

ASSEMBLY BILL

No. 1544

Introduced by Assembly Members Cooley and Jones

July 15, 2015

An act to amend Section 82015 of the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1544, as introduced, Cooley. Political Reform Act of 1974: behested payments.

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing and related matters, including campaign contributions, as defined. Under existing law, a payment made at the behest of a candidate for elective office is considered a contribution unless the payment is made for purposes unrelated to the candidate's candidacy. Under the act, a payment made by a government agency or an exempt nonprofit organization is presumed to be unrelated to a candidate's candidacy. Likewise, a payment made principally for legislative, governmental, or charitable purposes is presumed to be unrelated to a candidate's candidacy, and such payments are required to be reported by a candidate who is an elected officer if they total \$5,000 or more in the aggregate from a single source in a calendar year. For purposes of the act, an elected officer retains his or her status as a candidate for that office until the officer has terminated all of his or her committees and no longer holds the office, as specified.

This bill would create a conclusive presumption that a payment made at the behest of a candidate who is an elected officer by a state, local, or federal governmental agency that is made principally for legislative

or governmental purposes is unrelated to the elected officer’s candidacy and would exempt the payment from the reporting requirement for behested payments.

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.

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This bill would declare that it is to take effect immediately as an urgency statute.

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

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

8 (b) (1) A payment made at the behest of a committee, as defined
9 in subdivision (a) of Section 82013, is a contribution to the
10 committee unless full and adequate consideration is received from
11 the committee for making the payment.

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

15 (A) Full and adequate consideration is received from the
16 candidate.

17 (B) It is clear from the surrounding circumstances that the
18 payment was made for purposes unrelated to his or her candidacy
19 for elective office. The following types of payments are presumed

1 to be for purposes unrelated to a candidate’s candidacy for elective
2 office:

3 (i) A payment made principally for personal purposes, in which
4 case it may be considered a gift under the provisions of Section
5 82028. Payments that are otherwise subject to the limits of Section
6 86203 are presumed to be principally for personal purposes.

7 (ii) A payment made by a state, local, or federal governmental
8 agency or by a nonprofit organization that is exempt from taxation
9 under Section 501(c)(3) of the Internal Revenue Code. *The*
10 *presumption is conclusive for, and the reporting requirement*
11 *described in clause (iii) does not apply to, a payment by a state,*
12 *local, or federal governmental agency that is made principally for*
13 *legislative or governmental purposes at the behest of a candidate*
14 *who is an elected officer.*

15 (iii) A payment not covered by clause (i), made principally for
16 legislative, governmental, or charitable purposes, in which case it
17 is neither a gift nor a contribution. However, payments of this type
18 that are made at the behest of a candidate who is an elected officer
19 shall be reported within 30 days following the date on which the
20 payment or payments equal or exceed five thousand dollars
21 (\$5,000) in the aggregate from the same source in the same
22 calendar year in which they are made. The report shall be filed by
23 the elected officer with the elected officer’s agency and shall be
24 a public record subject to inspection and copying pursuant to
25 subdivision (a) of Section 81008. The report shall contain the
26 following information: name of payor, address of payor, amount
27 of the payment, date or dates the payment or payments were made,
28 the name and address of the payee, a brief description of the goods
29 or services provided or purchased, if any, and a description of the
30 specific purpose or event for which the payment or payments were
31 made. Once the five-thousand-dollar (\$5,000) aggregate threshold
32 from a single source has been reached for a calendar year, all
33 payments for the calendar year made by that source shall be
34 disclosed within 30 days after the date the threshold was reached
35 or the payment was made, whichever occurs later. Within 30 days
36 after receipt of the report, state agencies shall forward a copy of
37 these reports to the Commission, and local agencies shall forward
38 a copy of these reports to the officer with whom elected officers
39 of that agency file their campaign statements.

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

- 6 (i) Communications that contain express advocacy of the
7 nomination or election of the candidate or the defeat of his or her
8 opponent.
- 9 (ii) Communications that contain reference to the candidate’s
10 candidacy for elective office, the candidate’s election campaign,
11 or the candidate’s or his or her opponent’s qualifications for
12 elective office.
- 13 (iii) Solicitation of contributions to the candidate or to third
14 persons for use in support of the candidate or in opposition to his
15 or her opponent.
- 16 (iv) Arranging, coordinating, developing, writing, distributing,
17 preparing, or planning of any communication or activity described
18 in clause (i), (ii), or (iii).
- 19 (v) Recruiting or coordinating campaign activities of campaign
20 volunteers on behalf of the candidate.
- 21 (vi) Preparing campaign budgets.
- 22 (vii) Preparing campaign finance disclosure statements.
- 23 (viii) Communications directed to voters or potential voters as
24 part of activities encouraging or assisting persons to vote if the
25 communication contains express advocacy of the nomination or
26 election of the candidate or the defeat of his or her opponent.

27 (D) A contribution made at the behest of a candidate for a
28 different candidate or to a committee not controlled by the
29 behesting candidate is not a contribution to the behesting candidate.

30 (3) A payment made at the behest of a member of the Public
31 Utilities Commission, made principally for legislative,
32 governmental, or charitable purposes, is not a contribution.
33 However, payments of this type shall be reported within 30 days
34 following the date on which the payment or payments equal or
35 exceed five thousand dollars (\$5,000) in the aggregate from the
36 same source in the same calendar year in which they are made.
37 The report shall be filed by the member with the Public Utilities
38 Commission and shall be a public record subject to inspection and
39 copying pursuant to subdivision (a) of Section 81008. The report
40 shall contain the following information: name of payor, address

1 of payor, amount of the payment, date or dates the payment or
2 payments were made, the name and address of the payee, a brief
3 description of the goods or services provided or purchased, if any,
4 and a description of the specific purpose or event for which the
5 payment or payments were made. Once the five-thousand-dollar
6 (\$5,000) aggregate threshold from a single source has been reached
7 for a calendar year, all payments for the calendar year made by
8 that source shall be disclosed within 30 days after the date the
9 threshold was reached or the payment was made, whichever occurs
10 later. Within 30 days after receipt of the report, the Public Utilities
11 Commission shall forward a copy of these reports to the Fair
12 Political Practices Commission.

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

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

30 (e) "Contribution" does not include amounts received pursuant
31 to an enforceable promise to the extent those amounts have been
32 previously reported as a contribution. However, the fact that those
33 amounts have been received shall be indicated in the appropriate
34 campaign statement.

35 (f) (1) Except as provided in paragraph (2) or (3), "contribution"
36 does not include a payment made by an occupant of a home or
37 office for costs related to any meeting or fundraising event held
38 in the occupant's home or office if the costs for the meeting or
39 fundraising event are five hundred dollars (\$500) or less.

1 (2) “Contribution” includes a payment made by a lobbyist or a
 2 cohabitant of a lobbyist for costs related to a fundraising event
 3 held at the home of the lobbyist, including the value of the use of
 4 the home as a fundraising event venue. A payment described in
 5 this paragraph shall be attributable to the lobbyist for purposes of
 6 Section 85702.

7 (3) “Contribution” includes a payment made by a lobbying firm
 8 for costs related to a fundraising event held at the office of the
 9 lobbying firm, including the value of the use of the office as a
 10 fundraising event venue.

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

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

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

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

26 (i) “Contribution” further includes a payment made by a person
 27 to a multipurpose organization as defined and described in Section
 28 84222.

29 SEC. 2. The Legislature finds and declares that this bill furthers
 30 the purposes of the Political Reform Act of 1974 within the
 31 meaning of subdivision (a) of Section 81012 of the Government
 32 Code.

33 SEC. 3. This act is an urgency statute necessary for the
 34 immediate preservation of the public peace, health, or safety within
 35 the meaning of Article IV of the Constitution and shall go into
 36 immediate effect. The facts constituting the necessity are:

37 It is a core principle of representative government that an elected
 38 official’s duties include advocacy of government agencies in favor
 39 of expenditures that benefit constituents or public purposes
 40 generally. It is also well-established that a government agency

1 may not expend public funds for purposes unrelated to the business
2 of that agency. To that end, government expenditures are subject
3 to a myriad of laws designed to protect the public interest and
4 promote transparency, including laws relating to open meetings,
5 the appropriate use of public resources, conflicts of interests, and
6 disbursement practices. Therefore, it is necessary that this act take
7 effect immediately in order to provide clarity for elected officials,
8 in conformity with the Legislature's intent when it enacted Chapter
9 450 of the Statutes of 1997 that reporting requirements for behested
10 payments not apply with respect to the payments made by a
11 government agency at the behest of an elected official for a
12 legislative or governmental purpose.

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