

AMENDED IN ASSEMBLY JUNE 24, 1997

SENATE BILL

No. 124

Introduced by Senator Karnette
(Coauthor: Assembly Member Vincent)

January 8, 1997

An act to amend Sections 82015, 82028, and 82030 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

SB 124, as amended, Karnette. Political Reform Act of 1974: contributions: gifts: income.

(1) Existing provisions of the Political Reform Act of 1974 require candidates and committees, as defined, to periodically disclose on reports filed with specified public agencies the political contributions they receive. The act also limits the amount in contributions that candidates, committees, and political parties may receive in elections. The act defines the term "contribution" to include a payment, except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. The act also includes within the definition of the term "contribution" an expenditure that is made at the behest of a candidate.

This bill would amend the act's definition of the term "contribution" to provide that a payment made at the behest of a candidate is not a contribution when full and adequate consideration is received from the candidate for the payment

or when it is clear from the circumstances that the payment was made for purposes unrelated to his or her candidacy. This bill would provide specified circumstances in which it is presumed that a payment made at the behest of a candidate is unrelated to his or her candidacy and specified circumstances in which this type of payment would be deemed to be related to a candidate's candidacy. For payments made at the behest of a candidate who holds public office but that are unrelated to his or her candidacy, this bill would require the candidate to file a document with his or her agency within 30 days identifying, among other things, the amount and source of payments that, in the aggregate, equal or exceed \$5,000 in a calendar year, and that a copy of that document be forwarded to the Fair Political Practices Commission or to the officer with whom elected officers of that candidate's agency file their campaign statements, as specified.

(2) Existing provisions of the Political Reform Act of 1974 regulate the making of gifts to specified public officials and require specified public officials to periodically file a statement of economic interests disclosing, among other things, sources of gifts and income, as defined, to the official. However, the act exempts from the definition of "gift," among other things, a gift to an official that, within 30 days of receipt, is returned to the donor or delivered to a "charitable organization" without being claimed as a deduction for tax purposes. Furthermore, the act exempts from the definition of "income," among other things, travel expenses and per diem received from a bona fide "educational, academic or charitable organization."

This bill would amend the act's definition of "gift" to clarify that a gift is a payment that confers a personal benefit and to provide that an official does not receive a "gift" if, within 30 days after receipt, he or she donates the gift to a nonprofit entity that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, rather than any "charitable organization," and does not claim the donation as a deduction for tax purposes.

This bill would amend the act's definition of "income" to provide that travel expenses and per diem received from a



bona fide nonprofit entity that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, rather than from an “educational, academic or charitable organization,” are exempt from the definition of “income.”

(3) Existing law makes a violation of the act subject to administrative, civil, and criminal penalties.

This bill would impose a state-mandated local program by imposing these penalties on persons who violate the provisions of the bill.

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 with a 2/3 vote of each house and compliance with specified procedural requirements.

This bill, which would declare that it furthers the purposes of the act, would therefore require a 2/3 vote.

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

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 82015 of the Government Code
2 is amended to read:
3 82015. (a) “Contribution” means a payment, a
4 forgiveness of a loan, a payment of a loan by a third party,
5 or an enforceable promise to make a payment except to
6 the extent that full and adequate consideration is
7 received unless it is clear from the surrounding
8 circumstances that it is not made for political purposes.
9 (b) (1) A payment made at the behest of a committee
10 as defined in subdivision (a) of Section 82013 is a
11 contribution to the committee unless full and adequate



1 consideration is received from the committee for making
2 the payment.

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

6 (A) Full and adequate consideration is received from
7 the candidate.

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

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

18 (ii) A payment made by a state, local, or federal
19 governmental agency or by a nonprofit organization that
20 is exempt from taxation under Section 501(c)(3) of the
21 Internal Revenue Code.

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



1 single source has been reached for a calendar year, all
2 payments for the calendar year made by that source must
3 be disclosed within 30 days after the date the threshold
4 was reached or the payment was made, whichever occurs
5 later. State agencies shall forward a copy of these reports
6 to the Fair Political Practices Commission. Local agencies
7 shall forward a copy of these reports to the officer with
8 whom elected officers of that agency file their campaign
9 statements.

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

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

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

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

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

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

32 (vi) Preparing campaign budgets.

33 (vii) Preparing campaign finance disclosure
34 statements.

35 ~~(viii) Participating in partisan get-out-the-vote drives.~~

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



1 (D) A contribution made at the behest of a candidate
2 for a different candidate or to a committee not controlled
3 by the behesting candidate is not a contribution to the
4 behesting candidate.

5 (c) The term “contribution” includes the purchase of
6 tickets for events such as dinners, luncheons, rallies, and
7 similar fundraising events; the candidate’s own money or
8 property used on behalf of his or her candidacy; the
9 granting of discounts or rebates not extended to the
10 public generally or the granting of discounts or rebates by
11 television and radio stations and newspapers not
12 extended on an equal basis to all candidates for the same
13 office; the payment of compensation by any person for
14 the personal services or expenses of any other person if
15 the services are rendered or expenses incurred on behalf
16 of a candidate or committee without payment of full and
17 adequate consideration.

18 (d) The term “contribution” further includes any
19 transfer of anything of value received by a committee
20 from another committee, unless full and adequate
21 consideration is received.

22 (e) The term “contribution” does not include amounts
23 received pursuant to an enforceable promise to the
24 extent those amounts have been previously reported as a
25 contribution. However, the fact that those amounts have
26 been received shall be indicated in the appropriate
27 campaign statement.

28 (f) The term “contribution” does not include a
29 payment made by an occupant of a home or office for
30 costs related to any meeting or fundraising event held in
31 the occupant’s home or office if the costs for the meeting
32 or fundraising event are five hundred dollars (\$500) or
33 less.

34 (g) Notwithstanding the foregoing definition of
35 “contribution,” the term does not include volunteer
36 personal services or payments made by any individual for
37 his or her own travel expenses if the payments are made
38 voluntarily without any understanding or agreement that
39 they shall be, directly or indirectly, repaid to him or her.



1 SEC. 2. Section 82028 of the Government Code is
2 amended to read:

3 82028. (a) “Gift” means, except as provided in
4 subdivision (b), any payment that confers a personal
5 benefit on the recipient, to the extent that consideration
6 of equal or greater value is not received and includes a
7 rebate or discount in the price of anything of value unless
8 the rebate or discount is made in the regular course of
9 business to members of the public without regard to
10 official status. Any person, other than a defendant in a
11 criminal action, who claims that a payment is not a gift by
12 reason of receipt of consideration has the burden of
13 proving that the consideration received is of equal or
14 greater value.

15 (b) The term “gift” does not include:

16 (1) Informational material such as books, reports,
17 pamphlets, calendars, or periodicals. No payment for
18 travel or reimbursement for any expenses shall be
19 deemed “informational material.”

20 (2) Gifts which are not used and which, within 30 days
21 after receipt, are either returned to the donor or
22 delivered to a nonprofit entity exempt from taxation
23 under Section 501(c)(3) of the Internal Revenue Code
24 without being claimed as a charitable contribution for tax
25 purposes.

26 (3) Gifts from an individual’s spouse, child, parent,
27 grandparent, grandchild, brother, sister, parent-in-law,
28 brother-in-law, sister-in-law, nephew, niece, aunt, uncle,
29 or first cousin or the spouse of any such person; provided
30 that a gift from any such person shall be considered a gift
31 if the donor is acting as an agent or intermediary for any
32 person not covered by this paragraph.

33 (4) Campaign contributions required to be reported
34 under Chapter 4 of this title.

35 (5) Any devise or inheritance.

36 (6) Personalized plaques and trophies with an
37 individual value of less than two hundred fifty dollars
38 (\$250).

39 SEC. 3. Section 82030 of the Government Code is
40 amended to read:



1 82030. (a) “Income” means, except as provided in
2 subdivision (b), a payment received, including but not
3 limited to any salary, wage, advance, dividend, interest,
4 rent, proceeds from any sale, gift, including any gift of
5 food or beverage, loan, forgiveness or payment of
6 indebtedness received by the filer, reimbursement for
7 expenses, per diem, or contribution to an insurance or
8 pension program paid by any person other than an
9 employer, and including any community property
10 interest in the income of a spouse. Income also includes
11 an outstanding loan. Income of an individual also includes
12 a pro rata share of any income of any business entity or
13 trust in which the individual or spouse owns, directly,
14 indirectly or beneficially, a 10-percent interest or greater.
15 “Income,” other than a gift, does not include income
16 received from any source outside the jurisdiction and not
17 doing business within the jurisdiction, not planning to do
18 business within the jurisdiction, or not having done
19 business within the jurisdiction during the two years prior
20 to the time any statement or other action is required
21 under this title.

22 (b) “Income” also does not include:

23 (1) Campaign contributions required to be reported
24 under Chapter 4 (commencing with Section 84100).

25 (2) Salary and reimbursement for expenses or per
26 diem received from a state, local, or federal government
27 agency and reimbursement for travel expenses and per
28 diem received from a bona fide nonprofit entity exempt
29 from taxation under Section 501(c)(3) of the Internal
30 Revenue Code.

31 (3) Any devise or inheritance.

32 (4) Interest, dividends, or premiums on a time or
33 demand deposit in a financial institution, shares in a
34 credit union or any insurance policy, payments received
35 under any insurance policy, or any bond or other debt
36 instrument issued by any government or government
37 agency.

38 (5) Dividends, interest, or any other return on a
39 security which is registered with the Securities and
40 Exchange Commission of the United States government



1 or a commodity future registered with the Commodity
2 Futures Trading Commission of the United States
3 government, except proceeds from the sale of these
4 securities and commodities futures.

5 (6) Redemption of a mutual fund.

6 (7) Alimony or child support payments.

7 (8) Any loan or loans from a commercial lending
8 institution which are made in the lender's regular course
9 of business on terms available to members of the public
10 without regard to official status if:

11 (A) Used to purchase, refinance the purchase of, or for
12 improvements to, the principal residence of filer; or

13 (B) The balance owed does not exceed ten thousand
14 dollars (\$10,000).

15 (9) Any loan from an individual's spouse, child, parent,
16 grandparent, grandchild, brother, sister, parent-in-law,
17 brother-in-law, sister-in-law, nephew, niece, uncle, aunt,
18 or first cousin, or the spouse of any such person, provided
19 that a loan from any such person shall be considered
20 income if the lender is acting as an agent or intermediary
21 for any person not covered by this paragraph.

22 (10) Any indebtedness created as part of a retail
23 installment or credit card transaction if made in the
24 lender's regular course of business on terms available to
25 members of the public without regard to official status, so
26 long as the balance owed to the creditor does not exceed
27 ten thousand dollars (\$10,000).

28 (11) Payments received under a defined benefit
29 pension plan qualified under Internal Revenue Code
30 Section 401(a).

31 (12) Proceeds from the sale of securities registered
32 with the Securities and Exchange Commission of the
33 United States government or from the sale of
34 commodities futures registered with the Commodity
35 Futures Trading Commission of the United States
36 government if the filer sells the securities or the
37 commodities futures on a stock or commodities exchange
38 and does not know or have reason to know the identity of
39 the purchaser.

1 SEC. 4. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution because the only costs that may be incurred
4 by a local agency or school district will be incurred
5 because this act creates a new crime or infraction,
6 eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section
8 17556 of the Government Code, or changes the definition
9 of a crime within the meaning of Section 6 of Article
10 XIII B of the California Constitution.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

15 SEC. 5. The Legislature finds and declares that the
16 provisions of this act further the purpose of the Political
17 Reform Act of 1974 within the meaning of subdivision (a)
18 of Section 81012 of the Government Code.

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

24 In order to clarify the definition of the term
25 “contribution” so that candidates for elective office may
26 better comply with the contribution limitations imposed
27 by the amendments to the Political Reform Act of 1974 in
28 the form of the California Political Reform Act of 1996,
29 and in order to clarify the definitions of “gift” and
30 “income” so that public officials and candidates for
31 elective office may avoid conflicts of interest under the
32 Political Reform Act of 1974, it is necessary that this act
33 take effect immediately.

