

AMENDED IN SENATE AUGUST 15, 2016

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 amend Section 54964.5 of, to add Sections ~~84222.1 and 84222.2~~ Section 84222.5 to, and to repeal Sections ~~54964.5 and Section 54964.6~~ of, the Government Code, relating to the ~~Political Reform Act of 1974~~: *nonprofit organizations*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2318, as amended, Low. ~~Political Reform Act of 1974: Fair Political Practices Commission: enforcement: Nonprofit organizations:~~ 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 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 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. *clarify that the prohibition applies to making contributions or expenditures not authorized by law, and would specify certain expenditures authorized by law that are not subject to the prohibition.*~~

~~(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 Commission. Existing law requires a reporting nonprofit organization that engages in campaign activity to deposit into a separate bank account all specific 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.~~

~~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 nonprofit organization,” defined 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. ~~This~~ *The* 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 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 nonprofit organization.

The Political Reform Act of 1974 makes a willful violation of its provisions a misdemeanor. 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 54964.5 of the Government Code is~~
- 2 ~~repealed.~~
- 3 ~~SECTION 1. Section 54964.5 of the Government Code is~~
- 4 ~~amended to read:~~

1 54964.5. (a) A nonprofit organization or an officer, employee,
2 or agent of a nonprofit organization shall not use, or permit another
3 to use, ~~public resources~~; *resources* received from any local agency
4 for any campaign activity *to make a contribution or expenditure*
5 not authorized by law.

6 (b) As used in this section and Section ~~54964.6~~, 84222.5, the
7 following terms shall have the following meanings:

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

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

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

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

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

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

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

6 ~~(5)~~

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

13 ~~(6)~~

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

23 ~~(7)~~

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

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

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

38 (4) “*Publicly funded nonprofit organization*” means a nonprofit
39 *organization for which public resources from one or more local*
40 *agencies account for more than 20 percent of the nonprofit*

1 organization’s annual gross revenue in the current fiscal year or
 2 either of the previous two fiscal years.

3 ~~(8)~~

4 (5) “Use” means a use of public resources from one or more
 5 local agencies that is substantial enough to result in a gain or
 6 advantage to the user or a loss to ~~any~~ a local agency for which ~~any~~
 7 a monetary value may be estimated.

8 (c) This section does not prohibit the use of public resources
 9 for ~~providing information to the public about the possible effects~~
 10 ~~of any ballot measure on the activities, operations, or policies of~~
 11 ~~the state or a local agency, provided that the informational activities~~
 12 ~~meet both of the following conditions: expenditures authorized by~~
 13 ~~law, including all of the following:~~

14 (1) *The costs of adopting a position or resolution supporting*
 15 *or opposing a clearly identified ballot measure or candidate,*
 16 *including posting the position or resolution on the nonprofit*
 17 *organization’s Internet Web site, communicating the position or*
 18 *resolution to members of the nonprofit organization, or issuing a*
 19 *press statement.*

20 (2) *Incidental or minimal use of public resources.*

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

29 (4) *Providing information to the public about the possible effects*
 30 *of a ballot measure on the activities, operations, or policies of the*
 31 *state or a local agency if the informational activities meet both of*
 32 *the following conditions:*

33 ~~(1)~~

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

36 ~~(2)~~

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

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

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

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

21 ~~SEC. 3. Section 84222.1 is added to the Government Code, to~~
22 ~~read:~~

23 ~~84222.1. (a) A nonprofit organization or an officer, employee,~~
24 ~~or agent of a nonprofit organization shall not use, or permit another~~
25 ~~to use, public resources received from any local agency to make~~
26 ~~a contribution or expenditure not authorized by law.~~

27 ~~(b) As used in this section and Section 84222.2, the following~~
28 ~~terms have the following meanings:~~

29 ~~(1) "Local agency" has the same meaning as that term is defined~~
30 ~~in paragraph (4) of subdivision (b) of Section 54964 and shall also~~
31 ~~include a public entity created pursuant to the Joint Exercise of~~
32 ~~Powers Act (Chapter 5 (commencing with Section 6500) of~~
33 ~~Division 7 of Title 1) by one or more entities described in Section~~
34 ~~54964.~~

35 ~~(2) "Nonprofit organization" means an entity incorporated under~~
36 ~~the Nonprofit Corporation Law (Division 2 (commencing with~~
37 ~~Section 5000) of Title 1 of the Corporations Code) or a nonprofit~~
38 ~~organization that qualifies for exempt status under Section 115 or~~
39 ~~501(e) of the federal Internal Revenue Code. "Nonprofit~~
40 ~~organization" does not include a nonprofit organization that~~

1 ~~qualifies for tax-exempt status under Section 501(c)(3) of the~~
2 ~~federal Internal Revenue Code.~~

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

4 ~~(A) Any property or asset owned by a local agency, including,~~
5 ~~but not limited to, cash, land, buildings, facilities, funds, equipment,~~
6 ~~supplies, telephones, computers, vehicles, travel, and local~~
7 ~~government compensated work time that is provided to a nonprofit~~
8 ~~organization, except funds received in exchange for consideration~~
9 ~~for goods or services.~~

10 ~~(B) Funds received by a nonprofit organization that have been~~
11 ~~generated from any activities related to conduit bond financing by~~
12 ~~those entities subject to the conduit financing and transparency~~
13 ~~and accountability provisions of Chapter 10.7 (commencing with~~
14 ~~Section 5870) of Division 6 of Title 1, whether or not those funds~~
15 ~~are received by the nonprofit organization in exchange for~~
16 ~~consideration for goods or services.~~

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

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

26 ~~(e) This section does not prohibit the use of public resources~~
27 ~~for expenditures authorized by law, including:~~

28 ~~(1) The costs of adopting a position or resolution supporting or~~
29 ~~opposing a clearly identified ballot measure or candidate, including,~~
30 ~~but not limited to, posting the position or resolution on the~~
31 ~~nonprofit organization’s Internet Web site, communicating the~~
32 ~~position or resolution to members of the nonprofit organization,~~
33 ~~or issuing a press statement.~~

34 ~~(2) Incidental or minimal use of public resources.~~

35 ~~(3) Incidental costs related to the establishment or administration~~
36 ~~of a sponsored committee, as defined in Section 82048.7. A~~
37 ~~reasonable accounting method may be used to determine the use~~
38 ~~of nonpublic resources to pay for that cost. For purposes of this~~
39 ~~subparagraph, “establishment and administration” means the cost~~
40 ~~of office space, telephones, salaries, utilities, supplies, legal and~~

1 accounting fees, and other expenses incurred in establishing and
2 operating a sponsored committee.

3 (4) ~~Providing information to the public about the possible effects~~
4 ~~of a ballot measure on the activities, operations, or policies of the~~
5 ~~state or a local agency if the informational activities meet both of~~
6 ~~the following conditions:~~

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

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

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

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

26 (3) ~~The Commission has jurisdiction to commence an~~
27 ~~investigation for a violation of this section in the manner described~~
28 ~~in Section 83115 and issue an order under Section 83116. A civil~~
29 ~~action shall not be filed or prosecuted under paragraph (1) with~~
30 ~~regard to a person for a violation of this section after the~~
31 ~~Commission has issued an order in the manner described in Section~~
32 ~~83116 against that person for the same violation.~~

33 ~~SEC. 4.~~

34 ~~SEC. 3.~~ Section 84222.284222.5 is added to the Government
35 Code, to read:

36 ~~84222.2.~~

37 84222.5. (a) A publicly funded nonprofit organization that
38 makes contributions or expenditures, either directly or through the
39 control of another entity, shall establish and deposit into a separate
40 bank account all funds that will be used to make contributions and

1 expenditures, and those contributions and expenditures shall come
2 from that separate bank account.

3 (b) In addition to subdivisions (b) and (c) of Section 84222, a
4 publicly funded nonprofit organization is a recipient committee
5 within the meaning of subdivision (a) of Section 82013 if any of
6 the following occur:

7 (1) It makes contributions or expenditures totaling fifty thousand
8 dollars (\$50,000) or more related to statewide candidates or ballot
9 measures or makes contributions or expenditures totaling two
10 thousand five hundred dollars (\$2,500) or more related to local
11 candidates or ballot measures, either directly or through the control
12 of another entity, during the prior quarter.

13 (2) By January 31 of each odd-numbered year, it makes
14 contributions or expenditures totaling one hundred thousand dollars
15 (\$100,000) or more related to statewide candidates or ballot
16 measures or makes contributions or expenditures totaling ten
17 thousand dollars (\$10,000) or more related to local candidates or
18 ballot measures, either directly or through the control of another
19 entity, during the previous two years.

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

23 (d) Each publicly funded nonprofit organization that makes
24 contributions or expenditures, either directly or through the control
25 of another entity, shall provide to the Commission, and display on
26 the organization's Internet Web site, the information it is required
27 to disclose under this section. The information shall be clearly
28 described and identified on a separate Internet Web page that is
29 linked from the homepage of the organization's Internet Web site.
30 The link to this Internet Web page from the homepage shall be as
31 visible as all similar links.

32 (e) The Commission may require an audit of a publicly funded
33 nonprofit organization that is required to provide records to the
34 Commission pursuant to this section. The Commission shall require
35 an audit of any publicly funded nonprofit organization that makes
36 contributions or expenditures in excess of five hundred thousand
37 dollars (\$500,000) in a calendar year. The publicly funded
38 nonprofit organization shall provide records to the Commission
39 to substantiate the information required to be disclosed by this
40 section.

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

7 (g) The definitions in subdivision (b) of Section ~~84222.1~~ 54964.5
8 apply to this section.

9 ~~SEC. 5.~~

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

19 ~~SEC. 6.~~

20 *SEC. 5.* The Legislature finds and declares that this bill furthers
21 the purposes of the Political Reform Act of 1974 within the
22 meaning of subdivision (a) of Section 81012 of the Government
23 Code.