

AMENDED IN SENATE JUNE 24, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 9

**Introduced by Assembly Member John A. Perez
(Coauthor: Assembly Member Beall)**

December 1, 2008

An act to ~~add Section 82025.5 to~~ amend Sections 82015 and 82031 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as amended, John A. Perez. Political Reform Act of 1974: expenditures.

Under the Political Reform Act of 1974, ~~an~~ “*expenditure*” a “*contribution*” means a payment, a forgiveness of a loan, a payment of a loan by a 3rd party, or an enforceable promise to make a payment *except to the extent that full and adequate consideration is received*, unless it is clear from the surrounding circumstances that it is not made for political purposes. Under the act, ~~a~~ an “*independent expenditure*” is an expenditure in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. A candidate or committee that makes an independent expenditure totaling \$1,000 or more in a calendar year to support or oppose a measure or qualification of a measure shall file a report of that disclosure with the Fair Political Practices Commission. A person who violates the act is subject to administrative, civil, and criminal penalties.

This bill would provide that a contribution includes the payment of public moneys by a state or local governmental agency for a communication to the public which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, and which is made at the behest of the affected candidate or committee. The bill would further provide that an independent expenditure includes the payment of public moneys by a state or local governmental agency. By placing administrative, civil, and criminal penalties on persons who violate this bill, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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 and compliance with specified procedural requirements.

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

~~This bill clarifies existing law that an expenditure includes the payment of public moneys by a state agency or local government agency, or by an agent of that agency, for a communication to the electorate within the jurisdiction of that agency regarding a clearly identified measure, except if the communication constitutes a fair and impartial presentation of the facts relating to the measure or the communication is otherwise required by law.~~

Vote: ~~majority~~ ^{$\frac{2}{3}$} . Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: ~~no~~^{yes}.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 82015 of the Government Code is
- 2 amended to read:
- 3 82015. (a) "Contribution" means a payment, a forgiveness of
- 4 a loan, a payment of a loan by a third party, or an enforceable
- 5 promise to make a payment except to the extent that full and

1 adequate consideration is received, unless it is clear from the
2 surrounding circumstances that it is not made for political purposes.

3 (b) (1) A payment made at the behest of a committee as defined
4 in subdivision (a) of Section 82013 is a contribution to the
5 committee unless full and adequate consideration is received from
6 the committee for making the payment.

7 (2) A payment made at the behest of a candidate is a contribution
8 to the candidate unless the criteria in either subparagraph (A) or
9 (B) are satisfied:

10 (A) Full and adequate consideration is received from the
11 candidate.

12 (B) It is clear from the surrounding circumstances that the
13 payment was made for purposes unrelated to his or her candidacy
14 for elective office. The following types of payments are presumed
15 to be for purposes unrelated to a candidate's candidacy for elective
16 office:

17 (i) A payment made principally for personal purposes, in which
18 case it may be considered a gift under the provisions of Section
19 82028. Payments that are otherwise subject to the limits of Section
20 86203 are presumed to be principally for personal purposes.

21 (ii) A payment made by a state, local, or federal governmental
22 agency or by a nonprofit organization that is exempt from taxation
23 under Section 501(c)(3) of the Internal Revenue Code.

24 (iii) A payment not covered by clause (i), made principally for
25 legislative, governmental, or charitable purposes, in which case it
26 is neither a gift nor a contribution. However, payments of this type
27 that are made at the behest of a candidate who is an elected officer
28 shall be reported within 30 days following the date on which the
29 payment or payments equal or exceed five thousand dollars
30 (\$5,000) in the aggregate from the same source in the same
31 calendar year in which they are made. The report shall be filed by
32 the elected officer with the elected officer's agency and shall be
33 a public record subject to inspection and copying pursuant to
34 subdivision (a) of Section 81008. The report shall contain the
35 following information: name of payor, address of payor, amount
36 of the payment, date or dates the payment or payments were made,
37 the name and address of the payee, a brief description of the goods
38 or services provided or purchased, if any, and a description of the
39 specific purpose or event for which the payment or payments were
40 made. Once the five-thousand-dollar (\$5,000) aggregate threshold

1 from a single source has been reached for a calendar year, all
 2 payments for the calendar year made by that source must be
 3 disclosed within 30 days after the date the threshold was reached
 4 or the payment was made, whichever occurs later. Within 30 days
 5 after receipt of the report, state agencies shall forward a copy of
 6 these reports to the Fair Political Practices Commission, and local
 7 agencies shall forward a copy of these reports to the officer with
 8 whom elected officers of that agency file their campaign
 9 statements.

10 (C) For purposes of subparagraph (B), a payment is made for
 11 purposes related to a candidate’s candidacy for elective office if
 12 all or a portion of the payment is used for election-related activities.
 13 For purposes of this subparagraph, “election-related activities”
 14 shall include, but are not limited to, the following:

15 (i) Communications that contain express advocacy of the
 16 nomination or election of the candidate or the defeat of his or her
 17 opponent.

18 (ii) Communications that contain reference to the candidate’s
 19 candidacy for elective office, the candidate’s election campaign,
 20 or the candidate’s or his or her opponent’s qualifications for
 21 elective office.

22 (iii) Solicitation of contributions to the candidate or to third
 23 persons for use in support of the candidate or in opposition to his
 24 or her opponent.

25 (iv) Arranging, coordinating, developing, writing, distributing,
 26 preparing, or planning of any communication or activity described
 27 in clause (i), (ii), or (iii).

28 (v) Recruiting or coordinating campaign activities of campaign
 29 volunteers on behalf of the candidate.

30 (vi) Preparing campaign budgets.

31 (vii) Preparing campaign finance disclosure statements.

32 (viii) Communications directed to voters or potential voters as
 33 part of activities encouraging or assisting persons to vote if the
 34 communication contains express advocacy of the nomination or
 35 election of the candidate or the defeat of his or her opponent.

36 (D) A contribution made at the behest of a candidate for a
 37 different candidate or to a committee not controlled by the
 38 behesting candidate is not a contribution to the behesting candidate.

39 (3) A payment made at the behest of a member of the Public
 40 Utilities Commission, made principally for legislative,

1 governmental, or charitable purposes, is not a contribution.
2 However, payments of this type shall be reported within 30 days
3 following the date on which the payment or payments equal or
4 exceed five thousand dollars (\$5,000) in the aggregate from the
5 same source in the same calendar year in which they are made.
6 The report shall be filed by the member with the Public Utilities
7 Commission and shall be a public record subject to inspection and
8 copying pursuant to subdivision (a) of Section 81008. The report
9 shall contain the following information: name of payor, address
10 of payor, amount of the payment, date or dates the payment or
11 payments were made, the name and address of the payee, a brief
12 description of the goods or services provided or purchased, if any,
13 and a description of the specific purpose or event for which the
14 payment or payments were made. Once the five-thousand-dollar
15 (\$5,000) aggregate threshold from a single source has been reached
16 for a calendar year, all payments for the calendar year made by
17 that source must be disclosed within 30 days after the date the
18 threshold was reached or the payment was made, whichever occurs
19 later. Within 30 days after receipt of the report, the Public Utilities
20 Commission shall forward a copy of these reports to the Fair
21 Political Practices Commission.

22 (c) "Contribution" includes the purchase of tickets for events
23 such as dinners, luncheons, rallies, and similar fundraising events;
24 the candidate's own money or property used on behalf of his or
25 her candidacy other than personal funds of the candidate used to
26 pay either a filing fee for a declaration of candidacy or a candidate
27 statement prepared pursuant to Section 13307 of the Elections
28 Code; the granting of discounts or rebates not extended to the
29 public generally or the granting of discounts or rebates by television
30 and radio stations and newspapers not extended on an equal basis
31 to all candidates for the same office; the payment of compensation
32 by any person for the personal services or expenses of any other
33 person if the services are rendered or expenses incurred on behalf
34 of a candidate or committee without payment of full and adequate
35 consideration.

36 (d) "Contribution" further includes any transfer of anything of
37 value received by a committee from another committee, unless
38 full and adequate consideration is received.

39 (e) "Contribution" does not include amounts received pursuant
40 to an enforceable promise to the extent those amounts have been

1 previously reported as a contribution. However, the fact that those
2 amounts have been received shall be indicated in the appropriate
3 campaign statement.

4 (f) “Contribution” does not include a payment made by an
5 occupant of a home or office for costs related to any meeting or
6 fundraising event held in the occupant’s home or office if the costs
7 for the meeting or fundraising event are five hundred dollars (\$500)
8 or less.

9 (g) Notwithstanding the foregoing definition of “contribution,”
10 the term does not include volunteer personal services or payments
11 made by any individual for his or her own travel expenses if the
12 payments are made voluntarily without any understanding or
13 agreement that they shall be, directly or indirectly, repaid to him
14 or her.

15 (h) “Contribution” further includes the payment of public
16 moneys by a state or local governmental agency for a
17 communication to the public that satisfies both of the following:

18 (1) The communication expressly advocates the election or
19 defeat of a clearly identified candidate or the qualification,
20 passage, or defeat of a clearly identified measure, or, taken as a
21 whole and in context, unambiguously urges a particular result in
22 an election.

23 (2) The communication is made at the behest of the affected
24 candidate or committee.

25 SEC. 2. Section 82031 of the Government Code is amended to
26 read:

27 82031. “Independent expenditure” means an expenditure made
28 by any person, including a payment of public moneys by a state
29 or local governmental agency, in connection with a communication
30 which expressly advocates the election or defeat of a clearly
31 identified candidate or the qualification, passage or defeat of a
32 clearly identified measure, or taken as a whole and in context,
33 unambiguously urges a particular result in an election but which
34 is not made to or at the behest of the affected candidate or
35 committee.

36 SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 *for a crime or infraction, within the meaning of Section 17556 of*
2 *the Government Code, or changes the definition of a crime within*
3 *the meaning of Section 6 of Article XIII B of the California*
4 *Constitution.*

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

8 ~~SECTION 1. Section 82025.5 is added to the Government~~
9 ~~Code, to read:~~

10 ~~82025.5. (a) Except as described in subdivision (b),~~
11 ~~“expenditure” includes the payment of public moneys by a state~~
12 ~~agency or local government agency, or by an agent of that agency,~~
13 ~~for a communication to the electorate within the jurisdiction of~~
14 ~~that agency regarding a clearly identified measure.~~

15 ~~(b) “Expenditure” does not include either of the following:~~

16 ~~(1) A communication where the information in the~~
17 ~~communication constitutes a fair and impartial presentation of~~
18 ~~relevant facts relating to the measure.~~

19 ~~(2) A communication otherwise required by law.~~

20 ~~(c) For purposes of this section, a communication clearly~~
21 ~~identifies a measure if it satisfies subparagraph (C) or (D) of~~
22 ~~paragraph (1) of subdivision (b) of Section 18225 of Title 2 of the~~
23 ~~California Code of Regulations.~~