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To: Chair Ravel and Commissioners Casher, Eskovitz, Wasserman, and Wynne

From: Zackery P. Morazzini, General Counsel
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Subject: Legislative Report

Date: April 10, 2013

The 2012-2013 Legislative Session began on December 3, 2012. As we do each legislative session, upon request, the Fair Political Practices Commission (the "Commission") staff provides technical assistance to members of the Legislature and their staff on legislative proposals that would impact the Commission. In particular, we have been asked to focus on increased disclosure and increased enforcement capabilities, particularly with regard to independent expenditures that are made before an election. Traditionally, each session staff proposes that the Commission officially sponsor legislation that we believe makes important improvements to, and further the purposes of, the Political Reform Act (the "Act"). Therefore, staff is requesting the Commission officially sponsor the following bills listed in this report. Staff will be providing the Commission with a comprehensive Legislative Report later in the session that will summarize all pending legislation that seeks to amend the Political Reform Act.

SB 27 (Correa)

Existing Law

The Act provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures. Regulations previously adopted by the Commission require nonprofit organizations to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such funds to make contributions or expenditures, or when such organizations have previously made contributions or independent expenditures from their general treasuries of $1,000 or more during the calendar year, or the previous four years.

Proposed Law

This bill revises the definition of contribution in the Act to include payments by a donor who, at the time of making the payment, knows or has reason to know that the payment will be used to make contributions or expenditures in California. The bill would require multipurpose organizations that receive donations and use them to make contributions or expenditures in

California of $1,000 or more in a calendar year to disclose the sources of those donations. The bill defines multipurpose organization as a nonprofit organization, a federal or out of state PAC, or a local club focusing on educational or social activities. The bill establishes two presumptions as to whether a donor has reason to know that a payment will be used to make contributions or expenditures.

The first presumption states that if a multipurpose organization has been in existence for two years or more prior to making a contribution or expenditure and the organization's first contribution or expenditure in California is less than $500,000, there is a presumption that the donor did not have reason to know that all or part of the payment would be used to make a contribution or expenditure. However, if the organization has made contributions or expenditures of $1,000 or more during the calendar year, or any of the preceding four calendar years, the group cannot take advantage of this presumption. The second presumption states that if a multipurpose organization has been in existence for less than two years before making a contribution or expenditure in California, or its first contribution in California is $500,000 or more, there shall be a presumption that a donor has reason to know that all or part of the payment will be used to make a contribution or expenditure. Once the presumption attaches, disclosure of the donor information is required unless the organization can affirmatively rebut the presumption. For example, the presumption could be rebutted by evidence that the donor gave money to the organization in response to a solicitation that affirmatively stated that no money from the donation would be used for political purposes. The bill also provides discretionary audit authority to the FPPC over multipurpose organizations that make contributions or expenditures in California.

This bill would also require ballot measure committees and candidate committees that raise $1,000,000 or more for an election to maintain an accurate list of the committee's top 10 contributors, which would be posted on the FPPC's Internet website and the Committee's Internet website.

Staff believes the amendments proposed by this bill will result in more timely and accurate disclosure of the identity of the actual source of funds being spent on California elections, rather than just the name of a multipurpose organization which often provides little, and sometimes misleading, information about the interest behind the expenditure. Staff believes this bill is important because it would increase accountability for those who attempt to avoid disclosure of their identities by channeling funds used to influence California elections through other committees or nonprofits. By establishing specific rebuttable presumptions that donors have reason to know their donations may be used for contributions or expenditures in California elections, this bill would increase disclosure of important information regarding the true source of the money and the true interest behind it.

The Supreme Court has repeatedly held that the identity of the source of funds spent on elections provides valuable information to voters, and staff believes that timely pre-election disclosure of such information increases its value to voters when it matters most.

Status: Referred to Committee on Senate Elections and Constitutional Amendments.
Staff Recommended Position: Support as Sponsor

AB 552 (Fong)

Existing Law

The Act currently requires the Commission to commence a civil action and obtain a judgment in a superior court to collect any unpaid fines imposed under the Act.

Proposed Law

This bill would authorize the Commission to apply to the clerk of the superior court for a judgment enforcing a monetary penalty or fee, and would require the clerk of the court to enter a judgment immediately in conformity with the application under specified circumstances, rather than requiring the Commission to institute a formal civil action.

Staff believes the amendments proposed by this bill would increase efficiencies in the Commission's Enforcement Division by simplifying the procedure for collecting unpaid penalties. Rather than having to proceed with a full civil action to judgment in order to collect, this bill would allow the Commission to take advantage of a streamlined procedure for obtaining a judgment. The procedure established by this bill for the collection of unpaid penalties is similar to procedures that currently exist for a number of other government agencies, including the Department of Conservation (pursuant to Section 14591.5 of the Public Resources Code) and the Department of Forestry and Fire Protection (pursuant to Section 4601.3 of the Public Resources Code).

Status: Referred to Assembly Committee on Elections and Redistricting
Staff Recommended Position: Support as Sponsor

AB 800 (Gordon)

Existing Law

The Act currently defines the term "candidate" as including an officeholder who is the subject of a recall election. A candidate retains that status until the status is terminated. Candidate status requires individuals to continue to file campaign reports and provide disclosure to the public on campaign activities for both their main committee and other committees with which they may be involved. Candidates are prohibited from controlling committees that make independent expenditures and are prohibited from making contributions to committees that make independent expenditures to support or oppose other candidates. By regulation, the Commission has said that a candidate retains his or her status as a candidate until he or she leaves office.

A "Committee" is currently defined in the Act as any person or combination of persons who receives contributions or makes independent expenditures totaling $1,000 or more in a calendar year. The Act defines a "controlled committee" as a committee that is controlled directly or indirectly by a candidate or state measure proponent, or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, or his or her agent or any other committee he or she controls, has a significant influence on the actions or decisions of the committee. The Act requires an agent or independent contractor to make known to the candidate or committee all information that is subject to campaign reporting requirements.

"Surplus campaign funds" are defined in the Act as funds that are under the control of a former candidate or former elected officer as of the date of leaving office, or the end of the postelection reporting period following the defeat of the candidate for elective office, whichever occurs last. The purposes for which surplus campaign funds may be used are restricted.

The Act requires the Franchise Tax Board to periodically prepare reports regarding its audit and investigations under the Act and send them to the Commission, the Secretary of State and the Attorney General. These audit reports must be completed within one year.

The Act generally prohibits the commencement of an audit or investigation of a candidate, controlled committee, or committee primarily supporting or opposing a candidate or a measure in connection with a report or statement required by specified provisions of the Act until after the last date for filing the first report or statement following the general, the runoff, or a special election for the office for which the candidate ran, or following the election at which the measure was adopted or defeated.

Proposed Law

This bill would revise the definition of "candidate" to include any officeholder, regardless of whether he or she is the subject of a recall election, and provides that a candidate retains that status until the time that he or she leaves office and the status is terminated. This change will make clear that officeholders who terminate their campaign committees will continue to retain their status as a candidate until they actually leave office, so that while they remain in office they are prohibited from controlling committees that make independent expenditures and prohibited from making contributions to committees that make independent expenditures to support or oppose other candidates.

This bill would revise the monetary threshold of contributions or independent expenditures that qualify a person or combination of persons as a committee, subject to reporting and disclosure requirements, from $1,000 to $2,000.

This bill would establish a presumption that a committee is significantly influenced by a candidate, and thus a "controlled committee", if the candidate is a voting member of the committee's governing body, the candidate or his or her agent is involved in the decision-making of the committee or the development or implementation of the committee's campaign strategy the candidate or his or her agent is involved in directing, planning, or implementing the committee's fundraising activities in a greater capacity than making endorsements or appearing at fundraisers, or the candidate, or his or her agent, is substantially involved in directing the day to day operations of the committee.

This bill would require a subcontractor who provides goods or services to or for the benefit of a candidate or committee to make known to the agent or independent contractor all of the information subject to the reporting requirements of the Act and would require this information be disclosed by a subagent or independent contractor to the agent, independent contractor, candidate, or committee no later than three working days prior to the time the campaign statement reporting the expenditure is required to be filed. Late contributions or late independent expenditures must be reported to the candidate or committee within 24 hours of the time it is made.

This bill would increase the time at which campaign funds become surplus by 90 days following either the officer leaving elective office or the end of the postelection reporting period following the defeat of the candidate, whichever occurs last.

This bill would remove the one-year deadline for the Franchise Tax Board (the "FTB") to complete audit reports for audits conducted on a random basis, and would allow the Commission and the FTB at the direction of the Commission) to audit any record required to be maintained under the Act in order to ensure compliance with the Act prior to an election, even if the record or report is one that has not yet been filed. The one year deadline has proven counter-productive as it forces the FTB to work on minor audits and not have the discretion to adjust their workload to more rapidly work on major issues.

Finally, the bill would authorize the Commission to seek injunctive relief in a superior court to compel disclosure consistent with the Act and require a court grant expedited review of an action filed pursuant to this provision.

Staff believes this bill is important because it would facilitate the Commission's ability to identify if and when a candidate is influencing a committee. Due to contribution limits, more and more campaign activity is being done through independent expenditure committees. This becomes a problem when candidates coordinate with these committees to effectively circumvent contribution limits and create an uneven campaign playing field. This bill puts into place common sense presumptions of coordination that will assist with enforcement, while allowing for facts to be presented in rebuttal to the presumption that show lack of coordination.

This bill also updates outdated provisions in the Act with respect to the committee qualification monetary threshold in a manner that balances the rights of smaller groups of grassroots advocates with the burdens imposed once an organization qualifies as a committee under the Act. It also increases accountability on the part of committee subcontractors by requiring them to provide the committee that hired them with the information that is required to be reported on campaign statements. The bill would help committees obtain necessary information from their subcontractors in a timely manner which, in turn, will result in more accurate and timely disclosure to the public.

The bill would also allow candidates more time to decide what to do with campaign funds after they leave office or lose an election, as the current deadlines do not allow sufficient time (in most cases just a few weeks) for a candidate to decide if they want to run for another office before their funds become surplus, thus leading to candidates scrambling to create committees as place holders until they can decide. Staff believes this bill would reduce workload by eliminating or reducing the number of requests for advice regarding the proper use of surplus finds, as well as reduce the hardship on officeholders and candidates under the prior truncated timeframe.

Additionally, provisions addressing injunctive relief and auditing will help the FPPC identify those who attempt to violate the Act and provide disclosure to the public identifying who is funding campaign activity before an election, when that information is most relevant.

Status: Referred to Assembly Committee on Elections and Redistricting
Staff Recommended Position: Support as Sponsor

AB 914 (Gordon)

Existing Law

Existing law outside of the Act authorizes the California Attorney General to regulate charities with assets in California. Each year charities that are active in California must file a periodic written report with the Attorney General along with other IRS forms disclosing how they have spent their funds.

The Act provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures by nonprofit organizations, and imposes other reporting and recordkeeping requirements on campaign committees. Regulations previously adopted by the Commission require nonprofit organizations such as charities (501 (c)(3)) and social welfare organizations (501 (c)(4)) to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such funds to make campaign contributions or expenditures or when such organizations have previously made contributions or independent expenditures from their general treasuries of $1,000 or more during the calendar year, or the previous four years, in California.

Proposed Law

This bill would require nonprofit organizations that make campaign contributions, expenditures or independent expenditures in California to file an annual report with the Commission and/or the Attorney General, as specified, disclosing the total percentage of their funds that were used to make contributions, expenditures and independent expenditures during each fiscal year the entity spends at least $50,000 on such activities. If the total amount spent on such activities exceeds 10 percent of the entity's total expenses during the fiscal year, the entity would be required to disclose information related to each contribution, expenditure and independent expenditure, including the amount, date, name and address of the recipient, and a description of the purpose for the contribution, expenditure or independent expenditure. The names of each donor to the nonprofit organization of $10,000 or more would also have to be disclosed, unless the organization makes all of its campaign expenditures from a separate account used for political expenditures. If all campaign contributions, expenditures and independent expenditures are made from a separate account, only donors whose funds were deposited into the separate account would be required to be disclosed. The bill would allow exemptions from disclosing the identities of donors in limited circumstances.

Staff believes this bill would provide the public with much needed disclosure that in some cases can be nonexistent. Since the Supreme Court decided *Citizens United* in 2010, there has been an unprecedented amount of campaign activity conducted by nonprofit organizations. Many of these organizations receive large sums of money from individuals and corporations and, under Federal law, are not required to disclose their donors. In the last election, a nonprofit organization contributed a large sum of money, which it apparently obtained from a number of other nonprofit organizations, to a committee in California prior to the election for use on ballot measure campaigns. Only the nonprofit in California was disclosed as the source of the funds. The FPPC brought legal action against them seeking to obtain the true source of the funds. This occurred just a few days before the election. This legislation would simply require nonprofits to know who their donors are and to disclose who is actually funding their campaign activities.

This basic disclosure also would provide the public and other government agencies with valuable information regarding the amount of campaign activity conducted by the nonprofit in relation to its activities as whole.

Status: Referred to Assembly Committee on Elections & Redistricting and Assembly Committee on Judiciary
Staff Recommended Position: Support as Sponsor

AB 1090 (Fong)

Existing Law

Existing law (Government Code Section 1090) prohibits Members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law makes a willful violation of this prohibition a crime. Currently enforcement of this law is under the authority of the Attorney General and district attorneys. These prohibitions are outside of the Act and are not enforced by the Commission. Nor can the Commission advise public officials on Section 1090 issues, as only the Attorney General has the authority to formally advise on such matters.

Proposed Law

This bill would authorize the Commission to bring a civil or administrative action to enforce these prohibitions in a manner similar to that provided for under the Act. Criminal enforcement would remain with the Attorney General and district attorneys. This bill would prohibit the Commission from bringing an action against an individual if a criminal action is proceeding. Additionally, amendments to the bill are pending that would authorize the Commission to provide advice to those subject to the prohibitions of Section 1090, in a manner concurrent with the authority of the Attorney General's Office.

The Commission has a unique expertise in advising upon, investigating, and prosecuting civil ethics violations, such as conflicts of interest, under the Act. In fact, the prohibitions set forth in Section 1090 are quite similar to the conflict-of-interest prohibitions contained in the Act. Indeed, as the California Supreme Court has recognized, "Section 1090 is the principal California statute governing conflicts of interest in the making of government contracts. In turn, the Political Reform Act is the principal California law governing conflicts of interest in the making of all government decisions. It is well established that these two acts are in pari materia …." (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1091). Under the Act, conflicts of interest are subject to criminal, civil or administrative prosecution. This results in accounting for the full range of conduct that can be a violation of the Act, even if the conduct does not meet the intent requirements for criminal prosecution. Section 1090 does not currently have a similar range of penalties, even though it is very similar to the Act's conflicts-of-interest provisions. This bill would bring conformity to both prohibitions. Moreover, the Commission is well-suited to assist the Attorney General and district attorneys by having civil and administrative enforcement authority over Section 1090 conflicts.

Additionally, often times, when staff is advising or investigating public officials, a potential 1090 issue is spotted in the fact pattern. However, because Section 1090 falls outside the Act, staff is

forced to simply refer the individual or the matter to either the Attorney General or district attorney. Staff is informed that individuals are often unable to obtain timely advice regarding Section 1090 issues. Staff believes that authorizing the Commission to formally and informally advise officials on Section 1090 matters would bring much needed clarity to this area of the law and enable public officials to more effectively carry out their public duties. Staff further believes that authorizing the Commission to bring civil or administrative actions under Section 1090 would result in more enforcement and, ultimately, more compliance with Section 1090, thus ensuring public officials conduct the public's business free from improper personal financial interests.

Status: Referred to Assembly Committee on Elections and Redistricting.
Staff Recommended Position: Support as Sponsor

***AB 45 (Dickinson)**

*****The authors of AB 800, discussed above, and AB 45 are working together on amendments to harmonize the provisions of each bill in order to avoid any duplication or inconsistencies and intend to move forward with separate bills that each cover important concepts.

Additionally, the donor disclosure provisions in Section 3 of AB 45 (amendments to Section 82015 of the Act), present a similar approach to donor disclosure as that presented in SB 27, described above. Staff is informed that amendments are pending to remove any inconsistencies between these similar provisions. Staff believes the concepts presented in AB 45 would bring much needed improvements to, and further the purposes of, the Act.

Therefore, staff requests that the Commission delegate authority to the Chair to formally support or sponsor AB 45 in the future should amendments to AB 45 harmonize with AB 800 and not go beyond the concepts currently expressed in the bill's existing language.

Existing Law

The Act currently defines a "committee" as any person or combination of persons who receive contributions or make independent expenditures of $1,000 or more in a calendar year. The Act also defines a "controlled committee" as a committee that is controlled directly or indirectly by a candidate. The Act requires committees to file campaign statements and requires that those statements disclose certain information about contributors who have made aggregate contributions of $100 or more.

The Act also defines "surplus campaign funds" as campaign funds that are under the control of a former candidate or former elected official as of the date of leaving office or the end of the postelection reporting period following the defeat of the candidate for elective office, whichever occurs last. Additionally, the Act restricts the purposes for which surplus campaign funds can be used.

The Act also imposes specified duties on a filing officer with respect to reports and statements filed with that filing officer. The Act requires that certain campaign statements be filed with the Secretary of State online or electronically. Statements that are filed electronically must also be filed in paper format.

The Act authorizes the Commission and the FTB to perform discretionary investigations and audits with respect to campaign and lobbying reports and statements filed with the Secretary of State.

Proposed Law

This bill would increase the monetary threshold of contributions or independent expenditures that qualify a person or combination of persons as a committee from $1,000 to $2,000. The bill would revise the definition of "controlled committee" to specify that a committee controlled by a candidate who is elected to office is a controlled committee for the duration of the candidate's entire term of office.

The bill would increase the $100 contribution disclosure threshold from $100 to $250.

The bill would revise the definition of "contribution" to include payments made to multipurpose organizations by a person who "knows or has reason to know" that a payment will be used to make a contribution or independent expenditure. The bill would impose a presumption that a donor has "reason to know" (a) if the recipient organization has made aggregate contributions or expenditures of $2,000 or more within the calendar year, or the preceding four years, or (b) if the donor's payment is $50,000 or more, is made in the six months preceding the election, and the multipurpose organization makes a contribution or an independent expenditure of $50,000 or more within the six months prior to the election. Such donors would have to be identified and reported by the organization in accordance with existing reporting regulations.

The bill would increase the time at which campaign funds become surplus by 90 days.

Additionally, the bill would require filing officers to immediately affix a date stamp to each statement of economic interest. The bill would also require the Secretary of State to make campaign and lobbying statements and reports that are filed with the Secretary of State available to the Commission upon request.

The bill would specify that the Commission may perform an audit of a committee before a report or statement is required to be filed and would authorize a person to challenge an audit by seeking a writ of mandate.

The bill would specify that the Commission is authorized to seek an injunction to prevent a violation of the Act or compel compliance with the Act.

Status: Referred to Assembly Committee on Elections and Redistricting

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