Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
AB 1590 (Committee on Elections) – As Introduced March 18, 2021

SUBJECT: Political Reform Act of 1974.

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

1) Clarifies that a committee that is required to pay a $50 annual fee to the Secretary of State (SOS), and that fails to timely pay that fee, is subject to an administrative penalty of $150. Transfers the responsibility for enforcing that requirement—and for collecting the penalty—from the Fair Political Practices Commission (FPPC) to the SOS.

2) Corrects an erroneous cross-reference in the PRA.

EXISTING LAW:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.

2) Requires each committee that qualifies as a committee by virtue of having received contributions totaling $2,000 or more in a calendar year (known as a recipient committee) to pay a fee of $50 per year to the SOS, as specified. Imposes a penalty of three times the amount of the fee on any committee that fails to timely pay the fee. Requires the FPPC to enforce these provisions.

3) Requires the fees collected from recipient committees, as described above, to be deposited into a specified fund that may be used for costs associated with the maintenance, repair, and improvement of the state's online and electronic campaign and lobbying disclosure systems.

4) Permits the FPPC to impose administrative penalties where it determines that a violation of the PRA has occurred. Permits the FPPC, through this administrative enforcement procedure, to require the person who violated the PRA to do any of the following:

   a) Cease and desist violation of the PRA;

   b) File any reports, statements, or other documents or information required by the PRA; and,

   c) Pay a monetary penalty of up to $5,000 per violation.

5) Specifies that for the purposes of various state laws governing a state initiative or referendum measure, the electors that submit the proposed measure to the Attorney General with a written request that a circulating title and summary of the chief purpose and points of the proposed measure be prepared shall be known as the "proponents" of the measure.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of the Bill**: This is an Assembly Elections Committee omnibus bill, containing various minor and technical changes to the PRA. This bill includes changes requested by the FPPC, and technical changes identified by committee staff.

2) **Committee Fees and Penalties**: In 1997, the Legislature passed and Governor Pete Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, which required the SOS, in consultation with the FPPC, to develop and implement an online filing and disclosure system for campaign and lobbying disclosure reports and statements required to be filed under the PRA, as specified. The system developed pursuant to SB 49 is called the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, more commonly referred to as Cal-Access.

   Given the age, instability, and limitations of Cal-Access, 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 available to be used to update or replace the Cal-Access system.

   SB 1001 provided that a committee that fails to pay the required fee by the deadline is subject to a penalty equal to three times the amount of the fee – or $150. Although the $50 fee must be paid to the SOS, SB 1001 required the FPPC to enforce the provision of law requiring that committees pay the fee.

   After SB 1001 took effect, the FPPC began bringing administrative enforcement actions against committees that had failed to pay the $50 fee and the $150 penalty outlined in SB 1001. In addition to seeking payment of the $50 fee and the statutorily prescribed $150 penalty, the cases brought through the FPPC's administrative enforcement process also sought to impose additional monetary penalties against those committees for violating the PRA. Specifically, the FPPC concluded that a failure by a committee to pay the annual fee in a timely manner was itself a violation of the PRA, and that violation was subject to the same penalties that generally are available for violations of the PRA.

   At an April 2017 meeting, however, a member of the FPPC questioned whether the FPPC had the authority to levy a fine against a committee for a violation of the PRA if the committee failed to pay the annual fee in a timely manner. Instead, the member suggested that the $150 statutorily prescribed penalty in SB 1001 was intended to be the *exclusive* penalty available when a committee failed to pay the $50 annual fee by the statutory deadline. Since that meeting, the FPPC largely has stopped bringing enforcement actions against committees for failing to pay the $50 annual fee in a timely manner.

   Unfortunately, the legislative history of SB 1001 does not provide clarity on whether the $150 penalty was intended to be the *exclusive* remedy when a committee failed to pay its annual fee in a timely manner, or if those violations were to be subject to the penalties that generally apply to violations of the PRA *in addition to* the $150 penalty.

   By requiring the SOS, rather than the FPPC, to enforce the requirement that specified

campaign committees pay a $50 annual fee (and by requiring the SOS to collect the specified penalty for the failure to timely pay the fee), this bill will clarify that a committee's failure to pay the $50 annual fee in a timely manner is subject to a $150 penalty, but is not generally subject to a separate enforcement action by the FPPC for a violation of the PRA.

Furthermore, because the non-timely payments of the $50 annual fee would no longer be subject to the FPPC's administrative enforcement process, it would be unusual for the FPPC to have the responsibility for collecting the statutorily imposed penalty for non-timely payments of the fee. Accordingly, this bill transfers the responsibility for collecting the $150 penalty for non-timely payments of the fee from the FPPC to the SOS. Because the SOS is responsible for collecting the $50 annual fee from committees, the SOS already has a process for collecting payments from campaign committees.

This provision was requested by the FPPC, and is found in sections 2 and 3 of this bill.

3) **State Ballot Measure Proponents**: Section 82047.7 of the Government Code defines the term "proponent of a state ballot measure" to mean the "proponent" of a measure as defined in section 9002 of the Elections Code. AB 753 (Adams), Chapter 373, Statutes of 2009, reorganized various provisions of the Elections Code governing the preparation of titles, summaries, and ballot labels for state ballot measures, however, and as part of that reorganization, the definition of the term "proponent" of a state ballot measure was moved from section 9002 to section 9001 of the Elections Code. Accordingly, this bill updates the cross-reference in section 82047.7 of the Government Code to reflect the reorganization of AB 753.

   This provision was identified by committee staff, and is found in section 1 of this bill.

4) **Arguments in Support**: The Fair Political Practices Commission, which is the source of the provisions found in sections 2 & 3 of this bill, as identified above, writes in support:

   > Under current law, a political committee is required to pay a $50 annual fee to the [SOS], and failure to pay the annual fee is subject to a $150 penalty. The FPPC has authority to enforce this provision and currently collects the $150 penalty. AB 1590, as it amends Section 84101.5 of the Government Code, would transfer the responsibility for enforcing this provision to the [SOS].
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> This bill would resolve the question of whether the FPPC has authority to enforce the requirement to pay the annual committee fee beyond the $150 penalty by eliminating the FPPC's role in enforcement and consolidating collection of the original fee and the penalty under the [SOS].

5) **Previous Legislation**: AB 1752 (Kalra) of 2019 would have prohibited the FPPC from imposing any penalty, other than a prescribed $150 penalty, against a committee for failing to pay a required $50 annual fee by the deadline. AB 1752 was approved by the Assembly on a 76-0 vote, but was gutted-and-amended in the Senate and used for another purpose.

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

Opposition

None on file.

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