

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1730 (Olsen) – As Amended: March 26, 2012

SUBJECT: Legislative Transparency Act.

SUMMARY: Makes various substantive changes to provisions of law governing the operations of the Legislature. Specifically, this bill:

- 1) Requires the Assembly, Senate, and Joint Rules Committees to provide each Member of the Legislature a monthly report of that Member's office budget. Requires the budget report to include all allocations and expenditures, including caucus allocations, travel expenses, office rent, and staff salaries. Requires the monthly budget report for a Member who chairs a committee to include any allocations and expenditures related to that committee, identified in a manner that permits the Member to report those allocations and expenditures separately from his or her office spending.
- 2) Requires each Member of the Legislature to publish the monthly budget report provided to him or her pursuant to the provisions described above on his or her Internet website. Requires the monthly budget report for each committee to be published on the committee's Internet website.
- 3) Prohibits a vote from being taken in either house of the Legislature on a bill until that bill, in its present form, has been made available to the public on an Internet website for at least 72 hours, unless the house dispenses with this requirement by a two-thirds vote of the membership.
- 4) Defines a "legislative deadline contribution" as a contribution of \$100 or more that is made to a Member of the Legislature or the controlled committee of a Member of the Legislature within seven days prior to any of the following deadlines:
  - a) The June 15 deadline to pass a Budget bill;
  - b) Any deadline for the passage of a bill by the house in which the bill was introduced; and,
  - c) Any date by which the Legislature is required to adjourn for a joint recess in an odd-numbered year to reconvene in an even-numbered year, or the date for the Legislature to adjourn sine die in an even-numbered year.
- 5) Requires each Member of the Legislature and controlled committee of a Member of the Legislature that receives a legislative deadline contribution, as defined, to report that contribution within 24 hours of the time the contribution is received. Requires the report to be filed with each office with which the Member or committee is required to file its next campaign statement, and provides that a report filed pursuant to this provision is in addition to any other campaign statement required to be filed under existing law. Provide that a legislative deadline contribution does not need to be reported if it is not cashed, negotiated,

or deposited, and is returned to the contributor within 24 hours of its receipt.

- 6) Requires the Secretary of State (SOS) to submit the provisions of this bill governing the reporting of legislative deadline contributions to the voters for their consideration.

EXISTING LAW:

- 1) Pursuant to the Legislative Open Records Act (LORA), provides that legislative records are open to inspection, and any person has a right to inspect any legislative record, with certain exceptions.
- 2) Requires the Assembly Rules Committee, the Senate Rules Committee, and the Joint Rules Committee, for the period ending on November 30 of each year, to prepare a report to the public of all expenditures made from the operating fund subject to their direction and control. Requires the report to be made available to the public by November 30 of the year following that for which it is prepared. Requires the report to include, but not be limited to, a list of expenditures for each Member and committee of the Legislature in the following categories:
  - a) Out-of-state travel and living expense reimbursement and in-state travel and living expense reimbursement;
  - b) Automotive expenses;
  - c) Building utilities, maintenance, and rent;
  - d) Telephone;
  - e) Postage;
  - f) Printing;
  - g) Office supplies;
  - h) Newsletters;
  - i) Per diem for attendance at legislative sessions;
  - j) Employee salaries and benefits;
  - k) Employee travel and per diem;
  - l) Equipment and furniture;
  - m) Telegraph;
  - n) Freight;

- o) Publications;
  - p) Study contracts and any other contract not reported under any other category;
  - q) Meals;
  - r) Ceremonies and events;
  - s) First-class air travel;
  - t) Automotive repairs;
  - u) Office alterations; and,
  - v) All other expenditures.
- 3) Constitutionally prohibits a bill from being passed unless it is read by title on three days in each house, but provides that the house may dispense with this requirement by a vote of two-thirds of the membership of the house.
  - 4) Constitutionally prohibits a bill from being passed until the bill with amendments has been printed and distributed to members.
  - 5) Requires elected officers, candidates, and committees to file semiannual and other periodic campaign statements, with certain exceptions.
  - 6) Requires all candidates and committees that are required to file campaign reports in connection with a state elective office or state measure to file those reports online or electronically if the cumulative amount of contributions received, expenditures made, loans made, or loans received is \$25,000 or more.
  - 7) Requires a committee that receives a contribution of \$1,000 or more, after the closing date of the last campaign statement required to be filed prior to the election but before election day, to report the contribution within 24 hours of the time the contribution is received.
  - 8) Requires a committee that is required to file campaign reports electronically to report any contribution of \$1,000 or more received less than 90 days prior to an election within 24 hours of the time the contribution is received.

FISCAL EFFECT: Unknown. State-mandated local program; contains a no new duties (voter approved) disclaimer.

COMMENTS:

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

Each year, the Legislature passes bills requiring greater transparency of various agencies and local governments. However, it fails to hold itself accountable to

those same standards of open, transparent, citizen-driven government. The citizens of California deserve a transparent government and legislative body. They should be given the opportunity to review all bills for at least 72-hours before they are voted on. Only then, can we claim to have a true representative government where people have the ability to voice their opinions on all issues.

In addition citizens should have the right to review members' office and committee budgets in order to facilitate transparency and responsible use of taxpayer dollars.

Finally, the Legislature is driven by deadlines when hundreds of bills are passed in either house. Members of the public deserve to see campaign funds received during these most critical times of the year.

AB 1730, also known as the Legislative Transparency Act, will increase transparency in the Legislature by requiring all bills to be in print and available online for at least 72-hours before legislative actions. The Act also requires all members of the Legislature to post their office budgets each month on their state websites. Finally, AB 1730 requires 24-hour online campaign reporting of funds received over \$100 dollars during the week of legislative house of origin, budget and end of session deadlines. Such reports are filed with the Secretary of State.

AB 1730 will end the midnight votes on backroom deals and bring greater transparency to the taxpayers. This will allow all stakeholders to be at the table and voice their concerns or support. We should hold ourselves to the same transparency standards that we pass onto local governments and other agencies and organizations.

- 2) Constitutional Issues: Article IV, Section 7(a) of the California Constitution provides that "[e]ach house [of the Legislature] shall choose its officers and adopt rules for its proceedings." Pursuant to that authority, the Legislature has adopted rules that govern the operations of the houses of the Legislature and that establish procedures for the consideration and passage of bills. California courts have ruled that the Legislature cannot, through statute, infringe upon that authority.

In People's Advocate, Inc. v. Superior Court (1986), 181 Cal.App.3d 316, the court found that various statutory provisions enacted through the initiative process that sought to control the operations of the Legislature were invalid. In striking down those statutory provisions, the court wrote that a house could not "estop itself or a future house by use of the statutory form from adopting any rule the substance of which is within the powers exclusively delegated to it by the Constitution." The court went on to write that "[a] house 'has power to adopt any procedure and to change it at any time and without notice. It cannot tie its own hands by establishing rules which, as a matter of power purely, it cannot at any time change and disregard. Its action in any given case is the only criterion by which to determine the rule of proceeding adopted for that case'" (quoting French v. Senate (1905), 146 Cal. 604).

Although the Legislature has previously enacted legislation that sought to govern legislative procedure (see Government Code Section 9500 et seq.), the court in People's Advocate

rejected the suggestion that such an action was legally significant, and instead found that "[a] rule of internal proceeding made in the guise of a statute is nonetheless a rule 'adopted' by the house and may be changed by an internal rule." In light of this, if policymakers wish to require that bills be in print for 72 hours prior to taking a vote in either house of the Legislature, that requirement should be established through a constitutional amendment or through a change to the Joint Rules.

- 3) Availability of Records: As noted above, the LORA provides that legislative records are open to inspection, and any person has a right to inspect any legislative record, with certain exceptions. Additionally, existing law requires the Rules Committee of each house of the Legislature to prepare an annual report to the public of all expenditures made from the operating fund subject to their direction and control. Last year, a number of news organizations filed LORA requests with the Assembly Rules Committee requesting information about budget allowances and expenditures for members of the Assembly and for Assembly committees. The Assembly Rules Committee denied these requests on the grounds that the records were exempt from disclosure under the provisions of the LORA.

Subsequent to that denial, the news organizations filed a lawsuit against the Assembly Rules Committee in the Sacramento County Superior Court. The court ruled that the documents that were requested by the news organizations should have been provided pursuant to the LORA, and issued a writ of mandate ordering the Assembly Rules Committee to produce those budget documents. The court's ruling was not appealed, and the Assembly Rules Committee released documents that were responsive to the LORA requests earlier this year. Given the court's ruling, and the Rules Committee's subsequent release of documents describing budget allowances and expenditures, it appears that information about budget allowances to members of the Legislature and legislative committees will now generally be available to entities that request that information under the LORA. Additionally, since last year, the Assembly has been posting expenditure reports on its website on a quarterly basis, and the Assembly has posted quarterly reports listing member and staff salaries for several years. In light of these facts, it would appear that information regarding member and committee budgets is already publicly available.

- 4) Overly Burdensome? Under the Political Reform Act of 1974 (PRA), there are two general types of reporting requirements. The first type of report is referred to as a periodic report. Periodic reports must be filed according to a specified time schedule for all similarly-situated candidates and committees, regardless of the amount of campaign activity during the period of time covered by the report. These reports generally include all campaign activity (contributions, loans, expenditures, etc.) that occurred over a specified period of time. Semi-annual reports and preelection reports are two examples of periodic reports that are required under the PRA.

The second type of report that the PRA requires is an activity-based report. An activity-based report is triggered when a candidate or committee has campaign activity that meets or exceeds a specific dollar threshold. Late contribution reports and late independent expenditure reports are examples of activity-based reports.

As a general rule, the thresholds for campaign activities that trigger an activity-based report under the PRA are significantly higher than the thresholds for campaign activities that are

required to be reported on a periodic report. For instance, while the PRA generally requires contributions of \$100 or more to be itemized on a periodic report, activity-based reporting requirements for contributions received by committees do not kick in for contributions of less than \$1,000, and for some activity-based reports, the threshold is much higher.

There are two primary reasons for this distinction in reporting thresholds. First, the fact that activity-based reports target higher-dollar transactions acknowledges that there may be a public interest for requiring higher-dollar activity to be reported more promptly than lower-dollar activity.

Second, the distinction in thresholds reflects the fact that activity-based reporting can be more burdensome than periodic reports. There are a number of reasons why this may be the case. First, activity-based reports generally must be prepared in a much shorter period of time than periodic reports (often within 24 hours of the time the activity occurs). Second, activity-based reports can be triggered by activity that is unpredictable to, or otherwise outside the control of, the candidate or the committee (for instance, if a person made a contribution to a candidate through his or her website on Christmas Day, that contribution could trigger an activity-based reporting requirement even if the candidate did not know in advance that the person planned to make that contribution). Finally, activity-based reporting can significantly increase the volume of reports that are required to be filed in order to disclose the same amount of activity (for instance, a committee that received contributions from 50 different donors in a specified time period might be able to report all of those contributions on a single periodic report, whereas an activity-based reporting requirement could require a separate report for each of those contributions, resulting in the need to file 50 different reports).

This bill marks a significant departure from the current practice in the PRA by requiring activity-based reports for contributions of as little as \$100. Such a requirement could impose a significant burden on committees for campaign activity at a relatively low dollar threshold. Furthermore, this bill additionally departs from current practice by establishing activity-based reporting requirements that are based on the Legislative calendar, rather than based on the election calendar.

- 5) Arguments in Support: In support of this bill, the Howard Jarvis Taxpayers Association (HJTA) writes:

AB 1730 represents a multi-faceted and necessary approach to deal with a number of transparency concerns facing the California Legislature. Especially facing a \$10 billion budget deficit, it is imperative that taxpayer dollars be prudently spent. Staff salaries should not be hidden within committee budgets but reported separately. HJTA is also in favor of the 24 hour reporting requirement provisions in this bill. As legislation moves through the process, it is imperative that contributions made by various special interests be exposed for review by voters. If anything, this bill is too modest. HJTA has long been in favor of mandatory 24 hour reporting requirements for all contributions made within existing FPPC limits.

- 6) Related Legislation: AB 2239 (Norby), which is also being heard in this committee today, repeals all limits on contributions to candidates for elective state office, and requires

campaigns to disclose all campaign contributions and expenditures of \$100 or more within 24 hours.

- 7) Double-Referral: This bill has been double-referred to the Assembly Rules Committee.
- 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 Political Reform Act (PRA). Amendments to the PRA by the Legislature must further the purposes of the proposition and require a two-thirds vote of each house of the Legislature, or the Legislature may propose amendments to the proposition that do not further the purposes of the act by a majority vote, but such amendments must be approved by the voters to take effect. This bill would only take effect if approved by the voters.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause  
Fair Political Practices Commission (provisions relating to "legislative deadline contributions" only)  
Howard Jarvis Taxpayers Association  
Madera County  
North Valley Patriots  
2 individuals

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094