
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

Bill No: SB 752 **Hearing Date:** 4/26/21
Author: Allen
Version: 4/22/21
Urgency: No **Fiscal:** Yes
Consultant: Nicolas Heidorn

Subject: Elections: disclosure of contributors

DIGEST

This bill lowers the minimum contribution thresholds above which a contributor to a political committee may be considered a top contributor, as specified. This bill also changes the text and formatting of required disclosures on petitions and electronic media and video campaign advertisements, as specified.

ANALYSIS

Existing law:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Defines "advertisement," for the purposes of the PRA, as any general or public communication that is authorized and paid for by a political committee, as defined, for the purpose of supporting or opposing a candidate or a ballot measure, except as specified.
- 3) Requires advertisements that support or oppose candidates or ballot measures to include disclosure statements in specified circumstances. Requires that these disclosures comply with certain formatting, display, legibility, and audibility requirements.
- 4) Requires that an advertisement supporting or opposing a candidate that is paid for by an independent expenditure include a statement that it was not authorized by a candidate or a committee controlled by a candidate.
- 5) Defines "top contributors," for the purposes of the PRA, as the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more.
- 6) Requires generally that any advertisement supporting or opposing a candidate or ballot measure paid for by a committee, other than a political party committee or a candidate's own campaign committee, include the words "committee major funding from" followed by the names of the committee's top contributors, as defined above.

- 7) Prescribes requirements regarding the form, content, and presentation of the top contributors disclosures on advertisements, which vary significantly based on the medium of the advertisement, as specified.
- 8) Prescribes requirements regarding the form, content, and presentation of an initiative, referendum, and recall petition.
- 9) Provides that a petition must be designed so that each signer can personally affix their signature, printed name, residence address, and incorporated city or unincorporated community.
- 10) Requires, for a state or local initiative, referendum, or recall petition for which the circulation is paid for by a committee, as specified, that an "Official Top Funders" disclosure be made, either in a box with a black border on the petition or on a separate sheet as specified, that identifies the name of the committee, any qualifying "top contributors," as that term is defined in the PRA, and the month and year during which the Official Top Funders disclosure is valid. Provides that the printed month and year of validity may start at most seven days after the date the top contributors were last confirmed.
- 11) Permits the committee, in its discretion, to include a list of up to three endorsers with the Official Top Funders disclosure, either on the petition or on the separate sheet, as specified. Defines "endorser" as:
 - a) A business that has been in existence for at least two years and has had at least one full-time staffer during that period.
 - b) A non-profit organization that was not originally created for the purposes of serving as a committee, as specified, that has existed for at least two years, and that either has received contributions from more than 50 donors or has had at least one full-time staffer during that period.
 - c) A political party.
 - d) An individual, whose name may include their title if they are an elected official or represent one of the aforementioned organizations.
- 12) Requires that the Official Top Funders disclosure include, either on the petition or the separate sheet, a link to an internet web page with updated information on the committee's top funders, as specified.
- 13) Requires a state or local initiative petition contain the following notices, in 11-point type, after the heading "NOTICE TO THE PUBLIC:" and before that portion of the petition for voters' signatures:
 - a) For petitions that do not include the Official Top Funders disclosure on the petition: "YOU HAVE THE RIGHT TO SEE AN "OFFICIAL TOP FUNDERS" SHEET." Provides that this text shall be in a boldface font.

- b) "THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK."
 - c) For state initiative petitions only: "THE PROPONENTS OF THIS PROPOSED INITIATIVE MEASURE HAVE THE RIGHT TO WITHDRAW THIS PETITION AT ANY TIME BEFORE THE MEASURE QUALIFIES FOR THE BALLOT."
- 14) Requires petition circulators to certify under the penalty of perjury that they showed each petition signer a valid Official Top Funders sheet if the petition does not include a disclosure statement containing the same information.
- 15) Provides that signatures collected on a petition are not invalid solely because the Official Top Funders disclosure was absent or inaccurate.

This bill:

- 1) Amends the definition of "top contributors" in the PRA to mean the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more in the case of an advertisement in support of or opposition to a state measure or a statewide candidate, except for a candidate for the State Board of Equalization, or of \$10,000 or more in the case of an advertisement in support of or opposition to any other measure or candidate, including a candidate for the State Board of Equalization.
- 2) Amends the top contributors disclosure on qualifying political committee advertisements to say "Ad Committee's Top Funders" or, if only one contributor qualifies as a top contributor, "Ad Committee's Top Funder," except as specified.
- 3) Makes a number of formatting changes to the disclosures required on a campaign advertisement disseminated as a video, including over the Internet, including:
 - a) That the committee paying for the ad be displayed in white type.
 - b) That the statement identifying an independent expenditure committee be displayed in white type.
 - c) That the committee's top contributors, if any, be displayed in yellow with each contributor listed on a separate horizontal line, as specified. Prohibits the names of these contributors from having their type condensed, as specified.
- 4) Makes a number of changes to the disclosures required on an electronic media advertisement that is a graphic or an image, as specified, including:
 - a) Requires that the disclosure area on the advertisement either:
 - i) Have a solid white background and use black type for the text identifying the committee paying for the ad and blue type for the text listing the top contributors, as specified.

- ii) Have a solid black background and use white type for the text identifying the committee paying for the ad and yellow type for the text of the top contributors, as specified.
 - b) Provides that the independent expenditure committee notice may be omitted from the disclosure area.
 - c) Provides that the disclosure area may disclose only the largest top contributor to the committee paying for the advertisement.
 - d) Provides that if disclosing only the largest top contributor on the advertisement would take up more than 25 percent of the graphic or image, as specified, then the disclosure area may instead include the text “Who funded this ad?”.
 - e) Provides that a disclosure area is not required if adding only “Who funded this ad?” would take up more than 25 percent of the graphic or image, as specified.
 - f) Provides that, unless the disclosure area includes the full disclosure text required by law, the advertisement shall contain a hyperlink to an internet website containing those disclosures, as specified.
- 5) Permits, for electronic media advertisements and video advertisements disseminated over the internet, the shortening of a committee’s name to either a name that uniquely identifies the committee, as specified, or by displaying the words “Committee ID” followed by the committee’s identification number.
- 6) Prohibits any text or images, other than text or images required by law, from being included in a campaign advertisement’s disclosure area, as specified.
- 7) Requires that the public notices that are included on state and local initiative petitions before the portion of the petition for voter signatures also be included on state and local referendum and recall petitions, and amends those notices as follows:
- a) Deletes the requirement of a top funders sheet notice on petitions that do not include the Official Top Funders disclosure.
 - b) Adds the following notice, in boldface type, on petitions that do include the Official Top Funders disclosure: “SIGN ONLY IF IT IS THE SAME MONTH SHOWN IN THE OFFICIAL TOP FUNDERS OR YOU SAW AN “OFFICIAL TOP FUNDERS” SHEET FOR THIS MONTH.”
 - c) Specifies that the paid signature gatherer notice shall be in a non-boldface font.
 - d) Deletes the requirement of a proponent withdrawal notice on statewide initiative petitions.

- 8) Requires, if a petition does not include the Official Top Funders disclosure, the following text in the portion of the petition for voter signatures, placed on a separate horizontal line below the space for each signer's printed name and above the space for the signer's signature: "DO NOT SIGN UNLESS you have seen Official Top Funders sheet and its month is still valid." Provides that only the text "DO NOT SIGN UNLESS" shall be in all capitals and in boldface.
- 9) Requires that the circulating title and summary prepared by the Attorney General for a statewide initiative appear upon each section of the petition preceding the text of the measure.
- 10) Increases from 50 to 500 the number of donors that a nonprofit without full-time staff must have received contributions from to be eligible to be listed as an endorser of the proposed measure with the Official Top Funders disclosure either on the petition or the separate sheet.
- 11) Makes other minor formatting changes to petitions and the Official Top Funders sheet.
- 12) Makes technical and conforming changes.
- 13) Makes findings and declarations.

BACKGROUND

The Disclose Act and Other Previous Legislation. Four years ago, the Legislature approved and the Governor signed AB 249 (Mullin), Chapter 546, Statutes of 2017, which significantly changed the content and format of disclosure statements required on specified campaign advertisements, including video and electronic media advertisements, in a manner that generally required such disclosures to be more prominent. AB 249 also established new requirements for determining when contributions are considered to be earmarked, and imposed new disclosure requirements for earmarked contributions to ensure that committees are able to determine which contributors must be listed on campaign advertisements. AB 249 is commonly known as the "Disclose Act."

Since AB 249's enactment, there have been several other bills that have modified the content and format of the disclosure statements created by that legislation. Notably, AB 2188 (Mullin), Chapter 754, Statutes of 2018, required online platforms that sell political ads to make specified information about those political ads available to the public and made various changes to the format for disclosures required on electronic media ads. AB 201 (Cervantes), Chapter 555, Statutes of 2019, required a text message that supports or opposes a candidate or ballot measure to disclose the name of the candidate or committee that paid for the text message and, in certain circumstances, the top contributors to the committee.

The Disclose Act's approach was also extended to apply to initiative, referendum, and recall petitions with the passage of SB 47 (Allen), Chapter 563, Statutes of 2019. Among other things, SB 47 required that an Official Top Funders disclosure be made

either on the petition itself or on a separate sheet that identifies the name of the committee and any qualifying top contributors.

Top Contributors. Under existing law, campaign ads must disclose the three highest contributors of \$50,000 or more to the political committee paying for the ad, unless the committee is a candidate or political party. According to some press accounts from the 2020 election cycle, some donors to independent expenditure committees, particularly those that are active in legislative and local races, are contributing just below this threshold, likely to avoid being disclosed on the committee's ads.

SB 752 revises the top contributors disclosure threshold to \$10,000 or more for campaign ads supporting or opposing local ballot measures and candidates that are not elected statewide, including candidates for the State Board of Equalization, State Legislature, and local office. For campaign ads supporting or opposing candidates for statewide office or statewide ballot measures, the threshold under SB 752 remains unchanged at \$50,000.

The same definition of "top contributors" used for campaign ad disclosures is also used to determine the top contributors to a committee circulating an initiative, referendum, or recall petition, who must be disclosed as "Official Top Funders" either on the petition itself or on a separate sheet. By amending the threshold for political committees, SB 752 also changes the top contributors disclosure threshold to \$10,000 or more for local petitions, but leaves the threshold for statewide petitions unchanged at \$50,000.

Petition Notices. Existing law requires that certain notices be printed in all capital letters on state and local *initiative* petitions, after the heading "NOTICE TO THE PUBLIC" and just above where voters sign the petition.

One notice, on state initiative petitions only, informs voters that the proponents of an initiative measure may withdraw their measure at any time before the measure qualifies for the ballot. This notice was added by SB 1253 (Steinberg), Chapter 697, Statutes of 2014, which, among other changes, lengthened the process for qualifying initiatives and referenda and permitted proponents to withdraw their measure anytime during this qualification process, including after filing their petitions with elections officials.

SB 752 eliminates this notice.

Another notice informs voters, for state and local initiatives that do not have the committee's contributors disclosed on the petition, that they have the right to see an Official Top Funders sheet for the committee circulating the measure.

SB 752 eliminates this notice, too. Instead, SB 752 adds the following text above each signature line of any petition, as specified: "DO NOT SIGN UNLESS you have seen Official Top Funders sheet and its month is still valid."

SB 752 also adds a new notice, for any petition that has the Official Top Funders disclosure on the petition, that the voter should only sign the petition if the month of validity printed on that disclosure is the current month, or if the voter was shown a current Official Top Funders sheet.

Video Advertisements. Under existing law, video advertisements, including video advertisements distributed over the internet, must disclose the name of the committee paying for the ad and the committee's top contributors on a solid black background that takes up the bottom one-third of the screen. The disclosure must be displayed for at least five seconds of a broadcast of 30 seconds or less or for at least 10 seconds of a broadcast that lasts longer than 30 seconds. The smallest letter in the disclosure must take up at least 4% of the height of the video screen and must be in a contrasting color; however, the name of the top contributor may have its type condensed if it would exceed the length of the screen.

SB 752, among other formatting changes, requires that the committee name be displayed in a white type and that the top contributors be displayed in a yellow type, instead of a contrasting color, and prohibits the names of any top contributor from being condensed.

Electronic Media Advertisements. Under existing law, an electronic media advertisement that is a graphic or an image, as specified, must include the text "Who funded this ad?," "Paid for by," or "Ad Paid for by" in a contrasting color and a font size that is easily readable by the average viewer. This text must be hyperlinked to an internet website which contains the committee's top contributors disclosure and other required disclosures. However, if this text would take up more than one-third of the advertisement's image, the text may be omitted, but the advertisement must still include a hyperlink to the required disclosures. Unlike most other types of advertisements, electronic media advertisements are not required to display the committee's top contributors.

Instead, SB 752 generally requires that at least one top contributor be displayed on an electronic media advertisement. The bill requires that on-ad disclosures appear on either:

- A solid white background, using black type for the committee name and other disclosures and a blue type for top contributors; or
- A solid black background, using white type for the committee name and other disclosures and a yellow type for top contributors.

However, if adding the top contributor would take up more than 25 percent of the graphic or image, the disclosure could be reduced to just the text "Who funded this ad?" with a hyperlink to a website with the required disclosures. If that text would take up more than 25 percent of the advertisement, then only the hyperlink would be required.

COMMENTS

- 1) According to the Author. The 1974 Political Reform Act instituted numerous important transparency reforms and extensive campaign disclosure requirements. Subsequent legislation has modernized the PRA's disclosure requirements on television advertisements and expanded disclosure to additional forms of online advertising. Previous elections have highlighted tactics to avoid transparency by making it difficult for voters to read the disclosure text displayed on political advertisements. Long committee names look like "blobs" of text that are hard to

distinguish from the top funders of the committee during the 5 seconds it is displayed during the advertisement. This bill updates the formatting requirements of disclosure text on television and online graphic advertisements to be easier to identify and read. The bill also lowers the contribution amount for a political action committee funder to be considered a “top contributor”, tightening a loophole frequently used to circumvent disclosure in local and legislative races by donating just under the current \$50,000 threshold.

- 2) Argument in Support. In a letter sponsoring SB 752, the California Clean Money Campaign stated, in part, the following:

It's crucial for voters to know who's really funding political ads and initiative campaigns. That's why overwhelming bipartisan majorities in the legislature passed AB 249 (Mullin-Levine) the California DISCLOSE Act in 2017 to show voters the top funders of political ads, and then passed SB 47 (Allen) the Petition DISCLOSE Act in 2019 to show voters the top funders circulating initiative, referendum, and recall petitions.

Both laws have worked well but a few of their provisions are being abused by some campaign committees, subverting the intent of the legislature and denying voters the ability to clearly see the committees' top funders. SB 752 will clarify AB 249's and SB 47's disclosure requirements in order to end abuses that make it hard for voters to see top funders.

RELATED/PRIOR LEGISLATION

SB 47 (Allen), Chapter 563, Statutes of 2019, described above, required that a top funders disclosure be made on an initiative, referendum, or recall petition, or on a separate sheet, as specified.

AB 864 (Mullin), Chapter 558, Statutes of 2019, made numerous, mostly technical changes to the Disclose Act and other provisions of state law governing the content and format of disclosure statements that are required to appear on communications disseminated by candidates and committees.

AB 201 (Cervantes), Chapter 555, Statutes of 2019, described above, required that a text message disclose the name of the candidate or committee that paid for the text message and, in certain circumstances, the top contributors to the committee, as specified.

AB 2188 (Mullin), Chapter 754, Statutes of 2018, described above, required online platforms that sell political ads to make specified information about those political ads available to the public and made various changes to the required format for disclosures on electronic media ads.

AB 2155 (Mullin), Chapter 777, Statutes of 2018, made various changes to the Disclose Act that generally were clarifying or technical in nature.

AB 249 (Mullin), Chapter 546, Statutes of 2017, described above, enacted what is commonly known as the "Disclose Act" which significantly changed the content and format of disclosure statements required on specified campaign advertisements. AB 249 also established new requirements for determining when contributions are considered to be earmarked, as specified.

SB 1253 (Steinberg), Chapter 697, Statutes of 2014, described above, enacted the provision of law that allows proponents of a statewide initiative or referendum measure to withdraw the measure after filing the petition with the appropriate elections official. It required that state initiative petitions include a withdrawal notice, as specified above.

POSITIONS

Sponsor: California Clean Money Campaign

Support: California Church IMPACT
Consumer Federation of California
Endangered Habitats League
MapLight
Money Out Voters In
Progressive Democrats of California

Oppose: None received

-- END --