

AMENDED IN ASSEMBLY APRIL 30, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 800

**Introduced by Assembly Member Gordon
(Coauthor: Assembly Member Dickinson)**

February 21, 2013

An act to amend Sections 82016, 84303, 89519, 90002, 90003, 90004, and 90005 of, and to add Sections 90008 and 90009 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 800, as amended, Gordon. Political Reform Act of 1974

(1) The Political Reform Act of 1974 defines various terms for purposes of the reporting and disclosure requirements under the act. 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. The act provides that a candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

This bill would establish a presumption that a committee is significantly influenced by a candidate for purposes of these provisions if any of several specified factors is satisfied.

(2) The act prohibits an agent or independent contractor from making an expenditure of \$500 or more, other than overhead or normal operating

expenses, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The act requires an agent or independent contractor to make known to the candidate or committee all information subject to this reporting requirement.

This bill, in addition, would require a subagent or 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 requirement described above, and would require that disclosure of this information by a subagent or subcontractor to the agent or independent contractor or by the agent or independent contractor to the candidate or committee occur no later than three working days prior to the time the campaign statement reporting the expenditure is required to be filed, except that an expenditure that is required to be reported as a late contribution or late independent expenditure must be reported to the candidate or committee within 24 hours of the time that it is made.

(3) The act defines as “surplus campaign funds” campaign funds that are under the control of a former candidate or former elected officer as of the date of leaving elective office or the end of the postelection reporting period following the defeat of the candidate for elective office, whichever occurs last. The act restricts the purposes for which surplus campaign funds may be expended.

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

(4) The act requires the Franchise Tax Board to conduct audits and field investigations of various financial statements required to be submitted by lobbying firms, lobbyist employers, candidates, and specified committees.

The act 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, runoff, or special election for the office for which the candidate ran, or following the election at which the measure was adopted or defeated, except as provided. The act prescribes the scope of campaign statements and reports to be included in audits and investigations of candidates,

controlled committees, or committees primarily supporting or opposing a candidate or a measure.

This bill would delete these provisions that delay the commencement of an audit or investigation and prescribe the scope of audits and investigations.

In addition to the general auditing requirements imposed on the Franchise Tax Board as described above, the act authorizes the Franchise Tax Board and the Fair Political Practices Commission to make investigations and audits with respect to any reports or statements required by specified provisions of the act regarding campaign disclosure, limitations on contributions, and lobbyists.

This bill would expand this authority to allow the Franchise Tax Board and the Fair Political Practices Commission to make investigations and audits with respect to any reports or statements required under the act.

The act requires the Franchise Tax Board periodically to prepare reports regarding its audit and investigations under the act and send them to the Commission, the Secretary of State, and the Attorney General. The act requires the board to complete its report of any audit conducted on a random basis pursuant to a specified statute within one year after the person or entity subject to the audit is selected by the Commission to be audited.

This bill would ~~delete this~~ *extend the deadline for completing reports regarding audits the Franchise Tax Board to complete its report of an audit conducted on a random basis from one to two years after the person or entity to be audited is selected by the Fair Political Practices Commission.*

The act prohibits a member, employee, or agent of the Franchise Tax Board from divulging or making known in any manner any particulars of any record, documents, or information which he or she receives by virtue of conducting audits and investigations, except as provided.

This bill, in addition, would make this prohibition applicable to a member, employee, or agent of the Fair Political Practices Commission.

This bill would authorize the Fair Political Practices Commission, and the Franchise Tax Board 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 is a report or statement that has not yet been filed. The bill would authorize the Commission to seek injunctive relief in a superior court to compel disclosure consistent with the act, and would require a court

to grant expedited review of an action filed pursuant to this provision, as specified.

(5) Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

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.

(6) 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.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The people of this state have a compelling interest in
4 ensuring that the political contributions and expenditures of
5 nonprofit entities, multipurpose organizations, and other
6 committees are subject to prompt public disclosure prior to
7 elections in order to provide as much information to the public as
8 possible in a timely manner.

9 (b) If the Fair Political Practices Commission determines that
10 an audit or investigation is in the best interests of the public in
11 order to detect violations of the Political Reform Act of 1974,
12 judicial review of an action in this regard should receive expedited
13 review.

14 (c) It is therefore the intent of the Legislature to ensure that the
15 Fair Political Practices Commission be given the authority to carry
16 out the provisions of the Political Reform Act of 1974 in a manner
17 that ensures information regarding political contributions and

1 expenditures is provided to the public in an expedited manner prior
2 to elections.

3 SEC. 2. Section 82016 of the Government Code is amended
4 to read:

5 82016. (a) “Controlled committee” means a committee that
6 is controlled directly or indirectly by a candidate or state measure
7 proponent or that acts jointly with a candidate, controlled
8 committee, or state measure proponent in connection with the
9 making of expenditures. A candidate or state measure proponent
10 controls a committee if he or she, his or her agent, or any other
11 committee he or she controls has a significant influence on the
12 actions or decisions of the committee.

13 (b) Notwithstanding subdivision (a), a political party committee,
14 as defined in Section 85205, is not a controlled committee.

15 (c) For purposes of subdivision (a), a committee is presumed
16 to be significantly influenced by a candidate, his or her agent, or
17 another committee he or she controls if any of the following is
18 satisfied:

19 (1) The candidate, or his or her agent, is a voting member of
20 the committee’s governing body.

21 (2) The candidate, or his or her agent, is involved in the
22 decisionmaking of the committee, or the development or
23 implementation of the committee’s campaign strategy.

24 ~~(3) The candidate, or his or her agent, is involved in directing,
25 planning, or implementing the committee’s fundraising activities
26 in a greater capacity than making endorsements or appearing at
27 fundraisers.~~

28 ~~(4)~~

29 (3) The candidate, or his or her agent, is substantially involved
30 in directing the day-to-day operations of the committee.

31 SEC. 3. Section 84303 of the Government Code is amended
32 to read:

33 84303. (a) An expenditure of five hundred dollars (\$500) or
34 more shall not be made, other than for overhead or normal
35 operating expenses, by an agent or independent contractor,
36 including, but not limited to, an advertising agency, on behalf of
37 or for the benefit of a candidate or committee unless it is reported
38 by the candidate or committee as if the expenditure were made
39 directly by the candidate or committee.

1 (b) A subagent or subcontractor who provides goods or services
2 to or for the benefit of a candidate or committee shall make known
3 to the agent or independent contractor all of the information
4 required to be reported by this section, and the agent or independent
5 contractor shall then make known to the candidate or committee
6 all of the information required to be reported by this section no
7 later than three working days prior to the time the campaign
8 statement reporting the expenditure is required to be filed, except
9 that an expenditure that is required to be reported by Section 84203
10 or 84204 shall be reported to the candidate or committee within
11 24 hours of the time that it is made.

12 SEC. 4. Section 89519 of the Government Code is amended
13 to read:

14 89519. (a) Upon the 90th day after leaving an elective office,
15 or the 90th day following the end of the postelection reporting
16 period following the defeat of a candidate for elective office,
17 whichever occurs last, campaign funds under the control of the
18 former candidate or elected officer shall be considered surplus
19 campaign funds and shall be disclosed pursuant to Chapter 4
20 (commencing with Section 84100).

21 (b) Surplus campaign funds shall be used only for the following
22 purposes:

23 (1) The payment of outstanding campaign debts or elected
24 officer's expenses.

25 (2) The repayment of contributions.

26 (3) Donations to a bona fide charitable, educational, civic,
27 religious, or similar tax-exempt, nonprofit organization, where no
28 substantial part of the proceeds will have a material financial effect
29 on the former candidate or elected officer, any member of his or
30 her immediate family, or his or her campaign treasurer.

31 (4) Contributions to a political party committee, provided the
32 campaign funds are not used to support or oppose candidates for
33 elective office. However, the campaign funds may be used by a
34 political party committee to conduct partisan voter registration,
35 partisan get-out-the-vote activities, and slate mailers as that term
36 is defined in Section 82048.3.

37 (5) Contributions to support or oppose a candidate for federal
38 office, a candidate for elective office in a state other than
39 California, or a ballot measure.

1 (6) The payment for professional services reasonably required
2 by the committee to assist in the performance of its administrative
3 functions, including payment for attorney's fees for litigation that
4 arises directly out of a candidate's or elected officer's activities,
5 duties, or status as a candidate or elected officer, including, but
6 not limited to, an action to enjoin defamation, defense of an action
7 brought for a violation of state or local campaign, disclosure, or
8 election laws, and an action from an election contest or recount.

9 (c) For purposes of this section, the payment for, or the
10 reimbursement to the state of, the costs of installing and monitoring
11 an electronic security system in the home or office, or both, of a
12 candidate or elected officer who has received threats to his or her
13 physical safety shall be deemed an outstanding campaign debt or
14 elected officer's expense, provided that the threats arise from his
15 or her activities, duties, or status as a candidate or elected officer
16 and that the threats have been reported to and verified by an
17 appropriate law enforcement agency. Verification shall be
18 determined solely by the law enforcement agency to which the
19 threat was reported. The candidate or elected officer shall report
20 an expenditure of campaign funds made pursuant to this section
21 to the Commission. The report to the Commission shall include
22 the date that the candidate or elected officer informed the law
23 enforcement agency of the threat, the name and the telephone
24 number of the law enforcement agency, and a brief description of
25 the threat. No more than five thousand dollars (\$5,000) in surplus
26 campaign funds may be used, cumulatively, by a candidate or
27 elected officer pursuant to this subdivision. Payments made
28 pursuant to this subdivision shall be made during the two years
29 immediately following the date upon which the campaign funds
30 become surplus campaign funds. The candidate or elected officer
31 shall reimburse the surplus fund account for the fair market value
32 of the security system no later than two years immediately
33 following the date upon which the campaign funds became surplus
34 campaign funds. The campaign funds become surplus campaign
35 funds upon sale of the property on which the system is installed,
36 or prior to the closing of the surplus campaign fund account,
37 whichever comes first. The electronic security system shall be the
38 property of the campaign committee of the candidate or elected
39 officer.

1 SEC. 5. Section 90002 of the Government Code is amended
2 to read:

3 90002. (a) Audits and investigations of lobbying firms and
4 lobbyist employers shall be performed on a biennial basis and shall
5 cover reports filed during a period of two years.

6 (b) If a lobbying firm or lobbyist employer keeps a separate
7 account for all receipts and payments for which reporting is
8 required by this chapter, the requirement of an audit under
9 subdivision (a) of Section 90001 shall be satisfied by an audit of
10 that account and the supporting documentation required to be
11 maintained by Section 86110.

12 SEC. 6. Section 90003 of the Government Code is amended
13 to read:

14 90003. In addition to the audits and investigations required by
15 Section 90001, the Franchise Tax Board and the Commission may
16 make investigations and audits with respect to any reports or
17 statements required by this title.

18 SEC. 7. Section 90004 of the Government Code is amended
19 to read:

20 90004. (a) The Franchise Tax Board shall periodically prepare
21 reports, which, except as otherwise provided in this section, shall
22 be sent to the Commission, the Secretary of State, and the Attorney
23 General. If the reports relate to candidates for or committees
24 supporting or opposing candidates for the office of Attorney
25 General, the reports shall be sent to the Commission, the Secretary
26 of State, and the District Attorneys of the Counties of Los Angeles,
27 Sacramento, and San Francisco. If the reports relate to local
28 candidates and their controlled committees, the reports shall be
29 sent to the Commission, the local filing officer with whom the
30 candidate or committee is required to file the originals of campaign
31 reports pursuant to Section 84215, and the district attorney for the
32 candidate's county of domicile.

33 *(b) The Franchise Tax Board shall complete its report of any*
34 *audit conducted on a random basis pursuant to Section 90001*
35 *within two years after the person or entity subject to the audit is*
36 *selected by the Commission to be audited.*

37 ~~(b)~~

38 (c) The reports of the Franchise Tax Board shall be public
39 documents and shall contain in detail the Franchise Tax Board's
40 findings with respect to the accuracy and completeness of each

1 report and statement reviewed and its findings with respect to any
2 report or statement that should have been but was not filed. The
3 Secretary of State and the local filing officer shall place the audit
4 reports in the appropriate campaign statement or lobbying files.

5 SEC. 8. Section 90005 of the Government Code is amended
6 to read:

7 90005. A member, employee, or agent of the Franchise Tax
8 Board or the Commission shall not divulge or make known in any
9 manner the particulars of any record, documents, or information
10 that he or she receives by virtue of this chapter, except in
11 furtherance of the work of the Franchise Tax Board or the
12 Commission or in connection with a court proceeding or the lawful
13 investigation of any agency.

14 SEC. 9. Section 90008 is added to the Government Code, to
15 read:

16 90008. (a) It is the intent of the Legislature that the people of
17 California have timely access to information concerning the
18 campaign contributions and expenditures of all committees,
19 corporations, and individuals, and that this information be provided
20 before the election, when it is relevant, in accordance with the
21 requirements of this title. It is the further intent of the Legislature
22 that the Commission ensure that these disclosures are being made,
23 and that this title be liberally construed and any judicial process
24 be expedited to achieve this purpose.

25 (b) The Commission, and the Franchise Tax Board at the
26 direction of the Commission, may audit any record required to be
27 maintained under this title to ensure compliance with this title prior
28 to an election, even if the record is a report or statement that has
29 not yet been filed.

30 SEC. 10. Section 90009 is added to the Government Code, to
31 read:

32 90009. (a) To further the purposes ~~identified in Section 90008~~
33 *of this title*, the Commission may seek injunctive relief in a superior
34 court to compel disclosure consistent with this title.

35 (b) A court shall grant expedited review to an action filed
36 pursuant to subdivision (a) as follows:

37 (1) The court shall conduct an expedited hearing with an
38 opportunity for the defendant to respond.

39 (2) Briefs of the parties shall be required pursuant to an
40 expedited schedule.

1 (c) A superior or appellate court may, at its discretion, grant a
2 stay of an order granting relief pursuant to subdivision (a).

3 SEC. 11. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

12 SEC. 12. The Legislature finds and declares that this bill
13 furthers the purposes of the Political Reform Act of 1974 within
14 the meaning of subdivision (a) of Section 81012 of the Government
15 Code.