

Introduced by Senator CorreaDecember 3, 2012

An act to amend Section 82015 of, and to add Sections 84222 and 84223 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as introduced, Correa. Political Reform Act of 1974.

Existing law, the Political Reform Act of 1974, provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures, as defined, and imposing other reporting and recordkeeping requirements on campaign committees, as defined. The Fair Political Practices Commission administers and enforces the act. A violation of the act's provisions is punishable as a misdemeanor.

This bill would revise the definition of a "contribution" to include payments made by a donor who, at the time of making the payment, knows or has reason to know that the payment, or funds with which the payment will be commingled, will be used to make contributions or expenditures. The bill establishes presumptions as to whether a donor has reason to know that a payment will be used to make contributions or expenditures based on the number of years the recipient has existed and the amount of the recipient's first contribution or expenditure, as specified.

This bill would impose reporting requirements on a multipurpose organization, as defined, that receives donations and uses those donations to make contributions or expenditures of \$1,000 or more in a calendar year in this state. The bill would also authorize the

Commission to perform discretionary audits of these reports, as specified.

This bill would require ballot measure committees and candidate committees that raise \$1,000,000 or more for an election to maintain an accurate list of the committee's top 10 contributors, which are to be posted on the Commission's Internet Web site as well as the committee's Internet Web site, if any.

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. The Legislature finds and declares all of the
2 following:

3 (a) Nonprofit and other multipurpose organizations are
4 increasing their political activities and some are seeking to make
5 contributions and expenditures in California elections without
6 revealing their financial backers.

7 (b) Certain donors attempt to obscure their identities from the
8 public by making donations to one organization or entity which
9 then makes donations to a separate organization or campaign
10 committee, or by routing funds through a succession of committees.
11 Committees themselves are in the best position to know who their
12 financial backers are and to provide this information to the public
13 in an accurate, timely, and transparent manner.

14 (c) Under the Political Reform Act of 1974, nonprofit and other
15 multipurpose organizations that make contributions or expenditures
16 to support or oppose California candidates or ballot measures are
17 subject to the same rules as those entities that raise funds

1 specifically for California elections – they must disclose the sources
2 of funds used for their political expenditures.

3 (d) It is therefore the intent of the Legislature to strengthen the
4 laws requiring the disclosure of contributions and expenditures in
5 California elections by nonprofit and other multipurpose
6 organizations and to require Internet posting of a list of the top ten
7 contributors to a committee primarily formed to support or oppose,
8 and raising or spending one million dollars (\$1,000,000) or more
9 to support or oppose, ballot measures or candidates.

10 SEC. 2. Section 82015 of the Government Code is amended
11 to read:

12 82015. (a) “Contribution” means a payment, a forgiveness of
13 a loan, a payment of a loan by a third party, or an enforceable
14 promise to make a payment except to the extent that full and
15 adequate consideration is received, unless it is clear from the
16 surrounding circumstances that it is not made for political purposes.

17 (b) (1) A payment made at the behest of a committee as defined
18 in subdivision (a) of Section 82013 is a contribution to the
19 committee unless full and adequate consideration is received from
20 the committee for making the payment.

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

24 (A) Full and adequate consideration is received from the
25 candidate.

26 (B) It is clear from the surrounding circumstances that the
27 payment was made for purposes unrelated to his or her candidacy
28 for elective office. The following types of payments are presumed
29 to be for purposes unrelated to a candidate’s candidacy for elective
30 office:

31 (i) A payment made principally for personal purposes, in which
32 case it may be considered a gift under the provisions of Section
33 82028. Payments that are otherwise subject to the limits of Section
34 86203 are presumed to be principally for personal purposes.

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

38 (iii) A payment not covered by clause (i), made principally for
39 legislative, governmental, or charitable purposes, in which case it
40 is neither a gift nor a contribution. However, payments of this type

1 that are made at the behest of a candidate who is an elected officer
2 shall be reported within 30 days following the date on which the
3 payment or payments equal or exceed five thousand dollars
4 (\$5,000) in the aggregate from the same source in the same
5 calendar year in which they are made. The report shall be filed by
6 the elected officer with the elected officer's agency and shall be
7 a public record subject to inspection and copying pursuant to
8 subdivision (a) of Section 81008. The report shall contain the
9 following information: name of payor, address of payor, amount
10 of the payment, date or dates the payment or payments were made,
11 the name and address of the payee, a brief description of the goods
12 or services provided or purchased, if any, and a description of the
13 specific purpose or event for which the payment or payments were
14 made. Once the five-thousand-dollar (\$5,000) aggregate threshold
15 from a single source has been reached for a calendar year, all
16 payments for the calendar year made by that source must be
17 disclosed within 30 days after the date the threshold was reached
18 or the payment was made, whichever occurs later. Within 30 days
19 after receipt of the report, state agencies shall forward a copy of
20 these reports to the Fair Political Practices Commission, and local
21 agencies shall forward a copy of these reports to the officer with
22 whom elected officers of that agency file their campaign
23 statements.

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

29 (i) Communications that contain express advocacy of the
30 nomination or election of the candidate or the defeat of his or her
31 opponent.

32 (ii) Communications that contain reference to the candidate's
33 candidacy for elective office, the candidate's election campaign,
34 or the candidate's or his or her opponent's qualifications for
35 elective office.

36 (iii) Solicitation of contributions to the candidate or to third
37 persons for use in support of the candidate or in opposition to his
38 or her opponent.

1 (iv) Arranging, coordinating, developing, writing, distributing,
2 preparing, or planning of any communication or activity described
3 in clause (i), (ii), or (iii).

4 (v) Recruiting or coordinating campaign activities of campaign
5 volunteers on behalf of the candidate.

6 (vi) Preparing campaign budgets.

7 (vii) Preparing campaign finance disclosure statements.

8 (viii) Communications directed to voters or potential voters as
9 part of activities encouraging or assisting persons to vote if the
10 communication contains express advocacy of the nomination or
11 election of the candidate or the defeat of his or her opponent.

12 (D) A contribution made at the behest of a candidate for a
13 different candidate or to a committee not controlled by the
14 behesting candidate is not a contribution to the behesting candidate.

15 (3) A payment made at the behest of a member of the Public
16 Utilities Commission, made principally for legislative,
17 governmental, or charitable purposes, is not a contribution.
18 However, payments of this type shall be reported within 30 days
19 following the date on which the payment or payments equal or
20 exceed five thousand dollars (\$5,000) in the aggregate from the
21 same source in the same calendar year in which they are made.
22 The report shall be filed by the member with the Public Utilities
23 Commission and shall be a public record subject to inspection and
24 copying pursuant to subdivision (a) of Section 81008. The report
25 shall contain the following information: name of payor, address
26 of payor, amount of the payment, date or dates the payment or
27 payments were made, the name and address of the payee, a brief
28 description of the goods or services provided or purchased, if any,
29 and a description of the specific purpose or event for which the
30 payment or payments were made. Once the five-thousand-dollar
31 (\$5,000) aggregate threshold from a single source has been reached
32 for a calendar year, all payments for the calendar year made by
33 that source must be disclosed within 30 days after the date the
34 threshold was reached or the payment was made, whichever occurs
35 later. Within 30 days after receipt of the report, the Public Utilities
36 Commission shall forward a copy of these reports to the Fair
37 Political Practices Commission.

38 (c) "Contribution" includes the purchase of tickets for events
39 such as dinners, luncheons, rallies, and similar fundraising events;
40 the candidate's own money or property used on behalf of his or

1 her candidacy other than personal funds of the candidate used to
2 pay either a filing fee for a declaration of candidacy or a candidate
3 statement prepared pursuant to Section 13307 of the Elections
4 Code; the granting of discounts or rebates not extended to the
5 public generally or the granting of discounts or rebates by television
6 and radio stations and newspapers not extended on an equal basis
7 to all candidates for the same office; the payment of compensation
8 by any person for the personal services or expenses of any other
9 person if the services are rendered or expenses incurred on behalf
10 of a candidate or committee without payment of full and adequate
11 consideration.

12 (d) “Contribution” further includes any transfer of anything of
13 value received by a committee from another committee, unless
14 full and adequate consideration is received.

15 (e) “Contribution” does not include amounts received pursuant
16 to an enforceable promise to the extent those amounts have been
17 previously reported as a contribution. However, the fact that those
18 amounts have been received shall be indicated in the appropriate
19 campaign statement.

20 (f) “Contribution” does not include a payment made by an
21 occupant of a home or office for costs related to any meeting or
22 fundraising event held in the occupant’s home or office if the costs
23 for the meeting or fundraising event are five hundred dollars (\$500)
24 or less.

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

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

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

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

1 (I) (1) “Contribution” further includes a payment made to a
2 person if, at the time of making the payment, the donor knows or
3 has reason to know that the payment, or funds with which the
4 payment will be commingled, will be used to make a contribution
5 or expenditure. If the donor knows or has reason to know that only
6 part of the payment will be used to make a contribution or
7 expenditure, the payment shall be apportioned on a reasonable
8 basis in order to determine the amount of the contribution.

9 (2) For purposes of paragraph (1), if the person receiving the
10 payment has been in existence for two years or more prior to
11 making a contribution or expenditure in this state and the person’s
12 first contribution or expenditure in this state is less than five
13 hundred thousand dollars (\$500,000), there shall be a presumption
14 that the donor does not have reason to know that all or part of the
15 payment will be used to make a contribution or expenditure, unless
16 the person has made contributions or expenditures of one thousand
17 dollars (\$1,000) or more in the aggregate during the calendar
18 year in which the payment occurs, or in any of the immediately
19 preceding four calendar years.

20 (3) For purposes of paragraph (1), if the person receiving the
21 payment has been in existence for less than two years prior to
22 making a contribution or expenditure in this state or the person’s
23 first contribution or expenditure in this state is five hundred
24 thousand dollars (\$500,000) or more, there shall be a presumption
25 that the donor has reason to know that all or part of the payment
26 will be used to make a contribution or expenditure.

27 (4) A donor who makes a contribution described in paragraph
28 (1) shall be identified and reported by the person receiving the
29 contribution in accordance with regulations adopted by the
30 Commission.

31 SEC. 3. Section 84222 is added to the Government Code, to
32 read:

33 84222. (a) For purposes of this section, “multipurpose
34 organization” means a nonprofit organization, a federal or
35 out-of-state political action committee, or a local club focusing on
36 educational or social activities.

37 (b) A multipurpose organization that receives donations and
38 uses those donations to make contributions or expenditures of one
39 thousand dollars (\$1,000) or more in a calendar year in this state
40 shall disclose the donors that are the sources of the donations used

1 to make contributions or expenditures, in accordance with
2 regulations adopted by the Commission.

3 (c) A multipurpose organization that makes contributions or
4 expenditures in this state is subject to discretionary audits
5 conducted by the Commission. An audit conducted pursuant to
6 this subdivision shall be limited to examining the multipurpose
7 organization's contributions or expenditures in this state and the
8 donations that are the sources of the funds for those contributions
9 or expenditures. During an audit, a multipurpose organization shall
10 make its records of donors available for inspection by the
11 Commission, if requested. A multipurpose organization shall keep
12 copies of its fundraising solicitations and, during an audit, make
13 those solicitations available for inspection by the Commission, if
14 requested.

15 SEC. 4. Section 84223 is added to the Government Code, to
16 read:

17 84223. (a) A committee primarily formed to support or oppose
18 a ballot measure or candidate that raises one million dollars
19 (\$1,000,000) or more for an election shall maintain an accurate
20 and publicly available list of the committee's top ten contributors,
21 as specified by Commission regulations. The list of top ten
22 contributors shall be posted on the Commission's Internet Web
23 site and posted prominently on the committee's Internet Web site,
24 if any.

25 (b) In listing the top ten contributors, the committee shall use
26 reasonable efforts to identify the actual individuals or corporations
27 that are the true sources of the contributions made to the committee
28 from other persons or committees.

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

38 SEC. 6. The Legislature finds and declares that this bill furthers
39 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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