

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1881 (Donnelly) – As Introduced: February 22, 2012

SUBJECT: Political Reform Act of 1974: campaign statements.

SUMMARY: Increases the threshold, from \$100 to \$5,000, at which the names and addresses must be publicly reported for campaign donors who contributed to committees that are not candidate controlled committees. Specifically, this bill:

- 1) Provides that a campaign statement of a committee that is not a candidate controlled committee shall not disclose the name or street address of a person who has made a cumulative amount of contributions to the committee that is less than \$5,000.
- 2) Provides that, upon request of the Fair Political Practices Commission (FPPC), a committee that is not a candidate controlled committee shall provide the FPPC with the name and street address of any contributor that is withheld from a campaign statement pursuant to this bill. Provides that any record provided to the FPPC pursuant to this provision is not a public record and is not open for public inspection.

EXISTING LAW:

- 1) Requires state and local elected officers, candidates, and committees (including independent expenditure committees) to file periodic campaign statements disclosing specific information including, but not limited to, the name, street address, occupation, and name of employer for each person from whom a cumulative contribution of \$100 or more has been received during the period covered.
- 2) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

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

COMMENTS:

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

Although it is important for campaign contributions to remain transparent, it is not necessary for the public to have access to every private individual's information, such as their name, address, occupation, and employer information. Essentially, this bill would find a happy medium where large donors, those who cumulatively contribute \$5,000 or more to campaign committees, would have their information publicly available. Since arguably large contributions from an individual are representative of an extreme interest in what the campaign supports, it would be pertinent to have the individual's motives transparent. However, an individual

who chooses to donate a lesser amount than \$5,000 should be allowed to have their privacy protected. It is understood that regardless of public records, the state would require access to information regarding all donations to ensure no illegal activity transpires and this bill still enacts that provision.

- 2) Does This Bill Further the Purposes of the PRA? 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, typically must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature. Bills that propose to amend the PRA but do not further the purposes of that measure must be submitted to the voters for their approval.

The PRA expressly provides that two of the purposes of the act are that "[r]eceipts and expenditures in election campaigns should be fully and truthfully disclosed in order that voters may be fully informed and improper practices may be inhibited," and that "[a]dequate enforcement mechanisms should be provided for public officials and private citizens in order that this title will be vigorously enforced" (emphasis added). It could be argued that, in two respects, this bill does not further the purposes of the PRA, and therefore must be submitted to the voters for their approval in order to be enacted into law.

When originally enacted, the PRA required the public disclosure of the names and street addresses of all campaign contributors who made contributions to a committee of \$50 or more. Subsequent legislation in 1978 (AB 3155 (W. Thomas), Chapter 650, Statutes of 1978) raised the public disclosure threshold for the names and addresses of campaign contributors to \$100. Adjusting those thresholds for inflation, \$50 in 1974 is approximately the equivalent of \$230 today, while \$100 in 1978 is approximately the equivalent of \$350 today. In either case, even if the existing or original disclosure thresholds are adjusted for inflation, the threshold proposed by this bill would represent a 14 to 20-fold increase in the amount of money that an entity could contribute to a non-candidate controlled committee before the name and address of that person would need to be publicly disclosed. By significantly increasing the dollar threshold for campaign contributions before the names and addresses of those contributors are required to be publicly disclosed, this bill could be viewed as contrary to the stated purpose of the PRA of ensuring that receipts in election campaigns are fully disclosed.

Additionally, one of the findings and declarations of the PRA is that "[p]revious laws regulating political practices have suffered from inadequate enforcement by state and local authorities." To protect against inadequate enforcement, the PRA established a method by which the public may sue to enforce the PRA. By limiting the public availability of certain information about contributors of less than \$5,000, this bill may hamper efforts by the public to ensure that the PRA is adequately enforced. To the extent that the increase in the dollar threshold at which information about certain campaign contributors is publicly disclosed makes it more difficult for the public to ensure that there is adequate enforcement of the PRA, this bill could be viewed as contrary to the stated purpose of the PRA of providing adequate enforcement mechanisms for private citizens in order to ensure that the PRA is vigorously enforced.

In light of these issues, if the committee is supportive of the general policy proposed by this bill, the committee may wish to consider whether this bill furthers the purposes of the PRA, and if the committee concludes that it does not, the committee may wish to consider amending this bill to require its provisions to be submitted to the voters for their consideration.

- 3) Existing Privacy Protections & Redacted Information: As noted above, under existing law, campaign statements that are filed by candidates and campaign committees are required to include the name, street address, occupation, and name of employer of any person who contributed \$100 or more to the committee. While these details are included in reports that are filed by candidates and campaign committees, not all of this information is provided on the version of campaign reports that are made available on the Internet through the website of the Secretary of State (SOS). Specifically, subdivision (d) of Section 84602 of the Government Code prohibits the SOS from making the street addresses of campaign contributors available on Internet versions of campaign reports. While the street addresses of campaign contributors are publicly available to individuals who view paper copies of reports at the office of the SOS or at the office of a local filing official, or who order an electronic copy of the campaign disclosure database from the SOS, the Legislature chose to exclude this information from disclosure on the Internet due to concerns about the privacy of campaign contributors.
- 4) Disclosure Thresholds at the Federal Level and in Other States: Federal law requires campaign reports for political committees of federal election campaigns to disclose detailed information for contributions of \$200 or more. This federal limit is higher than California's current \$100 reporting threshold. However, according to information from the Campaign Disclosure Project, only five states have a reporting threshold for campaign contributions of more than \$100, while 45 states and the District of Columbia have a reporting threshold of \$100 or less. The state that has the highest threshold at which details about campaign contributions must be publicly disclosed on a campaign report is New Jersey, where the names and addresses of campaign contributors must be reported if their contributions exceed \$300.

If this bill were enacted into law, California's threshold for requiring disclosure of the names and addresses of campaign contributors to committees that are not candidate controlled committees would be more than 15 times higher than the threshold for disclosing that information in any other state. However, even if this bill were enacted into law, the threshold for public disclosure of the name and street address of contributors to candidate controlled committees would remain at \$100.

- 5) Number of Contributions Under \$5,000: While this bill has the potential to significantly reduce the number of contributors for whom identifiable information is provided on campaign disclosure reports, the impact on any given campaign committee likely will vary significantly, as demonstrated by a review of the largest committees in support of and in opposition to each state ballot measure that appeared on the November 2010 general election ballot. For instance, more than 96 percent of contributors who gave \$100 or more to the largest committee supporting Proposition 19 (related to marijuana) gave less than \$5,000, and thus their names and addresses would not have been disclosed on the campaign disclosure reports filed by that committee had this bill been in effect at that time. On the other hand,

less than seven percent of the contributors who gave \$100 or more to the largest committee opposing Proposition 24 (related to business taxes) gave less than \$5,000.

For the largest committees supporting and opposing Proposition 8 (same sex marriage) in 2008, just 3.8 percent of the contributors of \$100 or more to the largest committee supporting that measure gave more than \$5,000, while just 1.2 percent of the contributors of \$100 or more to the largest committee opposing Proposition 8 gave more than \$5,000.

- 6) Pending Litigation: On January 9, 2009, ProtectMarriage.com, a committee in support of Proposition 8 on the November 2008 statewide ballot, filed a lawsuit in the United States District Court for the Eastern District of California against the SOS and the FPPC (ProtectMarriage.com et al. v. Bowen et al.). The lawsuit challenged the PRA's campaign disclosure requirements on contributions to ballot measure committees as unconstitutional.

Although the District Court upheld the constitutionality of the PRA's campaign disclosure requirements in November 2011, the Plaintiffs subsequently appealed the District Court's decision. The case is currently pending before the Ninth Circuit Court of Appeals.

- 7) Technical Issues: There are a number of technical issues with this bill that the committee may wish to consider:
 - a) Information About Occupation and Employer: As currently drafted, this bill prohibits the name and street address of a contributor from being disclosed on a campaign report if that contributor made a cumulative amount of contributions of less than \$5,000 to a committee that is not a candidate controlled committee. However, this bill does not appear to eliminate the requirement that information about the occupation and employer of such individuals be disclosed on campaign reports. Based on the author's statement that is printed above, this appears to be contrary to the author's intent. Furthermore, this could create confusion by requiring campaign reports to include the occupation and employer of a contributor even though the name of that contributor does not appear on the report. If it is the committee's desire to move this bill forward, the committee may wish to consider an amendment to provide that information about a contributor's occupation and employer will not be included on a campaign report unless that contributor's name and address are required to be disclosed on the report.
 - b) Loans: Existing law requires each committee to publicly disclose detailed information on a campaign report about any person from which the committee has received loans cumulatively totaling \$100 or more. As is the case with the disclosure of contributions, among the information that must be reported is the name, street address, employer, and occupation, of each person who has provided a loan above the reporting threshold. The current version of this bill does not modify the information that must be disclosed for individuals who make loans of less than \$5,000 to non-candidate controlled committees. This could result in an anomalous situation where a person who made a loan to a campaign of \$150 would have his or her name and address listed on a campaign disclosure report, while a person who made a contribution of \$4,900 to the same committee would not have his or her name and address listed on the report. If it is the committee's desire to move this bill forward, the committee may wish to consider an amendment to conform the policy regarding disclosure of loans to the policy regarding

the disclosure of contributions.

- 8) Arguments in Opposition: Writing in opposition to this measure, the Consumer Federation of California argues "[a]lthough this bill proceeds under the guise of privacy protection, in reality it only serves to increase the opacity of elections in California. Campaign spending is increasing while the information about that spending that is available to voters is decreasing. AB 1881 only further reduces campaign transparency, a move which California's voters cannot afford."

Also in opposition, the FPPC writes that it "believes this proposal would create less transparency and does not further the purposes of the Political Reform Act. In addition, the [FPPC] has concerns about any legislative measure that requires additional [FPPC] resources to implement, unless the measure includes an appropriation adequate to carry out its provisions."

- 9) Related Legislation: AB 1146 (Norby), which is pending on the Senate Inactive File, increases the threshold at which state and local contributions and expenditures are required to be disclosed on campaign reports from \$100 to \$200 and similarly increases the limit on permissible anonymous contributions. AB 1146 was approved by this committee on a 6-0 vote, and was approved on the Assembly Floor by a 54-16 vote.

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 most contributions and expenditures of \$100 or more to be publicly disclosed within 24 hours.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Consumer Federation of California
Fair Political Practices Commission
Service Employees International Union

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