

AMENDED IN ASSEMBLY MAY 14, 2013
AMENDED IN ASSEMBLY APRIL 15, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 914

Introduced by Assembly Member Gordon

February 22, 2013

An act to ~~amend Section 12586 of, and to~~ add Article 3.5 (commencing with Section 84350) to Chapter 4 of Title 9 of; the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 914, as amended, Gordon. Political Reform Act of 1974: campaign disclosures.

~~(1)~~The Political Reform Act of 1974 imposes various reporting requirements with regard to contributions and independent expenditures, as defined, made for political purposes. The act establishes the Fair Political Practices Commission as the agency responsible for administering and enforcing the act. *A violation of the act's provisions is punishable as a misdemeanor.*

This bill would require the Commission to develop a Nonprofit and Multipurpose Organization Disclosure Statement form. The bill would require that the form provide for the disclosure of specified information relating to contributions, expenditures, and independent expenditures made by, and donations made to, a nonprofit corporation. The bill would require a nonprofit corporation to file a Nonprofit and Multipurpose Organization Disclosure Statement, at a time prescribed by the Commission, in any year in which the nonprofit corporation makes

combined contributions, expenditures, and independent expenditures in this state aggregating \$50,000 or more during the nonprofit corporation's fiscal year.

The bill would require the Commission to make Nonprofit and Multipurpose Organization Disclosure Statements available to the public. The bill would authorize a nonprofit corporation or a donor to the nonprofit corporation to petition the Commission to maintain the confidentiality of information relating to donors and donations. The bill would require the Commission to grant a petition to maintain the confidentiality of donor and donation information if the petitioner establishes by clear and convincing evidence that the public disclosure of donor information will cause undue harm, threats, harassment, or reprisals to the donor, or that the donor did not know or have reason to know that his or her donation would be used to make a contribution, expenditure, or independent expenditure, as specified.

~~(2) The Supervision of Trustees and Fundraisers for Charitable Purposes Act provides the Attorney General with enforcement and supervisory powers relating to certain entities, including charitable corporations, unincorporated associations, and trustees. Existing law requires these entities to file with the Attorney General periodic written reports, under oath, that set forth information as to the nature of the assets held for charitable purposes and the administration of these assets by the corporation or the trustee in accordance with rules and regulations of the Attorney General. These requirements do not apply to an entity that is a committee for purposes of the Political Reform Act of 1974 that is required to file specified campaign statements pursuant to that act.~~

~~This bill would additionally require a charitable corporation, unincorporated association, or trustee that is required to file periodic written reports with the Attorney General to file a Nonprofit and Multipurpose Organization Disclosure Statement as an attachment to its periodic written reports if the entity made combined contributions, expenditures, or independent expenditures in this state aggregating \$50,000 or more during the entity's fiscal year, as specified.~~

~~This bill would authorize an entity or its donors to petition the Attorney General to maintain the confidentiality of certain donor information in the same manner described above with respect to similar statements filed with the Commission, as specified.~~

~~*By expanding the scope of an existing crime, this 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 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: 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. Section 12586 of the Government Code is~~
2 ~~amended to read:~~
3 ~~12586. (a) Except as otherwise provided and except corporate~~
4 ~~trustees that are subject to the jurisdiction of the Commissioner of~~
5 ~~Financial Institutions of the State of California under Division 1~~
6 ~~(commencing with Section 99) of the Financial Code or to the~~
7 ~~Comptroller of the Currency of the United States, every charitable~~
8 ~~corporation, unincorporated association, and trustee subject to this~~
9 ~~article shall, in addition to filing copies of the instruments~~
10 ~~previously required, file with the Attorney General periodic written~~
11 ~~reports, under oath, setting forth information as to the nature of~~
12 ~~the assets held for charitable purposes and the administration~~
13 ~~thereof by the corporation, unincorporated association, or trustee,~~
14 ~~in accordance with rules and regulations of the Attorney General.~~
15 ~~(b) The Attorney General shall make rules and regulations as~~
16 ~~to the time for filing reports, the contents thereof, and the manner~~
17 ~~of executing and filing them. The Attorney General may classify~~
18 ~~trusts and other relationships concerning property held for a~~
19 ~~charitable purpose as to purpose, nature of assets, duration of the~~
20 ~~trust or other relationship, amount of assets, amounts to be devoted~~
21 ~~to charitable purposes, nature of trustee, or otherwise, and may~~
22 ~~establish different rules for the different classes as to time and~~
23 ~~nature of the reports required to the ends (1) that he or she shall~~
24 ~~receive reasonably current, periodic reports as to all charitable~~
25 ~~trusts or other relationships of a similar nature, which will enable~~

1 ~~him or her to ascertain whether they are being properly~~
2 ~~administered, and (2) that periodic reports shall not unreasonably~~
3 ~~add to the expense of the administration of charitable trusts and~~
4 ~~similar relationships. The Attorney General may suspend the filing~~
5 ~~of reports as to a particular charitable trust or relationship for a~~
6 ~~reasonable, specifically designated time upon written application~~
7 ~~of the trustee filed with the Attorney General and after the Attorney~~
8 ~~General has filed in the register of charitable trusts a written~~
9 ~~statement that the interests of the beneficiaries will not be~~
10 ~~prejudiced thereby and that periodic reports are not required for~~
11 ~~proper supervision by his or her office.~~

12 ~~(e) A copy of an account filed by the trustee in any court having~~
13 ~~jurisdiction of the trust or other relationship, if the account~~
14 ~~substantially complies with the rules and regulations of the~~
15 ~~Attorney General, may be filed as a report required by this section.~~

16 ~~(d) The first periodic written report, unless the filing thereof is~~
17 ~~suspended as herein provided, shall be filed not later than four~~
18 ~~months and 15 days following the close of the first calendar or~~
19 ~~fiscal year in which property is initially received. If any part of~~
20 ~~the income or principal of a trust previously established is~~
21 ~~authorized or required to be applied to a charitable purpose at the~~
22 ~~time this article takes effect, the first report shall be filed at the~~
23 ~~close of the calendar or fiscal year in which it was registered with~~
24 ~~the Attorney General or not later than four months and 15 days~~
25 ~~following the close of the calendar or fiscal period.~~

26 ~~(e) Every charitable corporation, unincorporated association,~~
27 ~~and trustee required to file reports with the Attorney General~~
28 ~~pursuant to this section that receives or accrues in any fiscal year~~
29 ~~gross revenue of two million dollars (\$2,000,000) or more,~~
30 ~~exclusive of grants from, and contracts for services with,~~
31 ~~governmental entities for which the governmental entity requires~~
32 ~~an accounting of the funds received, shall do all of the following:~~

33 ~~(1) Prepare annual financial statements using generally accepted~~
34 ~~accounting principles that are audited by an independent certified~~
35 ~~public accountant in conformity with generally accepted auditing~~
36 ~~standards. For any nonaudit services performed by the firm~~
37 ~~conducting the audit, the firm and its individual auditors shall~~
38 ~~adhere to the standards for auditor independence set forth in the~~
39 ~~latest revision of the Government Auditing Standards, issued by~~
40 ~~the Comptroller General of the United States (the Yellow Book).~~

1 The Attorney General may, by regulation, prescribe standards for
2 auditor independence in the performance of nonaudit services,
3 including standards different from those set forth in the Yellow
4 Book. If a charitable corporation or unincorporated association
5 that is required to prepare an annual financial statement pursuant
6 to this subdivision is under the control of another organization,
7 the controlling organization may prepare a consolidated financial
8 statement. The audited financial statements shall be available for
9 inspection by the Attorney General and by members of the public
10 no later than nine months after the close of the fiscal year to which
11 the statements relate. A charity shall make its annual audited
12 financial statements available to the public in the same manner
13 that is prescribed for IRS Form 990 by the latest revision of Section
14 6104(d) of the Internal Revenue Code and associated regulations.

15 (2) If it is a corporation, have an audit committee appointed by
16 the board of directors. The audit committee may include persons
17 who are not members of the board of directors, but the member or
18 members of the audit committee shall not include any members
19 of the staff, including the president or chief executive officer and
20 the treasurer or chief financial officer. If the corporation has a
21 finance committee, it must be separate from the audit committee.
22 Members of the finance committee may serve on the audit
23 committee; however, the chairperson of the audit committee may
24 not be a member of the finance committee and members of the
25 finance committee shall constitute less than one-half of the
26 membership of the audit committee. Members of the audit
27 committee shall not receive any compensation from the corporation
28 in excess of the compensation, if any, received by members of the
29 board of directors for service on the board and shall not have a
30 material financial interest in any entity doing business with the
31 corporation. Subject to the supervision of the board of directors,
32 the audit committee shall be responsible for recommending to the
33 board of directors the retention and termination of the independent
34 auditor and may negotiate the independent auditor's compensation
35 on behalf of the board of directors. The audit committee shall
36 confer with the auditor to satisfy its members that the financial
37 affairs of the corporation are in order, shall review and determine
38 whether to accept the audit, shall assure that any nonaudit services
39 performed by the auditing firm conform with standards for auditor
40 independence referred to in paragraph (1), and shall approve

1 performance of nonaudit services by the auditing firm. If the
2 charitable corporation that is required to have an audit committee
3 pursuant to this subdivision is under the control of another
4 corporation, the audit committee may be part of the board of
5 directors of the controlling corporation.

6 (f) If, independent of the audit requirement set forth in paragraph
7 (1) of subdivision (e), a charitable corporation, unincorporated
8 association, or trustee required to file reports with the Attorney
9 General pursuant to this section prepares financial statements that
10 are audited by a certified public accountant, the audited financial
11 statements shall be available for inspection by the Attorney General
12 and shall be made available to members of the public in conformity
13 with paragraph (1) of subdivision (e).

14 (g) The board of directors of a charitable corporation or
15 unincorporated association, or an authorized committee of the
16 board, and the trustee or trustees of a charitable trust shall review
17 and approve the compensation, including benefits, of the president
18 or chief executive officer and the treasurer or chief financial officer
19 to assure that it is just and reasonable. This review and approval
20 shall occur initially upon the hiring of the officer, whenever the
21 term of employment, if any, of the officer is renewed or extended,
22 and whenever the officer's compensation is modified. Separate
23 review and approval shall not be required if a modification of
24 compensation extends to substantially all employees. If a charitable
25 corporation is affiliated with other charitable corporations, the
26 requirements of this section shall be satisfied if review and approval
27 is obtained from the board, or an authorized committee of the
28 board, of the charitable corporation that makes retention and
29 compensation decisions regarding a particular individual.

30 (h) (1) This subdivision applies only to a charitable corporation,
31 unincorporated association, or trustee that is required to file reports
32 with the Attorney General pursuant to this section and that makes
33 combined contributions, expenditures, and independent
34 expenditures in this state aggregating fifty thousand dollars
35 (\$50,000) or more during the entity's fiscal year.

36 (2) The Fair Political Practices Commission shall develop a
37 Nonprofit and Multipurpose Organization Disclosure Statement
38 form that an entity described in paragraph (1) shall file with the
39 Attorney General, as required by this subdivision. The form, which
40 may be identical to the form created for nonprofit corporations

1 pursuant to Section 84350, shall provide for the disclosure of all
2 of the following information:

3 (A) The aggregate combined dollar amount of contributions,
4 expenditures, and independent expenditures that are made during
5 the reporting period.

6 (B) The amount of expenses attributable to contributions,
7 expenditures, and independent expenditures as a percentage of the
8 entity's total expenses that are made during the reporting period.

9 (C) For purposes of an entity for which the combined amounts
10 of contributions, expenditures, and independent expenditures made
11 during the reporting period exceed 10 percent of the entity's total
12 expenses, each of the following with respect to contributions,
13 expenditures, and independent expenditures made during that
14 period:

15 (i) The amount of any funds, or the fair market value of any
16 services or assets, that are provided in relation to a contribution,
17 expenditure, or independent expenditure.

18 (ii) The amount or fair market value of any liabilities incurred
19 in relation to a contribution, expenditure, or independent
20 expenditure.

21 (iii) The date that the funds, services, or assets were provided
22 or the liabilities were incurred.

23 (iv) The name and address of the recipient of the contribution,
24 expenditure, or independent expenditure.

25 (v) A description of the contribution, expenditure, or
26 independent expenditure and its purpose, including whether the
27 contribution, expenditure, or independent expenditure was made
28 in support of or opposition to a candidate, political party, ballot
29 measure, or other question put before the voters in an election.

30 (vi) Information related to each donor who made donations in
31 an aggregate amount of ten thousand dollars (\$10,000) or more to
32 the entity during the reporting period, including the name and
33 address of the donor, the name of the employer of the donor, if
34 available, and the date and amount of each donation from that
35 donor during the reporting period.

36 (3) (A) Except as otherwise provided in this paragraph, an entity
37 described in paragraph (1) shall file a Nonprofit and Multipurpose
38 Organization Disclosure Statement as an attachment to its periodic
39 written reports required by this section with the Attorney General
40 for any year in which the entity meets the fifty thousand dollar

1 (~~\$50,000~~) ~~threshold for combined aggregate contributions,~~
 2 ~~expenditures, and independent expenditures made during a fiscal~~
 3 ~~year. Except as provided in paragraph (4), the Attorney General~~
 4 ~~shall make the filed Nonprofit and Multipurpose Organization~~
 5 ~~Disclosure Statement available to the public through the Register~~
 6 ~~of Charitable Corporations and Trustees established pursuant to~~
 7 ~~Section 12584.~~

8 (B) ~~An entity is not required to disclose the information~~
 9 ~~described in subparagraph (C) of paragraph (2) if that information~~
 10 ~~has been previously disclosed by the entity in any other campaign~~
 11 ~~statement or report required by the Political Reform Act of 1974~~
 12 ~~(Title 9 (commencing with Section 81000)).~~

13 (C) ~~If an entity required to file a Nonprofit and Multipurpose~~
 14 ~~Organization Disclosure Statement pursuant to this subdivision~~
 15 ~~maintains one or more segregated bank accounts for the purpose~~
 16 ~~of making election-related contributions, expenditures, or~~
 17 ~~independent expenditures, and those accounts represent the~~
 18 ~~exclusive source of the entity's election-related contributions,~~
 19 ~~expenditures, and independent expenditures in this state, the entity~~
 20 ~~is only required to report information described in clause (vi) of~~
 21 ~~subparagraph (C) of paragraph (2) with respect to donations~~
 22 ~~deposited into the segregated election-related accounts.~~

23 (4) ~~A charitable corporation, unincorporated association, or~~
 24 ~~trustee that is subject to the reporting requirements of this~~
 25 ~~subdivision, or a donor to any of these entities, may petition the~~
 26 ~~Attorney General, no later than 45 days prior to the date on which~~
 27 ~~the Nonprofit and Multipurpose Organization Disclosure Statement~~
 28 ~~must be filed, to maintain the confidentiality of donor information~~
 29 ~~that is disclosed on the statement. If a petitioner demonstrates by~~
 30 ~~clear and convincing evidence that the public disclosure of donor~~
 31 ~~information reported on the Nonprofit and Multipurpose~~
 32 ~~Organization Disclosure Statement will cause undue harm, threats,~~
 33 ~~harassment, or reprisals to the donor or that the donor did not know~~
 34 ~~or have reason to know that his or her donation would be used to~~
 35 ~~make a contribution, expenditure, or independent expenditure in~~
 36 ~~this state, the Attorney General shall treat the donor and donation~~
 37 ~~information as confidential and shall redact the donor and donation~~
 38 ~~information from any documents that are made available to the~~
 39 ~~public. The Attorney General shall inform the petitioner, in writing,~~
 40 ~~whether the petition to maintain the confidentiality of donor and~~

1 donation information has been granted or denied. The Attorney
2 General's grant or denial determination shall include a statement
3 of findings and conclusions, and the reasons or basis for the
4 determination.

5 (5) A charitable corporation, unincorporated association, or
6 trustee that is subject to the reporting requirements of this
7 subdivision shall file a copy of the Nonprofit and Multipurpose
8 Organization Disclosure Statement with the Fair Political Practices
9 Commission at the same time that the entity files the statement
10 with the Attorney General. However, if a charitable corporation,
11 unincorporated association, or trustee that is subject to the reporting
12 requirements of this subdivision, or a donor to any of these entities,
13 petitions the Attorney General to maintain the confidentiality of
14 donor and donation information contained in the statement pursuant
15 to paragraph (4), the entity shall not be required to file a copy of
16 the Nonprofit and Multipurpose Organization Disclosure Statement
17 with the Fair Political Practices Commission until the Attorney
18 General has informed the petitioner whether the petition has been
19 granted or denied. If the Attorney General has approved a petition
20 to maintain the confidentiality of donor and donation information
21 disclosed on the Nonprofit and Multipurpose Organization
22 Disclosure Statement pursuant to paragraph (4), the Fair Political
23 Practices Commission shall also treat that information as
24 confidential and shall not make that information publicly available.

25 (6) For purposes of this subdivision, the following terms have
26 the following meanings:

27 (A) "Contribution" has the same meaning as set forth in Section
28 82015.

29 (B) "Expenditure" has the same meaning as set forth in Section
30 82025.

31 (C) "Independent expenditure" has the same meaning as set
32 forth in Section 82031.

33 ~~SEC. 2.~~

34 *SECTION 1.* Article 3.5 (commencing with Section 84350) is
35 added to Chapter 4 of Title 9 of the Government Code, to read:

36
37 Article 3.5. Nonprofit and Multipurpose Organizations

38
39 84350. (a) This section shall apply only to a nonprofit
40 corporation, as defined in Section 501(c) of the Internal Revenue

1 Code, that is not required to file periodic written reports with the
2 Attorney General under the Supervision of Trustees and
3 Fundraisers for Charitable Purposes Act (Article 7 (commencing
4 with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title
5 2) and that makes combined contributions, expenditures, and
6 independent expenditures in this state aggregating fifty thousand
7 dollars (\$50,000) or more during the nonprofit corporation's fiscal
8 year.

9 (b) The Commission shall develop a Nonprofit and Multipurpose
10 Organization Disclosure Statement form that provides for the
11 disclosure of all of the following information:

12 (1) The aggregate combined dollar amount of contributions,
13 expenditures, and independent expenditures that are made during
14 the reporting period.

15 (2) The amount of expenses attributable to contributions,
16 expenditures, and independent expenditures as a percentage of the
17 nonprofit organization's total expenses that are made during the
18 reporting period.

19 (3) For purposes of a nonprofit organization for which the
20 combined amounts of contributions, expenditures, and independent
21 expenditures made during the reporting period exceed 10 percent
22 of the nonprofit organization's total expenses, each of the following
23 with respect to contributions, expenditures, and independent
24 expenditures made during that period:

25 (A) The amount of any funds, or the fair market value of any
26 services or assets, that are provided in relation to a contribution,
27 expenditure, or independent expenditure.

28 (B) The amount or fair market value of any liabilities incurred
29 in relation to a contribution, expenditure, or independent
30 expenditure.

31 (C) The date that the funds, services, or assets were provided
32 or the liabilities were incurred.

33 (D) The name and address of the recipient of the contribution,
34 expenditure, or independent expenditure.

35 (E) A description of the contribution, expenditure, or
36 independent expenditures and its purpose, including whether the
37 contribution, expenditure, or independent expenditure was made
38 in support of or opposition to a candidate, political party, ballot
39 measure, or other question put before the voters in an election.

1 (F) Information related to each donor who made donations in
2 an aggregate amount of ten thousand dollars (\$10,000) or more to
3 the nonprofit corporation during the reporting period, including
4 each of the following:

- 5 (i) The name and address of the donor.
- 6 (ii) The name of the employer of the donor, if available.
- 7 (iii) The date and amount of each donation from that donor
8 during the reporting period.

9 (c) (1) Except as otherwise provided in this subdivision, a
10 nonprofit corporation described in subdivision (a) shall file, at a
11 time to be determined by the Commission, a Nonprofit and
12 Multipurpose Organization Disclosure Statement with the
13 Commission for any year in which the nonprofit corporation meets
14 the fifty thousand dollar (\$50,000) threshold for combined
15 aggregate contributions, expenditures, and independent
16 expenditures made during a fiscal year. Except as provided in
17 subdivision (d), the Commission shall make the filed Nonprofit
18 and Multipurpose Organization Disclosure Statement available to
19 the public, as required by Section 81008.

20 (2) A nonprofit corporation is not required to disclose the
21 information described in paragraph (3) of subdivision (b) if that
22 information has been previously disclosed by the nonprofit
23 corporation in any other campaign statement or report required by
24 this title.

25 (3) If a nonprofit corporation required to file a Nonprofit and
26 Multipurpose Organization Disclosure Statement pursuant to this
27 section maintains one or more segregated bank accounts for the
28 purpose of making election-related contributions, expenditures,
29 or independent expenditures, and those accounts represent the
30 exclusive source of the nonprofit corporation's election-related
31 contributions, expenditures, and independent expenditures in this
32 state, the nonprofit corporation is only required to report
33 information described in subparagraph (F) of paragraph (3) of
34 subdivision (b) with respect to donations deposited into the
35 segregated election-related accounts.

36 (d) A nonprofit corporation or a donor to a nonprofit corporation
37 that is subject to the reporting requirements of this section may
38 petition the Commission, no later than 45 days prior to the date
39 on which the Nonprofit and Multipurpose Organization Disclosure
40 Statement must be filed, to maintain the confidentiality of donor

1 information that is disclosed on the statement. If a petitioner
2 demonstrates by clear and convincing evidence that the public
3 disclosure of donor information reported on the Nonprofit and
4 Multipurpose Organization Disclosure Statement will cause undue
5 harm, threats, harassment, or reprisals to the donor or that the donor
6 did not know or have reason to know that his or her donation would
7 be used to make a contribution, expenditure, or independent
8 expenditure in this state, the Commission shall, notwithstanding
9 Section 81008, treat the donor and donation information as
10 confidential and shall redact the donor and donation information
11 from any documents that are made available to the public. The
12 Commission shall inform the petitioner, in writing, whether the
13 petition to maintain the confidentiality of donor and donation
14 information has been granted or denied. The Commission's grant
15 or denial determination shall include a statement of findings and
16 conclusions, and the reasons or basis for the determination.

17 ~~SEC. 3.~~

18 *SEC. 2.* No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

27 ~~SEC. 4.~~

28 *SEC. 3.* The Legislature finds and declares that this bill furthers
29 the purposes of the Political Reform Act of 1974 within the
30 meaning of subdivision (a) of Section 81012 of the Government
31 Code.