



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Commissioner Hatch, Chair of Law & Policy Committee

From: Phillip Ung, Director, Legislative and External Affairs

Subject: Attachment 2: Minor and Clarifying – RN 19 00981

Date: December 12, 2018

Background

The Political Reform Act has been amended on dozens of occasions by the Legislature or by the voters through ballot initiatives. The Political Reform Act requires regular maintenance to ensure clarity of the provisions and correct minor drafting issues.

The Act generally defines “expenditure.” The Act also includes exceptions from the “expenditure” including costs incurred by a broadcasting station to cover or carry a news story, commentary, or editorial, and costs incurred in publishing a regularly published newsletter or periodical whose circulation is limited to an organization’s members, employees, shareholders, other affiliated individuals, and those who request or purchase the publication.

The Act generally requires all pre-election reports be filed pursuant to the same schedule pursuant to Section 84200.5.

The Act requires when a public official reports income that the statement include the name, address of each source of income aggregating \$500 or more in value if the income was a gift, and a general description of the business activity, if any, of each source. The Act also requires the public official to the pro rata share of income to a business entity to include the name, address, and a general description of the business activity of the entity.

Analysis

This bill does the following:

1. Would clarify that communications paid for with public moneys by a state or local government agency, under certain conditions, are considered expenditures, as specified, and not included in the exception described above.
2. Clarify the language in Section 84200.5 to eliminate confusing language leading to multiple potential interpretations.
3. Clarify the disclosure of income from a gift or business entity include the street address of each source or entity.

Fiscal Impact

No costs to the Commission.

Staff Recommendation

1. Recommend the Commission approve the Legislative Counsel draft with amendments to address incorrect phrasing in 84200.5;
2. Adopt a sponsorship position; and
3. Authorize Commission staff to retain an author for bill introduction.

LEGISLATIVE COUNSEL'S DIGEST

Bill No.
as introduced, _____.
General Subject: Political Reform Act of 1974.

(1) The Political Reform Act of 1974 defines "expenditure" to include any monetary or nonmonetary payment made by any person that is used for communications that expressly advocate the nomination, election, or defeat of a clearly identified candidate or candidates, or the qualification, passage, or defeat of a clearly identified ballot measure. The act excludes from the definition the costs incurred by a broadcasting station to cover or carry a news story, commentary, or editorial, and the costs incurred in publishing a regularly published newsletter or periodical whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals, and those who request or purchase the publication.

This bill would provide that this exclusion from the definition of "expenditure" does not apply to communications paid for with public moneys by a state or local government agency.

This bill would also make various clarifying and nonsubstantive changes to other provisions of the act.

This bill would require the statement to include the street address of each source of income, as specified.

(2) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



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An act to amend Sections 82025, 84200.5, and 87207 of the Government Code, relating to the Political Reform Act of 1974.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 82025 of the Government Code is amended to read:

82025. (a) "Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. "Expenditure" does not include a candidate's use of his or her own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

(b) A payment is made for political purposes if it is any of the following:

(1) For purposes of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure.

(2) Made by any of the following:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an officeholder.

(B) A controlled committee.

(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee, or any subcommittee of such committee.

(D) An organization formed or existing primarily for political purposes, as described in paragraph (1), including, but not limited to, a political action committee established by any membership organization, labor union, or corporation.

(c) "Expenditure" includes any monetary or nonmonetary payment made by any person, other than the persons or organizations described in subdivision (b), that is used for communications that expressly advocate the nomination, election, or defeat of a clearly identified candidate or candidates, or the qualification, passage, or defeat of a clearly identified ballot measure.

(1) "Clearly identified" is defined as follows:

(A) A candidate is clearly identified if the communication states his or her name, makes unambiguous reference to his or her office or status as a candidate, or unambiguously describes him or her in any manner.

(B) A group of candidates is clearly identified if the communication makes unambiguous reference to some well-defined characteristic of the group, even if the communication does not name each candidate. A communication that clearly identifies a group of candidates and expressly advocates their election or defeat is reportable as an expenditure, but the expenditure need not be allocated among all members of the class or group on the campaign statement reporting the expenditure.

(C) A measure that has qualified to be placed on the ballot is clearly identified if the communication states a proposition number, official title, or popular name associated with the measure. In addition, the measure is clearly identified if the communication refers to the subject matter of the measure and either states that the measure is before the people for a vote or, taken as a whole and in context, unambiguously refers to the measure.



(D) A measure that has not qualified to be placed on the ballot is clearly identified if the communication refers to the subject matter of the measure and the qualification drive.

(2) A communication “expressly advocates” the nomination, election, or defeat of a candidate or the qualification, passage, or defeat of a measure if it contains express words of advocacy such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” or, within 60 days before an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

(A) Except for those communications paid for with public moneys by a state or local government agency, a communication, taken as a whole, unambiguously urges a particular result in an election if it is not susceptible of any reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure. A communication is not susceptible of any reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure when, taken as a whole, it could only be interpreted by a reasonable person as containing an appeal to vote for or against a specific candidate or measure because of both of the following:

(i) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning.

(ii) Reasonable minds could not differ as to whether it encourages a vote for or against a clearly identified candidate or measure, or encourages some other kind of action on a legislative, executive, or judicial matter or issue.

(B) The following nonexhaustive examples, referring to candidates or measures on the ballot in an upcoming election, illustrate statements that in most contexts would not be susceptible of any reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure: “Smith’s the One”; “No Measure A”; “Rally ‘round O’Malley”; “Create jobs with Measure X”; “Only Nancy Brown can clean out City Hall”; “Proposition 123 - your last chance to save California”; “Joe Green will earn your trust”; “Bob Boone is unqualified for office and a special-interest puppet”; “Shirley Hall - bad for California, bad for you.”

(C) The following nonexhaustive examples, referring to candidates or measures on the ballot in an upcoming election, illustrate statements that would be susceptible of a reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure: “Assembly Member Nancy Brown needs to be tough on criminals. Call her and tell her to stand firm on AB 100”; “Poor children need a home too. Support the Mayor’s stance against more budget cuts”; “Thank you, Supervisor Smith, for continuing to support our farmers.”

(D) Safe Harbor. A communication does not expressly advocate the nomination, election, or defeat of a candidate, or the qualification, passage, or defeat of a measure, within the meaning of this section, if both of the following apply:

(i) The communication does not mention an election, candidacy, political party unless required by law, opposing candidate, or voting by the general public, and it does not take a position on the character, qualifications, or fitness for office of a candidate or officeholder, or the merits of a ballot measure.

(ii) The communication focuses on a legislative, executive, or judicial matter or issue, either urging a candidate to take a particular position or action with respect to



the matter or issue, or urging the public to adopt a particular position and to contact the candidate with respect to the matter or issue.

(E) Rules of Interpretation. If a communication does not qualify for the safe harbor described in subparagraph (D), the commission shall consider if the communication has an interpretation other than as an appeal to vote for or against a clearly identified candidate or measure, in order to determine if, on balance, the communication is not susceptible of any reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate or measure.

(3) Reporting Expenditures.

(A) The amount of an expenditure reportable pursuant to this subdivision shall include all costs directly attributable to the communication, including, but not limited to, salaries, production, postage, space or time purchased, agency fees, printing, and any additional administrative or overhead costs attributable to the communication. The expenditure does not include any of the regular ongoing business overhead that will be incurred in similar amounts regardless of the communication.

(B) When a printed or broadcast communication circulates outside the state, the expenditure may be calculated on the basis of the fraction of the total cost attributable to circulation within the state.

(C) Costs directly traceable to the communication are reportable when the communication is made, or when payments are made in connection with the development, production, or dissemination of the communication, whichever occurs first.

(D) The costs of printing and distributing petitions, recruiting, training, and paying expenses of petition circulators, and other costs incurred in connection with the qualification of a measure are reportable expenditures.

(4) ~~Notwithstanding~~ Except for those communications paid for with public moneys by a state or local government agency, notwithstanding this subdivision, "expenditure" does not include costs incurred for communications that expressly advocate the nomination, election, or defeat of a clearly identified candidate or candidates, or the qualification, passage, or defeat of a clearly identified measure or measures by either of the following:

(A) A broadcasting station, including a cable or satellite television operation, programmer, or producer, Internet Web site, or a regularly published newspaper, magazine, or other periodical of general circulation, including an Internet or electronic publication, that routinely carries news and commentary of general interest, for the cost of covering or carrying a news story, commentary, or editorial.

(B) A regularly published newsletter or regularly published periodical, other than those specified in subparagraph (A), whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals, and those who request or purchase the publication. This subparagraph applies only to the costs regularly incurred in publishing the newsletter or periodical. If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, expanded in circulation, or substantially altered in style, size, or format, the additional costs are expenditures.

(5) The term "expenditure" also does not include uncompensated Internet activity by an individual supporting or opposing a candidate or measure as stated in Section 18215.2 of Title 2 of the California Code of Regulations.



(d) A payment used to make contributions, as defined in Section 82015, is an expenditure.

SEC. 2. Section 84200.5 of the Government Code is amended to read:

84200.5. (a) In addition to the semiannual campaign statements required by Section 84200, the following elected officers, candidates, and committees shall file preelection statements ~~as follows:~~ under Section 84200.8:

(a)

(1) All candidates appearing on the ballot ~~to be voted on~~ at the next election, their controlled committees, and committees primarily formed to support or oppose an elected officer, candidate, or a measure appearing on the ballot ~~to be voted on at~~ for the next election shall file the applicable preelection statements specified in Section 84200.8: election.

(b)

(2) All elected state officers and candidates for elective state office who are not appearing on the ballot at the next statewide primary or general election, and who, during the preelection reporting periods covered by Section 84200.8, ~~contribute to any committee required to report receipts, expenditures, or contributions pursuant to this title, or make an independent expenditure of make contributions or independent expenditures totaling five hundred dollars (\$500) or more in connection with to support or oppose a candidate or measure appearing on the ballot at the next~~ statewide primary or general election, shall file the applicable preelection statements specified in Section 84200.8: election.

(c)

(3) A state or county general purpose committee formed pursuant to subdivision (a) of Section 82013, other than a political party committee as defined in Section 85205, ~~shall file the applicable preelection statements specified in Section 84200.8 if it makes contributions or that, during the preelection reporting periods covered by Section 84200.8, makes contributions or independent expenditures totaling five hundred dollars (\$500) or more in connection with to support or oppose a candidate or measure appearing on the ballot at the next~~ statewide primary or general election during the period covered by the preelection statements: election. However, a state or county general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the preelection statements specified in Section 84200.8.

(d)

(4) A political party committee as defined in Section 85205 ~~shall file the applicable preelection statements specified in Section 84200.8 in connection with a state election if the committee that, during the preelection reporting periods covered by Section 84200.8, receives contributions totaling one thousand dollars (\$1,000) or more, or if it makes contributions or independent expenditures totaling five hundred dollars (\$500) or more, in connection with the election during the period covered by the preelection statement: to support or oppose a candidate or measure appearing on the ballot at the next~~ statewide primary or general election.

(e)

(5) A city general purpose committee formed pursuant to subdivision (a) of Section 82013 ~~shall file the applicable preelection statements specified in Section 84200.8 if it that, during the preelection reporting periods covered by Section 84200.8, makes contributions or independent expenditures totaling five hundred dollars (\$500)~~



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~~or more in connection with a city election in the committee's jurisdiction during the period covered by the preelection statements to support or opposed a candidate or measure appearing on the ballot at the next city election.~~ However, a city general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the preelection statements specified in Section 84200.8.

~~(f)~~

(b) During an election period for the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board, the following candidates and committees shall file the preelection statements specified in Section 84200.9:

(1) All candidates for these boards, their controlled committees, and committees primarily formed to support or oppose ~~the candidates shall file the preelection statements specified in Section 84200.9.~~ candidates.

(2) A state or county general purpose committee formed pursuant to subdivision (a) of Section 82013 ~~shall file the preelection statements specified in Section 84200.9 if it that, during the preelection reporting periods covered by Section 84200.9,~~ makes contributions or independent expenditures totaling five hundred dollars (\$500) or more ~~during the period covered by the preelection statement to support or oppose a candidate, or a committee primarily formed to support or oppose a candidate on the ballot~~ candidate for the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board. ~~(3)~~ However, a general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the statements specified in Section 84200.9.

SEC. 3. Section 87207 of the Government Code is amended to read:

87207. (a) If income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):

(1) The name and street address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least five hundred dollars (\$500) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but was not greater than ten thousand dollars (\$10,000), whether it was greater than ten thousand dollars (\$10,000) but not greater than one hundred thousand dollars (\$100,000), or whether it was greater than one hundred thousand dollars (\$100,000).

(3) A description of the consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received, and the travel destination for purposes of a gift that is a travel payment, advance, or reimbursement.

(5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

(b) If the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain:



(1) The name, street address, and a general description of the business activity of the business entity.

(2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(c) If a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interests. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

SEC. 4. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

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