

AMENDED IN ASSEMBLY MAY 18, 2016
AMENDED IN ASSEMBLY MARCH 28, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2318

Introduced by Assembly Member Low

February 18, 2016

An act to add Sections ~~84311 and 84312~~ *84222.1 and 84222.2* to, and to repeal ~~Section~~ *Sections 54964.5 and 54964.6* of, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 2318, as amended, Low. Political Reform Act of 1974: Fair Political Practices Commission: enforcement: use of public resources.

(1) Existing law prohibits a nonprofit organization or an officer, employee, or agent of a nonprofit organization from using, or permitting another to use, public resources received from a local agency for any campaign activity not authorized by law. Existing law authorizes the Attorney General, any district attorney, or any city attorney of a city with a population over 750,000 to bring a civil action to recover a civil penalty against any person who intentionally or negligently violates that prohibition.

The Political Reform Act of 1974 regulates contributions to public officials and also regulates conflicts of interests on the part of public officials while carrying out their respective duties. The act establishes the Fair Political Practices Commission as the agency responsible for administering and enforcing the act. The act authorizes the Commission to seek and impose administrative and civil penalties against persons

who violate the act, as prescribed. The act makes a willful violation of its provisions a misdemeanor subject to specified penalties.

This bill would ~~restate~~ *recast and relocate* the prohibition on the use of public resources described above within the Political Reform Act of 1974 and would also authorize the ~~Fair Political Practices~~ Commission, *in addition to the Attorney General or district attorney*, to bring a civil action to recover the civil penalty, as described above. The bill would authorize the Commission to investigate, hold an administrative hearing on, and issue an order against a violator of the prohibition on the use of public resources for campaign activity, instead of commencing a civil action.

(2) Existing law requires qualifying individuals and political organizations to report specified information, including, but not limited to, political contributions, in statements filed with the ~~Fair Political Practices~~ Commission. Existing law requires a reporting nonprofit organization that engages in campaign activity to deposit into a separate bank account all specific ~~source or~~ sources of funds it receives and to pay for all campaign activity from that separate bank account. Existing law defines “reporting nonprofit organization” as a nonprofit organization for which public resources from one or more local agencies account for more than 20% of the nonprofit organization’s annual gross revenue, as specified, and defines “~~specific source or sources of funds~~” as ~~any funds received by the reporting nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit organization that are used for campaign activity.~~

Existing law requires a reporting nonprofit organization that engages in campaign activity of specified amounts or more to periodically disclose to the Franchise Tax Board, and post on its Internet Web site in a certain manner, the identity and amount of each specific source or sources of funds it receives for campaign activity, a description of the campaign activity, and the identity and amount of payments the organization makes from the required separate bank account. Existing law authorizes, and in some instances requires, the Franchise Tax Board to audit a reporting nonprofit organization, requires the board to issue a written audit report, and requires the board to transmit the audit report to the Attorney General and the district attorney for the county in which the reporting nonprofit organization is domiciled. Existing law authorizes the Attorney General or the district attorney for the county in which the reporting nonprofit organization is domiciled to impose a monetary civil penalty of up to \$10,000 against a reporting nonprofit

organization for misusing public resources received from a local agency, as described in (1), for failing to maintain the separate bank account, or for not complying with the disclosure requirements described above.

This bill would recast and relocate those provisions within the Political Reform Act of 1974, thereby making the ~~Fair Political Practices~~ Commission responsible for their administration and enforcement, except as specified. The bill would change the term “reporting nonprofit organization” to “publicly funded ~~multi~~purpose nonprofit organization,” defined as a ~~multi~~purpose nonprofit organization for which public resources from one or more local agencies account for more than 20% of the ~~multi~~purpose nonprofit organization’s annual gross revenue, as specified. ~~The bill would redefine “specific source or sources of funds” as payments or funds that meet specified criteria received by the publicly funded multi~~purpose organization from donors that are for, or may be used for, contributions or expenditures, as specified, or any other funds received by the publicly funded ~~multi~~purpose organization within a 2-year period that are used for campaign activity. *This bill would require certain publicly funded nonprofit organizations to register as recipient committees and file the campaign statements that those committees are required to file under the act.* This bill would shift the Franchise Tax Board’s authority and duties under these provisions to the ~~Fair Political Practices~~ Commission and would authorize the Commission, in addition to the Attorney General or the district attorney, to impose the monetary civil penalty of up to \$10,000 against a publicly funded ~~multi~~purpose nonprofit organization.

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 $\frac{2}{3}$ 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. Section 54964.5 of the Government Code is~~
2 ~~repealed.~~

3 ~~54964.5. (a) A nonprofit organization or an officer, employee,~~
4 ~~or agent of a nonprofit organization shall not use, or permit another~~
5 ~~to use, public resources, received from any local agency for any~~
6 ~~campaign activity not authorized by law.~~

7 ~~(b) As used in this section and Section 54964.6, the following~~
8 ~~terms shall have the following meanings:~~

9 ~~(1) “Ballot measure” means a state or local initiative,~~
10 ~~referendum, or recall measure certified to appear on a regular or~~
11 ~~special election ballot or other measure submitted to the voters by~~
12 ~~the Legislature or the governing body of a local agency at a regular~~
13 ~~or special election.~~

14 ~~(2) “Campaign activity” means a payment that is used for~~
15 ~~communications that expressly advocate for or against the~~
16 ~~qualification of a clearly identified ballot measure, the approval~~
17 ~~or rejection of a clearly identified ballot measure, or the election~~
18 ~~or defeat of a clearly identified candidate by the voters, or that~~
19 ~~constitutes a campaign contribution.~~

20 ~~(A) “Campaign activity” does not include the costs of adopting~~
21 ~~a position or a resolution supporting or opposing a clearly identified~~
22 ~~ballot measure or candidate, including, but not limited to, posting~~
23 ~~the position or resolution on the nonprofit organization’s Internet~~
24 ~~Web site, communicating the position or resolution to members~~
25 ~~of the nonprofit organization, or issuing a press statement.~~

26 ~~(B) “Campaign activity” does not include incidental or minimal~~
27 ~~use of public resources.~~

28 ~~(C) “Campaign activity” does not include incidental costs related~~
29 ~~to the establishment or administration of a sponsored committee~~
30 ~~as defined in Section 82048.7. A reasonable accounting method~~
31 ~~may be used to determine the use of nonpublic resources to pay~~
32 ~~for that cost. “Establishment and administration” means the cost~~
33 ~~of office space, telephones, salaries, utilities, supplies, legal and~~
34 ~~accounting fees, and other expenses incurred in establishing and~~
35 ~~operating a sponsored committee.~~

36 ~~(3) “Candidate” means an individual who has qualified to have~~
37 ~~his or her name listed on the ballot, or who has qualified to have~~
38 ~~write-in votes on his or her behalf counted by elections officials,~~

1 for nomination or election to an elective office at any regular or
2 special primary or general election, and includes any officeholder
3 who is the subject of a recall election.

4 (4) “Expenditure” means a payment used for communications
5 that expressly advocate the approval or rejection of a clearly
6 identified ballot measure, or the election or defeat of a clearly
7 identified candidate, by the voters or that constitutes a campaign
8 contribution.

9 (5) “Local agency” shall have the same meaning as that term is
10 defined in paragraph (4) of subdivision (b) of Section 54964 and
11 shall also include a public entity created pursuant to the Joint
12 Exercise of Powers Act (Chapter 5 (commencing with Section
13 6500) of Division 7 of Title 1) by one or more entities described
14 in Section 54964.

15 (6) “Nonprofit organization” means any entity incorporated
16 under the Nonprofit Corporation Law (Division 2 (commencing
17 with Section 5000) of Title 1 of the Corporations Code) or a
18 nonprofit organization that qualifies for exempt status under
19 Section 115 or 501(c) of the Internal Revenue Code, provided,
20 however, that “nonprofit organization” does not include any
21 nonprofit organization that qualifies for tax-exempt status under
22 Section 501(c)(3) of the Internal Revenue Code.

23 (7) “Public resources” means the following:

24 (A) Any property or asset owned by a local agency, including,
25 but not limited to, cash, land, buildings, facilities, funds, equipment,
26 supplies, telephones, computers, vehicles, travel, and local
27 government compensated work time that is provided to a nonprofit
28 organization, except funds received in exchange for consideration
29 for goods or services.

30 (B) Funds received by a nonprofit organization which have been
31 generated from any activities related to conduit bond financing by
32 those entities subject to the conduit financing and transparency
33 and accountability provisions of Chapter 10.7 (commencing with
34 Section 5870) of Division 6 of Title 1, whether or not those funds
35 are received by the nonprofit in exchange for consideration for
36 goods or services.

37 (8) “Use” means a use of public resources from one or more
38 local agencies that is substantial enough to result in a gain or
39 advantage to the user or a loss to any local agency for which any
40 monetary value may be estimated.

1 ~~(e) This section does not prohibit the use of public resources~~
 2 ~~for providing information to the public about the possible effects~~
 3 ~~of any ballot measure on the activities, operations, or policies of~~
 4 ~~the state or a local agency, provided that the informational activities~~
 5 ~~meet both of the following conditions:~~

6 ~~(1) The informational activities are not otherwise prohibited by~~
 7 ~~the California Constitution or the laws of this state.~~

8 ~~(2) The information provided constitutes an accurate, fair, and~~
 9 ~~impartial presentation of relevant facts to aid the electorate in~~
 10 ~~reaching an informed judgment regarding the ballot measure.~~

11 ~~(d) (1) Any person who intentionally or negligently violates~~
 12 ~~this section is liable for a civil penalty not to exceed one thousand~~
 13 ~~dollars (\$1,000) for each day on which a violation occurs, plus~~
 14 ~~three times the value of the unlawful use of public resources. The~~
 15 ~~penalty shall be assessed and recovered in a civil action brought~~
 16 ~~in the name of the people of the State of California by the Attorney~~
 17 ~~General or by any district attorney or any city attorney of a city~~
 18 ~~having a population in excess of 750,000. If two or more persons~~
 19 ~~are responsible for any violation, they shall be jointly and severally~~
 20 ~~liable for the penalty. If the action is brought by the Attorney~~
 21 ~~General, the moneys recovered shall be paid into the General Fund.~~
 22 ~~If the action is brought by a district attorney, the moneys recovered~~
 23 ~~shall be paid to the treasurer of the county in which the judgment~~
 24 ~~was entered. If the action is brought by a city attorney, the moneys~~
 25 ~~recovered shall be paid to the treasury of that city.~~

26 ~~(2) A civil action alleging a violation of this section shall not~~
 27 ~~be commenced more than four years after the date of the alleged~~
 28 ~~violation.~~

29 SECTION 1.

30 SEC. 2. Section 54964.6 of the Government Code is repealed.

31 SEC. 2. Section 84311 is added to the Government Code, to
 32 read:

33 84311. (a) A nonprofit organization or an officer, employee,
 34 or agent of a nonprofit organization shall not use, or permit another
 35 to use, public resources, received from any local agency for any
 36 campaign activity not authorized by law.

37 (b) As used in this section and Section 84312, the following
 38 terms shall have the following meanings:

39 (1) "Ballot measure" means a state or local initiative,
 40 referendum, or recall measure certified to appear on a regular or

1 ~~special election ballot or other measure submitted to the voters by~~
2 ~~the Legislature or the governing body at a regular or special~~
3 ~~election.~~

4 ~~(2) (A) “Campaign activity” means a payment that is used for~~
5 ~~communications that expressly advocate for or against the~~
6 ~~qualification of a clearly identified ballot measure, the approval~~
7 ~~or rejection of a clearly identified ballot measure, or the election~~
8 ~~or defeat of a clearly identified candidate by the voters, or that~~
9 ~~constitutes a campaign contribution.~~

10 ~~(B) “Campaign activity” does not include any of the following:~~

11 ~~(i) The costs of adopting a position or resolution supporting or~~
12 ~~opposing a clearly identified ballot measure or candidate, including,~~
13 ~~but not limited to, posting the position or resolution on the~~
14 ~~nonprofit organizations’ Internet Web site, communicating the~~
15 ~~position or resolution to members of the nonprofit organization,~~
16 ~~or issuing a press statement.~~

17 ~~(ii) Incidental or minimal use of public resources.~~

18 ~~(iii) Incidental costs related to the establishment or~~
19 ~~administration of a sponsored committee, as defined in Section~~
20 ~~82048.7. A reasonable accounting method may be used to~~
21 ~~determine the use of nonpublic resources to pay for that cost. For~~
22 ~~purposes of this subparagraph, “establishment and administration”~~
23 ~~means the cost of office space, telephones, salaries, utilities,~~
24 ~~supplies, legal and accounting fees, and other expenses incurred~~
25 ~~in establishing and operating a sponsored committee.~~

26 ~~(3) “Candidate” means an individual who has qualified to have~~
27 ~~his or her name listed on the ballot, or who has qualified to have~~
28 ~~write-in votes on his or her behalf counted by elections officials,~~
29 ~~for nomination or election to an elective office at any regular or~~
30 ~~special primary or general election, and includes any officeholder~~
31 ~~who is the subject of a recall election.~~

32 ~~(4) “Expenditure” means a payment used for communications~~
33 ~~that expressly advocate the approval or rejection of a clearly~~
34 ~~identified ballot measure, or the election or defeat of a clearly~~
35 ~~identified candidate, by the voters, or that constitutes a campaign~~
36 ~~contribution.~~

37 ~~(5) “Local agency” has the same meaning as that term is defined~~
38 ~~in paragraph (4) of subdivision (b) of Section 54964 and shall also~~
39 ~~include a public entity created pursuant to the Joint Exercise of~~
40 ~~Powers Act (Chapter 5 (commencing with Section 6500) of~~

1 Division 7 of Title 1) by one or more entities described in Section
2 54964.

3 (6) “Nonprofit organization” means an entity incorporated under
4 the Nonprofit Corporation Law (Division 2 (commencing with
5 Section 5000) of Title 1 of the Corporations Code) or a nonprofit
6 organization that qualifies for exempt status under Section 115 of
7 501(c) of the federal Internal Revenue Code. “Nonprofit
8 organization” does not include a nonprofit organization that
9 qualifies for tax-exempt status under Section 501(c)(3) of the
10 federal Internal Revenue Code.

11 (7) “Public resources” means either of the following:

12 (A) Any property or asset owned by a local agency, including,
13 but not limited to, cash, land, buildings, facilities, funds, equipment,
14 supplies, telephones, computers, vehicles, travel, and local
15 government compensated work time that is provided to a nonprofit
16 organization, except funds received in exchange for consideration
17 for goods or services.

18 (B) Funds received by a nonprofit organization that have been
19 generated from any activities related to conduit bond financing by
20 those entities subject to the conduit financing and transparency
21 and accountability provision of Chapter 10.7 (commencing with
22 Section 5870) of Division 6 of Title 1, whether or not those funds
23 are received by the nonprofit organization in exchange for
24 consideration for goods or services.

25 (8) “Use” means a use of public resources from one or more
26 local agencies that is substantial enough to result in a gain or
27 advantage to the user or a loss to a local agency from which a
28 monetary value may be estimated.

29 (e) This section does not prohibit the use of public resources
30 for providing information to the public about the possible effects
31 of a ballot measure on the activities, operations, or policies of the
32 state or a local agency if the informational activities meet both of
33 the following conditions:

34 (1) The informational activities are not otherwise prohibited by
35 the California Constitution or the laws of this state.

36 (2) The information provided constitutes an accurate, fair, and
37 impartial presentation of relevant facts to aid the electorate in
38 reaching an informed judgment regarding the ballot measure.

39 (d) (1) A person who intentionally or negligently violates this
40 section is liable for a civil penalty not to exceed one thousand

1 dollars (\$1,000) for each day on which a violation occurs, plus
2 three times the value of the unlawful use of public resources. The
3 penalty shall be assessed and recovered in a civil action brought
4 in the name of the people by the Commission. If two or more
5 persons are responsible for a violation, they shall be jointly and
6 severally liable for the penalty. Any moneys recovered by the
7 Commission shall be paid into the General Fund. Only one
8 judgment on the merits with respect to a violation may be obtained
9 under this paragraph or paragraph (1) of subdivision (d) of Section
10 54964.5.

11 (2) A civil action alleging a violation of this section shall not
12 be commenced more than four years after the date of the alleged
13 violation.

14 (3) The Commission has jurisdiction to commence an
15 investigation for a violation of this section in the manner described
16 in Section 83115. A civil action shall not be filed or prosecuted
17 under paragraph (1) with regard to a person for a violation of this
18 section after the Commission has issued an order in the manner
19 described in Section 83116 against that person for the same
20 violation.

21 SEC. 3. Section 84312 is added to the Government Code, to
22 read:

23 84312. (a) A publicly funded multipurpose organization that
24 engages in campaign activity, either directly or through the control
25 of another entity, shall deposit into a separate bank account all
26 specific source or sources of funds received and shall pay for all
27 campaign activity from that separate bank account.

28 (b) (1) As used in this section, the following terms have the
29 following meanings:

30 (A) "Publicly funded multipurpose organization" means a
31 multipurpose organization, as defined in subdivision (a) of Section
32 84222, for which public resources, as defined in paragraph (7) of
33 subdivision (b) of Section 84311, from one or more local agencies
34 account for more than 20 percent of the multipurpose
35 organization's annual gross revenue in the current fiscal year or
36 either of the previous two fiscal years. "Publicly funded
37 multipurpose organization" does not include a multipurpose
38 organization that sponsors a committee, as defined in Section
39 82048.7, if the multipurpose organization reports all specific
40 sources of funds received and all campaign activities on campaign

1 disclosure statements filed by the sponsored committee, and the
2 multipurpose organization makes no payments from its general
3 treasury to the sponsored committee other than payments for
4 contributions by donors earmarked for the sponsored committee.
5 For purposes of this subparagraph, “earmarked” means a payment
6 by a donor to a multipurpose organization subject to a condition,
7 agreement, or understanding that the payment will be used for
8 making contributions or independent expenditures by the sponsored
9 committee of the sponsoring multipurpose organization.

10 (B) “Specific source or sources of funds” means any of the
11 following:

12 (i) Payments the publicly funded multipurpose organization
13 solicits and receives from donors in an amount equal to or greater
14 than the amount identified in subdivision (a) of Section 82013 for
15 purposes of making contributions or expenditures.

16 (ii) Payments the publicly funded multipurpose organization
17 receives from donors in an amount equal to or greater than the
18 amount identified in subdivision (a) of Section 82013 subject to a
19 condition, agreement, or understanding with the donor that all or
20 a portion of the payments may be used for making contributions
21 or expenditures.

22 (iii) Existing funds of the publicly funded multipurpose
23 organization from a donor and a subsequent agreement or
24 understanding is reached with the donor that all or a portion of the
25 funds may be used for making contributions or expenditures in an
26 amount equal to or greater than the amount identified in subdivision
27 (a) of Section 82013. The date of the subsequent agreement or
28 understanding is deemed to be the date of receipt of the payment.

29 (iv) Any other funds received by a publicly funded multipurpose
30 organization within a two-year period that are used for campaign
31 activity.

32 (2) Except as otherwise defined in this section, the definitions
33 in subdivision (b) of Section 84311 apply to this section.

34 (e) Thirty days after the end of each quarter, a publicly funded
35 multipurpose organization that engages in campaign activity of
36 fifty thousand dollars (\$50,000) or more related to statewide
37 candidates or ballot measures or engages in campaign activity of
38 two thousand five hundred dollars (\$2,500) or more related to local
39 candidates or ballot measures, either directly or through the control

1 of another entity, at any point during that quarter shall disclose the
2 following information for that quarter:

3 (1) ~~The name and amount of each specific source or sources of~~
4 ~~funds used for campaign activity if the aggregate amount of funds~~
5 ~~received since January 1 of the most recent odd year by the publicly~~
6 ~~funded multipurpose organization from that specific source or~~
7 ~~sources of funds is at least one thousand dollars (\$1,000). The~~
8 ~~publicly funded multipurpose organization shall report all sources~~
9 ~~of funds that satisfy the definition of subparagraph (B) of paragraph~~
10 ~~(1) of subdivision (b) and for the balance of its campaign activities~~
11 ~~paid from the separate bank account. The publicly funded~~
12 ~~multipurpose organization shall report sources of funds based on~~
13 ~~a last in, first out accounting method. For purposes of this section,~~
14 ~~“last in, first out accounting method” means an accounting method~~
15 ~~by which contributions and expenditures are attributed to the~~
16 ~~multipurpose organization’s contributors in reverse chronological~~
17 ~~order beginning with the most recent of its contributors or, if there~~
18 ~~are any prior contributions or expenditures, beginning with the~~
19 ~~most recent contributor for which unattributed contributions~~
20 ~~remain.~~

21 (2) ~~The name of the payee and amount of all payments~~
22 ~~aggregating two hundred fifty dollars (\$250) or more made from~~
23 ~~the separate bank account required by subdivision (a).~~

24 (3) ~~A description of each campaign activity.~~

25 (d) ~~By January 31 following the end of each even-numbered~~
26 ~~year, a publicly funded multipurpose organization that engages in~~
27 ~~campaign activity of one hundred thousand dollars (\$100,000) or~~
28 ~~more related to statewide candidates or ballot measures or engages~~
29 ~~in campaign activity of ten thousand dollars (\$10,000) or more~~
30 ~~related to local candidates or ballot measures, either directly or~~
31 ~~through the control of another entity, at any point during that even~~
32 ~~year or the prior odd year, shall disclose the following information~~
33 ~~for those two calendar years:~~

34 (1) ~~The name and amount of any specific source or sources of~~
35 ~~funds used for campaign activity if the aggregate amount of funds~~
36 ~~received since January 1 of the most recent odd year by the publicly~~
37 ~~funded multipurpose organization from that specific source or~~
38 ~~sources of funds is at least one thousand dollars (\$1,000). The~~
39 ~~publicly funded multipurpose organization shall report all sources~~
40 ~~of funds that satisfy the definition of subparagraph (B) of paragraph~~

1 (1) of subdivision (b) and for the balance of its campaign activities
2 paid from the separate bank account. The publicly funded
3 multipurpose organization shall report sources of funds based on
4 a last in, first out accounting method.

5 (2) The name of the payee and amount of all payments
6 aggregating two hundred fifty dollars (\$250) or more made from
7 the separate bank account required by subdivision (a).

8 (3) A description of each campaign activity.

9 (e) Each publicly funded multipurpose organization that engages
10 in campaign activity, either directly or through the control of
11 another entity, shall provide to the Commission, and display on
12 the organization's Internet Web site, the information it is required
13 to disclose under this section. The information shall be clearly
14 described and identified on a separate Internet Web page that is
15 linked from the homepage of the organization's Internet Web site.
16 The link to this Internet Web page from the homepage shall be as
17 visible as all similar links.

18 (f) The Commission may require an audit of a publicly funded
19 multipurpose organization that is required to provide records to
20 the Commission pursuant to this section. The Commission shall
21 require an audit of any publicly funded multipurpose organization
22 that engages in campaign activity in excess of five hundred
23 thousand dollars (\$500,000) in a calendar year. The publicly funded
24 multipurpose organization shall provide records to the Commission
25 to substantiate the information required to be disclosed by this
26 section. The Commission shall determine if the organization
27 complied with the requirements of Section 84311 and this section,
28 issue a written audit report, and transmit the written audit report
29 to the Attorney General and the district attorney for the county in
30 which the organization is domiciled.

31 (g) If the Commission determines at the conclusion of an audit
32 that a publicly funded multipurpose organization has violated
33 Section 84311 or this section, the Commission, the Attorney
34 General, or the district attorney for the county in which the
35 organization is domiciled may impose a civil fine upon the
36 organization in an amount up to ten thousand dollars (\$10,000)
37 for each violation.

38 *SEC. 3. Section 84222.1 is added to the Government Code, to*
39 *read:*

1 84222.1. (a) A nonprofit organization or an officer, employee,
2 or agent of a nonprofit organization shall not use, or permit
3 another to use, public resources received from any local agency
4 to make a contribution or expenditure not authorized by law.

5 (b) As used in this section and Section 84222.2, the following
6 terms have the following meanings:

7 (1) “Local agency” has the same meaning as that term is defined
8 in paragraph (4) of subdivision (b) of Section 54964 and shall also
9 include a public entity created pursuant to the Joint Exercise of
10 Powers Act (Chapter 5 (commencing with Section 6500) of Division
11 7 of Title 1) by one or more entities described in Section 54964.

12 (2) “Nonprofit organization” means an entity incorporated
13 under the Nonprofit Corporation Law (Division 2 (commencing
14 with Section 5000) of Title 1 of the Corporations Code) or a
15 nonprofit organization that qualifies for exempt status under
16 Section 115 or 501(c) of the federal Internal Revenue Code.
17 “Nonprofit organization” does not include a nonprofit organization
18 that qualifies for tax-exempt status under Section 501(c)(3) of the
19 federal Internal Revenue Code.

20 (3) “Public resources” means either of the following:

21 (A) Any property or asset owned by a local agency, including,
22 but not limited to, cash, land, buildings, facilities, funds, equipment,
23 supplies, telephones, computers, vehicles, travel, and local
24 government compensated work time that is provided to a nonprofit
25 organization, except funds received in exchange for consideration
26 for goods or services.

27 (B) Funds received by a nonprofit organization that have been
28 generated from any activities related to conduit bond financing
29 by those entities subject to the conduit financing and transparency
30 and accountability provisions of Chapter 10.7 (commencing with
31 Section 5870) of Division 6 of Title 1, whether or not those funds
32 are received by the nonprofit organization in exchange for
33 consideration for goods or services.

34 (4) “Publicly funded nonprofit organization” means a nonprofit
35 organization for which public resources from one or more local
36 agencies account for more than 20 percent of the nonprofit
37 organization’s annual gross revenue in the current fiscal year or
38 either of the previous two fiscal years.

39 (5) “Use” means a use of public resources from one or more
40 local agencies that is substantial enough to result in a gain or

1 advantage to the user or a loss to a local agency from which a
2 monetary value may be estimated.

3 (c) This section does not prohibit the use of public resources
4 for expenditures authorized by law, including:

5 (1) The costs of adopting a position or resolution supporting
6 or opposing a clearly identified ballot measure or candidate,
7 including, but not limited to, posting the position or resolution on
8 the nonprofit organization’s Internet Web site, communicating the
9 position or resolution to members of the nonprofit organization,
10 or issuing a press statement.

11 (2) Incidental or minimal use of public resources.

12 (3) Incidental costs related to the establishment or
13 administration of a sponsored committee, as defined in Section
14 82048.7. A reasonable accounting method may be used to
15 determine the use of nonpublic resources to pay for that cost. For
16 purposes of this subparagraph, “establishment and administration”
17 means the cost of office space, telephones, salaries, utilities,
18 supplies, legal and accounting fees, and other expenses incurred
19 in establishing and operating a sponsored committee.

20 (4) Providing information to the public about the possible effects
21 of a ballot measure on the activities, operations, or policies of the
22 state or a local agency if the informational activities meet both of
23 the following conditions:

24 (A) The informational activities are not otherwise prohibited
25 by the California Constitution or the laws of this state.

26 (B) The information provided constitutes an accurate, fair, and
27 impartial presentation of relevant facts to aid the electorate in
28 reaching an informed judgment regarding the ballot measure.

29 (d) (1) A person who intentionally or negligently violates this
30 section is liable for a civil penalty not to exceed one thousand
31 dollars (\$1,000) for each day on which a violation occurs, plus
32 three times the value of the unlawful use of public resources. The
33 penalty shall be assessed and recovered in a civil action brought
34 in the name of the people by the Attorney General, the district
35 attorney for the county in which the organization is domiciled, or
36 the Commission. If two or more persons are responsible for a
37 violation, they shall be jointly and severally liable for the penalty.
38 Any moneys recovered by the Commission shall be paid into the
39 General Fund.

1 (2) A civil action alleging a violation of this section shall not
2 be commenced more than four years after the date of the alleged
3 violation.

4 (3) The Commission has jurisdiction to commence an
5 investigation for a violation of this section in the manner described
6 in Section 83115 and issue an order under Section 83116. A civil
7 action shall not be filed or prosecuted under paragraph (1) with
8 regard to a person for a violation of this section after the
9 Commission has issued an order in the manner described in Section
10 83116 against that person for the same violation.

11 SEC. 4. Section 84222.2 is added to the Government Code, to
12 read:

13 84222.2. (a) A publicly funded nonprofit organization that
14 makes contributions or expenditures, either directly or through
15 the control of another entity, shall establish and deposit into a
16 separate bank account all funds that will be used to make
17 contributions and expenditures, and those contributions and
18 expenditures shall come from that separate bank account.

19 (b) In addition to subdivisions (b) and (c) of Section 84222, a
20 publicly funded nonprofit organization is a recipient committee
21 within the meaning of subdivision (a) of Section 82013 if any of
22 the following occur:

23 (1) It makes contributions or expenditures totaling fifty thousand
24 dollars (\$50,000) or more related to statewide candidates or ballot
25 measures or makes contributions or expenditures totaling two
26 thousand five hundred dollars (\$2,500) or more related to local
27 candidates or ballot measures, either directly or through the
28 control of another entity, during the prior quarter.

29 (2) By January 31 of each odd-numbered year, it makes
30 contributions or expenditures totaling one hundred thousand
31 dollars (\$100,000) or more related to statewide candidates or
32 ballot measures or makes contributions or expenditures totaling
33 ten thousand dollars (\$10,000) or more related to local candidates
34 or ballot measures, either directly or through the control of another
35 entity, during the previous two years.

36 (c) If a publicly funded nonprofit organization qualifies as a
37 recipient committee pursuant to subdivision (b), it shall comply
38 with the registration and reporting requirements of Section 84222.

39 (d) Each publicly funded nonprofit organization that makes
40 contributions or expenditures, either directly or through the control

1 of another entity, shall provide to the Commission, and display on
 2 the organization’s Internet Web site, the information it is required
 3 to disclose under this section. The information shall be clearly
 4 described and identified on a separate Internet Web page that is
 5 linked from the homepage of the organization’s Internet Web site.
 6 The link to this Internet Web page from the homepage shall be as
 7 visible as all similar links.

8 (e) The Commission may require an audit of a publicly funded
 9 nonprofit organization that is required to provide records to the
 10 Commission pursuant to this section. The Commission shall require
 11 an audit of any publicly funded nonprofit organization that makes
 12 contributions or expenditures in excess of five hundred thousand
 13 dollars (\$500,000) in a calendar year. The publicly funded
 14 nonprofit organization shall provide records to the Commission
 15 to substantiate the information required to be disclosed by this
 16 section.

17 (f) If the Commission determines at the conclusion of an audit
 18 that a publicly funded nonprofit organization has violated this
 19 section, the Commission, the Attorney General, or the district
 20 attorney for the county in which the organization is domiciled may
 21 impose a civil fine upon the organization in an amount up to ten
 22 thousand dollars (\$10,000) for each violation.

23 (g) The definitions in subdivision (b) of Section 84222.1 apply
 24 to this section.

25 ~~SEC. 4.~~

26 SEC. 5. No reimbursement is required by this act pursuant to
 27 Section 6 of Article XIII B of the California Constitution because
 28 the only costs that may be incurred by a local agency or school
 29 district will be incurred because this act creates a new crime or
 30 infraction, eliminates a crime or infraction, or changes the penalty
 31 for a crime or infraction, within the meaning of Section 17556 of
 32 the Government Code, or changes the definition of a crime within
 33 the meaning of Section 6 of Article XIII B of the California
 34 Constitution.

35 ~~SEC. 5.~~

36 SEC. 6. The Legislature finds and declares that this bill furthers
 37 the purposes of the Political Reform Act of 1974 within the

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

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