteer treasurers, of their responsibilities, liabilities, and potential

penalties for failing to comply with the PRA. Accordingly, this bill requires a statement acknowledging their duties to be included on the statement of organization filed in accordance with existing law. Adding this acknowledgement to the existing statement of organization may be helpful to better inform a treasurer of their liability, however, it could also be easily overlooked. The committee may wish to consider whether more outreach and education should be incorporated to ensure all treasurers are made aware of their responsibilities, liabilities, and potential penalties for failing to comply with the PRA.

- 6) **Cal-Access Replacement Project:** In 1997, the Legislature passed and Governor Pete Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, which amended the PRA and established the Online Disclosure Act of 1997. SB 49 required the SOS, in consultation with the FPPC, to develop and implement, by the year 2000, an online filing and disclosure system for reports and statements required to be filed under the PRA, as specified. As a result, the SOS created and deployed a system called the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly referred to as Cal-Access. Cal-Access, however, is over 19 years old, and the SOS reports that components of the system are no longer supported by their vendor. As a result the system has periodically crashed and denied public access.

Given the limitations of the existing Cal-Access system, the Legislature has taken steps to replace that system. In 2012, the Legislature enacted SB 1001 (Yee), Chapter 506, Statutes of 2012, which imposed a \$50 annual fee on political committees that are required to file disclosure reports pursuant to the PRA and increased the fee on lobbying firms and lobbyist employers from \$25 to \$50 per year per lobbyist. The revenue generated by the bill is deposited into the Political Disclosure, Accountability, Transparency, and Access Fund, and is available to be used to update or replace the Cal-Access system.

In 2016, the Legislature approved and the Governor signed SB 1349 (Hertzberg), Chapter 845, Statutes of 2016, which requires the SOS, in consultation with the FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format, as specified. The new system is intended to be data driven, rather than form-based, and is intended to permit future compatibility with local campaign finance data.

SB 1349 required the SOS to make the new filing and disclosure system available by February of this year but also allowed the SOS to extend that date to as late as December of this year after consulting with this committee and the Senate Committee on Elections and Constitutional Amendments, and providing a report to the committees that explains the need for the extension and includes a plan for completion.

On June 21, 2018, Secretary of State Alex Padilla submitted a letter and report to this committee indicating that his office had made a determination that it is in the best interests of the Cal-Access replacement system project to extend the implementation date for that project to December, as permitted by SB 1349. According to the report, the project team believes that a February implementation date would leave insufficient time for thorough testing of the new system, while limiting the ability to have stakeholder involvement in the implementation of the new system.

- 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**

Fair Political Practices Committee (sponsor)

**Opposition**

None on file.

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