
THIRD READING

Bill No: AB 1590
Author: Committee on Elections
Introduced: 3/18/21
Vote: 27

SENATE ELECTIONS & C.A. COMMITTEE: 5-0, 6/28/21
AYES: Glazer, Nielsen, Hertzberg, Leyva, Newman

ASSEMBLY FLOOR: 63-0, 5/17/21 - See last page for vote

SUBJECT: Political Reform Act of 1974

SOURCE: Author

DIGEST: This bill makes various minor and technical changes to the Political Reform Act (PRA).

ANALYSIS:

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) 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 Secretary of State (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.
 - 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.

This bill:

- 1) Clarifies that a committee that is required to pay a \$50 annual fee to the SOS, and that fails to timely pay that fee, is subject to an administrative penalty of \$150. Transfers, from the FPPC to the SOS, the responsibility for enforcing that requirement and for collecting the penalty.
- 2) Corrects an erroneous cross-reference in the PRA.

Background

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, also known as the PRA, and created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The PRA stipulates that amendments to the PRA are not required to be submitted to voters if the amendments further the purposes of the PRA, are approved by a two-thirds vote of both houses of the Legislature, and are chaptered.

Committee Fees and Penalties. In 1997, the Legislature passed and Governor Wilson signed SB 49 (Karnette, Chapter 866, Statutes of 1997) and established the

Online Disclosure Act of 1997. SB 49 required the SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required by the PRA could be filed online and viewed by the public. As a result, the SOS established the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly referred to as Cal-Access. SB 49 also required certain candidates, committees, slate mailer organizations, lobbyists, lobbyist employers, and lobbying firms to file campaign reports online.

Cal-Access is now over 20 years old, and the SOS has previously reported 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 age, instability, and limitations of Cal-Access, the Legislature has taken steps to replace that system. In 2012, the Legislature passed and Governor Brown signed SB 1001 (Yee, Chapter 506, Statutes of 2012). SB 1001 imposed a \$50 annual fee on political committees 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). The SOS receives the \$50 fee and 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.

However, at an April 2017 meeting, 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. The commissioner 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.

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 clarifies 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. Since 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.

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.

AB 1590 updates the cross-reference in section 82047.7 of the Government Code to reflect the reorganization accomplished by AB 753. This provision was identified by the Assembly Elections Committee staff and is found in section 1 of this bill.

Comments

- 1) According to the author, 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) *Argument in Support.* The FPPC is the source of the provisions found in sections 2 & 3 of this bill. In a letter of support, the FPPC states, in part, the following:

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].

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].

Related/Prior Legislation

AB 1752 (Kalra, 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 amended in the Senate and used for another purpose.

SB 1001 (Yee, Chapter 506, Statutes of 2012) imposed a \$50 annual fee on political committees 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.

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/28/21)

Fair Political Practices Commission

OPPOSITION: (Verified 6/28/21)

None received

ASSEMBLY FLOOR: 63-0, 5/17/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Cunningham, Daly, Davies, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Bigelow, Calderon, Chen, Choi, Megan Dahle, Flora, Fong, Gallagher, Gray, Kiley, Mathis, Patterson, Seyarto, Smith, Voepel

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6/30/21 15:23:15

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