

AMENDED IN ASSEMBLY AUGUST 17, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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.~~

This bill would provide that the provision relating to payments made by a government agency exclusively governs a payment by a governmental agency that is made principally for legislative or governmental purposes at the behest of a candidate who is an elected officer, and consequently the payment would not be subject to the reporting requirement that applies generally to payments made for legislative, governmental, or charitable purposes.

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.

~~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.~~

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.

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

4 (A) Full and adequate consideration is received from the
5 candidate.

6 (B) It is clear from the surrounding circumstances that the
7 payment was made for purposes unrelated to his or her candidacy
8 for elective office. The following types of payments are presumed
9 to be for purposes unrelated to a candidate's candidacy for elective
10 office:

11 (i) A payment made principally for personal purposes, in which
12 case it may be considered a gift under the provisions of Section
13 82028. Payments that are otherwise subject to the limits of Section
14 86203 are presumed to be principally for personal purposes.

15 (ii) A payment made by a state, local, or federal governmental
16 agency or by a nonprofit organization that is exempt from taxation
17 under Section 501(c)(3) of the Internal Revenue Code. ~~The~~
18 ~~presumption is conclusive for, and the reporting requirement~~
19 ~~described in clause (iii) does not apply to, a payment by a state,~~
20 ~~local, or federal governmental agency that is made principally for~~
21 ~~legislative or governmental purposes at the behest of a candidate~~
22 ~~who is an elected officer. A payment by a state, local, or federal~~
23 ~~governmental agency that is made principally for legislative or~~
24 ~~governmental purposes is governed exclusively by this clause and,~~
25 ~~therefore, is not subject to the reporting requirement described in~~
26 ~~clause (iii).~~

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

1 or services provided or purchased, if any, and a description of the
2 specific purpose or event for which the payment or payments were
3 made. Once the five-thousand-dollar (\$5,000) aggregate threshold
4 from a single source has been reached for a calendar year, all
5 payments for the calendar year made by that source shall be
6 disclosed within 30 days after the date the threshold was reached
7 or the payment was made, whichever occurs later. Within 30 days
8 after receipt of the report, state agencies shall forward a copy of
9 these reports to the Commission, and local agencies shall forward
10 a copy of these reports to the officer with whom elected officers
11 of that agency file their campaign statements.

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

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

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

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

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

30 (v) Recruiting or coordinating campaign activities of campaign
31 volunteers on behalf of the candidate.

32 (vi) Preparing campaign budgets.

33 (vii) Preparing campaign finance disclosure statements.

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

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

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

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

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

1 (e) “Contribution” does not include amounts received pursuant
2 to an enforceable promise to the extent those amounts have been
3 previously reported as a contribution. However, the fact that those
4 amounts have been received shall be indicated in the appropriate
5 campaign statement.

6 (f) (1) Except as provided in paragraph (2) or (3), “contribution”
7 does not include a payment made by an occupant of a home or
8 office for costs related to any meeting or fundraising event held
9 in the occupant’s home or office if the costs for the meeting or
10 fundraising event are five hundred dollars (\$500) or less.

11 (2) “Contribution” includes a payment made by a lobbyist or a
12 cohabitant of a lobbyist for costs related to a fundraising event
13 held at the home of the lobbyist, including the value of the use of
14 the home as a fundraising event venue. A payment described in
15 this paragraph shall be attributable to the lobbyist for purposes of
16 Section 85702.

17 (3) “Contribution” includes a payment made by a lobbying firm
18 for costs related to a fundraising event held at the office of the
19 lobbying firm, including the value of the use of the office as a
20 fundraising event venue.

21 (g) Notwithstanding the foregoing definition of “contribution,”
22 the term does not include volunteer personal services or payments
23 made by any individual for his or her own travel expenses if the
24 payments are made voluntarily without any understanding or
25 agreement that they shall be, directly or indirectly, repaid to him
26 or her.

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

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

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

36 (i) “Contribution” further includes a payment made by a person
37 to a multipurpose organization as defined and described in Section
38 84222.

39 SEC. 2. The Legislature finds and declares that this bill furthers
40 the purposes of the Political Reform Act of 1974 within the

1 meaning of subdivision (a) of Section 81012 of the Government
2 Code.

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

7 It is a core principle of representative government that an elected
8 official's duties include advocacy of government agencies in favor
9 of expenditures that benefit constituents or public purposes
10 generally. It is also well-established that a government agency
11 may not expend public funds for purposes unrelated to the business
12 of that agency. To that end, government expenditures are subject
13 to a myriad of laws designed to protect the public interest and
14 promote transparency, including laws relating to open meetings,
15 the appropriate use of public resources, conflicts of interests, and
16 disbursement practices. Therefore, it is necessary that this act take
17 effect immediately in order to provide clarity for elected officials,
18 in conformity with the Legislature's intent when it enacted Chapter
19 450 of the Statutes of 1997 that reporting requirements for behested
20 payments not apply with respect to the payments made by a
21 government agency at the behest of an elected official for a
22 legislative or governmental purpose.