

AMENDED IN ASSEMBLY APRIL 3, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2771

Introduced by Assembly Member Leno

February 24, 2006

An act to amend Sections 84602 and 84605 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL’S DIGEST

AB 2771, as amended, Leno. Political Reform Act of 1974: electronic filing.

The Political Reform Act of 1974 requires the Secretary of State, in consultation with the Fair Political Practices Commission, to make available a means or method no later than December 31, 2002, allowing filers subject to the online or electronic filing provisions of the act to submit required filings free of charge. The act specifies that any means or method developed for free online or electronic filing shall not provide any additional or enhanced functions or services that exceed the minimum requirements necessary to fulfill the disclosure provisions of the act.

The act requires that specified persons or entities periodically file reports online or electronically with the Secretary of State, including any general purpose committee that cumulatively has received contributions or made expenditures totaling \$50,000 or more, and any slate mailer organization with cumulative reportable payments received or made for purposes of producing slate mailers of \$50,000 or more.

This bill would make findings and declarations of the Legislature concerning the effect of the failure of the Secretary of State to provide

free online or electronic filing for on those entities required to file online or electronically by the act, especially smaller entities. The bill would delete the limitation on the provision of additional or enhanced functions or services by the Secretary of State in the means or method for free online or electronic filing. The bill would also delay the online or electronic filing above requirements for certain general purpose committees and slate mailer organizations with cumulative ~~contributions and expenditures~~ reportable payments less than \$50,000 over 3 years until January 1, 2010, or until the first filing due more than 6 months after the Fair Political Practices Commission has certified that the free online filing processes developed by the Secretary of State are sufficiently simple to access and use that a person without technical training or support can reasonably be expected to file without that training or support, whichever is earlier.

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~~ ^{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~~ ^{2/3} vote.

Vote: ^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Contrary to its statutory duty, the Secretary of State has not
- 4 timely provided a means of free online or electronic filing that
- 5 can be used by an entity required to disclose information by the
- 6 Political Reform Act of 1974 to file that information online or
- 7 electronically without technical training or support.
- 8 (b) The Secretary of State must provide a free means of filing
- 9 online or electronically with appropriately enhanced functions
- 10 and services to make free filing a viable option.
- 11 (c) The cost of contracting with one of the services that can
- 12 assist a committee or organization to comply with online or
- 13 electronic filing obligations is prohibitive for some of the smaller
- 14 organizations that are required to file under the act.

1 (d) The Legislature did not intend to force those smaller
2 committees and organizations, which by virtue of their limited
3 size are less likely to distort democratic processes, to commit
4 large portions of their budgets to filing obligations or to drive
5 them out of operation by making them inefficient.

6 (e) Until the Secretary of State provides for free filing methods
7 that are accessible to smaller general purpose committees and
8 slate mailer organizations, as was foreseen at the time the
9 Legislature designed the online filing requirement, or until cost
10 competition in the offering of online filing services by private
11 companies has reduced the cost of compliance, it is inappropriate
12 to apply the online filing duty to smaller slate mailer
13 organizations and general purpose committees.

14 (f) Delaying until January 1, 2010, the electronic or online
15 filing obligations of general purpose committees and slate mailer
16 organizations with lesser cumulative revenues will enable the
17 marketplace to adjust and provide less expensive filing services
18 consistent with the lesser budgets of those committees and
19 organizations, in the event the Secretary of State continues to fail
20 to provide an appropriate free method of filing online or
21 electronically.

22 SEC. 2. Section 84602 of the Government Code is amended
23 to read:

24 84602. To implement the Legislature's intent, the Secretary
25 of State, in consultation with the commission, notwithstanding
26 any other provision of the Government Code, shall do all of the
27 following:

28 (a) Develop online and electronic filing processes for use by
29 persons and entities specified in Sections 84604 and 84605 that
30 are required to file statements and reports with the Secretary of
31 State's office pursuant to Chapter 4 (commencing with Section
32 84100) and Chapter 6 (commencing with Section 86100). Those
33 processes shall each enable a user to comply with all the
34 disclosure requirements of this title and shall include, at a
35 minimum, the following:

36 (1) A means or method whereby filers subject to this chapter
37 may submit required filings free of charge. *Any means or method*
38 *developed pursuant to this subdivision shall not provide any*
39 *additional services that exceed the minimum requirements*
40 *necessary to fulfill the disclosure provisions of this title.* At least

1 one means or method shall be made available no later than
2 December 31, 2002.

3 (2) The definition of a nonproprietary standardized record
4 format or formats using industry standards for the transmission of
5 the data that is required of those persons and entities specified in
6 subdivision (a) of Section 84604 and Section 84605 and that
7 conforms with the disclosure requirements of this title. The
8 Secretary of State shall hold public hearings prior to development
9 of the record format or formats as a means to ensure that affected
10 entities have an opportunity to provide input into the
11 development process. The format or formats shall be made public
12 no later than July 1, 1999, to ensure sufficient time to comply
13 with the requirements of this chapter.

14 (b) Accept test files from software vendors and others wishing
15 to file reports electronically, for the purpose of determining
16 whether the file format is in compliance with the standardized
17 record format developed pursuant to subdivision (a) and is
18 compatible with the Secretary of State's system for receiving the
19 data. A list of the software and service providers who have
20 submitted acceptable test files shall be published by the Secretary
21 of State and made available to the public. Acceptably formatted
22 files shall be submitted by a filer in order to meet the
23 requirements of this chapter.

24 (c) Develop a system that provides for the online or electronic
25 transfer of the data specified in this section utilizing
26 telecommunications technology that assures the integrity of the
27 data transmitted and that creates safeguards against efforts to
28 tamper with or subvert the data.

29 (d) Make all the data filed available on the Internet in an easily
30 understood format that provides the greatest public access. The
31 data shall be made available free of charge and as soon as
32 possible after receipt. All late contribution and late independent
33 expenditure reports, as defined by Sections 84203 and 84204,
34 respectively, shall be made available on the Internet within 24
35 hours of receipt. The data made available on the Internet shall not
36 contain the street name and building number of the persons or
37 entity representatives listed on the electronically filed forms or
38 any bank account number required to be disclosed pursuant to
39 this title.

1 (e) Develop a procedure for filers to comply with the
2 requirement that they sign under penalty of perjury pursuant to
3 Section 81004.

4 (f) Maintain all filed data online for 10 years after the date it is
5 filed, and then archive the information in a secure format.

6 (g) Provide assistance to those seeking public access to the
7 information.

8 (h) Implement sufficient technology to seek to prevent
9 unauthorized alteration or manipulation of the data.

10 (i) Provide the commission with necessary information to
11 enable it to assist agencies, public officials, and others, with the
12 compliance with and administration of this title.

13 (j) Report to the Legislature on the implementation and
14 development of the online and electronic filing and disclosure
15 requirements of this chapter. The report shall include an
16 examination of system security, private security issues, software
17 availability, compliance costs to filers, use of the filing system
18 and software provided by the Secretary of State, and other issues
19 relating to this chapter, and shall recommend appropriate changes
20 if necessary. In preparing the report, the commission may present
21 to the Secretary of State and the Legislature its comments
22 regarding this chapter as it relates to the duties of the commission
23 and suggest appropriate changes if necessary. There shall be one
24 report due before the system is operational as set forth in Section
25 84603, one report due no later than June 1, 2002, and one report
26 due no later than January 31, 2003.

27 (k) Review the current filing and disclosure requirements of
28 this chapter and report to the Legislature, no later than June 1,
29 2005, recommendations on revising these requirements so as to
30 promote greater reliance on electronic and online submissions.

31 SEC. 3. Section 84605 of the Government Code is amended
32 to read:

33 84605. Beginning on July 1, 2000, and for all applicable
34 reporting periods thereafter, the following persons shall file
35 online or electronically with the Secretary of State:

36 (a) Any candidate, including appellate court and Supreme
37 Court candidates and officeholders, committee, or other persons
38 who are required, pursuant to Chapter 4 (commencing with
39 Section 84100), to file statements, reports, or other documents in
40 connection with a state elective office or state measure, provided

1 that the total cumulative reportable amount of contributions
2 received, expenditures made, loans made, or loans received is
3 fifty thousand dollars (\$50,000) or more. In determining the
4 cumulative reportable amount, all controlled committees, as
5 defined by Section 82016, and officeholder accounts, as defined
6 by Section 85313, shall be included. For a committee subject to
7 this title prior to January 1, 2000, the beginning date for
8 calculating cumulative totals is January 1, 2000. For a committee
9 that is first subject to this title on or after January 1, 2000, the
10 beginning date for calculating cumulative totals is the date the
11 committee is first subject to this title. A committee, as defined in
12 subdivision (c) of Section 82013, shall file online or
13 electronically if it makes contributions of fifty thousand dollars
14 (\$50,000) or more in a calendar year.

15 (b) Any general purpose committees, as defined in Section
16 82027.5, including the general purpose committees of political
17 parties, and small contributor committees, as defined in Section
18 85203, that cumulatively receive contributions or make
19 expenditures totaling fifty thousand dollars (\$50,000) or more to
20 support or oppose candidates for any elective state office or state
21 measure. For a committee subject to this title prior to January 1,
22 2000, the beginning date for calculating cumulative totals is
23 January 1, 2000. For a committee that first is subject to this title
24 on or after January 1, 2000, the beginning date for calculating
25 cumulative totals is the date the committee is first subject to this
26 title. However, any entity that would otherwise be required by
27 this subdivision to file online or electronically that has not
28 cumulatively received contributions or made expenditures
29 totaling fifty thousand dollars (\$50,000) within three years of the
30 applicable beginning date for calculating cumulative totals need
31 not file online or electronically until January 1, 2010, or until the
32 first filing due more than six months after the commission has
33 certified that the free online filing processes developed by the
34 Secretary of State pursuant to Section 84602 are sufficiently
35 simple to access and use that a person without technical training
36 or support can reasonably be expected to file without that
37 training or support, whichever is earlier.

38 (c) Any slate mailer organization with cumulative reportable
39 payments received or made for the purposes of producing slate
40 mailers of fifty thousand dollars (\$50,000) or more. For a slate

1 mailer organization subject to this title prior to January 1, 2000,
2 the beginning date for calculating cumulative totals is January 1,
3 2000. For a slate mailer organization that first is subject to this
4 title on or after January 1, 2000, the beginning date for
5 calculating cumulative totals is the date the organization is first
6 subject to this title.

7 However, any entity that would otherwise be required by this
8 subdivision to file online or electronically that has not
9 cumulatively received ~~contributions or made expenditures or~~
10 ~~made reportable payments~~ totaling fifty thousand dollars
11 (\$50,000) within three years of the applicable beginning date for
12 calculating cumulative totals need not file online or electronically
13 until January 1, 2010, or until the first filing due more than six
14 months after the commission has certified that the free online
15 filing processes developed by the Secretary of State pursuant to
16 Section 84602 are sufficiently simple to access and use that a
17 person without technical training or support can reasonably be
18 expected to file without that training or support, whichever is
19 earlier.

20 (d) Any lobbyist, lobbying firm, lobbyist employer or other
21 persons required, pursuant to Chapter 6 (commencing with
22 Section 86100), to file statements, reports, or other documents,
23 provided that the total amount of any category of reportable
24 payments, expenses, contributions, gifts, or other items is five
25 thousand dollars (\$5,000) or more in a calendar quarter.

26 (e) The Secretary of State shall also disclose on the Internet
27 any late contribution or late independent expenditure report, as
28 defined by Sections 84203 and 84204, respectively, not covered
29 by subdivision (a), (b), or (c).

30 (f) Committees and other persons that are not required to file
31 online or electronically by this section may do so voluntarily.

32 (g) Once a person or entity is required to file online or
33 electronically, subject to subdivision (a), (b), (c), (d), or (f), the
34 person or entity shall be required to file all subsequent reports
35 online or electronically.

36 (h) It shall be presumed that online or electronic filers file
37 under penalty of perjury.

38 (i) Persons filing online or electronically shall also continue to
39 file required disclosure statements and reports in paper format.
40 The paper copy shall continue to be the official filing for audit

1 and other legal purposes until the Secretary of State, pursuant to
2 Section 84606, determines the system is operating securely and
3 effectively.

4 (j) The Secretary of State shall maintain at all times a secured,
5 official version of all original online and electronically filed
6 statements and reports required by this chapter. Upon
7 determination by the Secretary of State, pursuant to Section
8 84606, that the system is operating securely and effectively, this
9 online or electronic version shall be the official version for audit
10 and other legal purposes.

11 SEC. 4. The Legislature finds and declares that the provisions
12 of this act further the purposes of the Political Reform Act of
13 1974 within the meaning of subdivision (a) of Section 81012 of
14 the Government Code.