

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 914

Introduced by Assembly Member Gordon

February 22, 2013

An act to amend Section 12586 of, and to add Article 3.5 (commencing with Section 84350) to Chapter 4 of Title 9 of, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 914, as amended, Gordon. Political Reform Act of 1974: *campaign disclosures.*

The

(1) The Political Reform Act of 1974 imposes various reporting requirements with regard to contributions and independent expenditures, as defined, made for political purposes. The act establishes the Fair Political Practices Commission as the agency responsible for administering and enforcing the act.

This bill would require the Commission to develop a Nonprofit and Multipurpose Organization Disclosure Statement form. The bill would require that the form provide for the disclosure of specified information relating to contributions, expenditures, and independent expenditures made by, and donations made to, a nonprofit corporation. The bill would require a nonprofit corporation to file a Nonprofit and Multipurpose Organization Disclosure Statement, at a time prescribed by the Commission, in any year in which the nonprofit corporation makes combined contributions, expenditures, and independent expenditures in this state aggregating \$50,000 or more during the nonprofit corporation's fiscal year.

The bill would require the Commission to make Nonprofit and Multipurpose Organization Disclosure Statements available to the public. The bill would authorize a nonprofit corporation or a donor to the nonprofit corporation to petition the Commission to maintain the confidentiality of information relating to donors and donations. The bill would require the Commission to grant a petition to maintain the confidentiality of donor and donation information if the petitioner establishes by clear and convincing evidence that the public disclosure of donor information will cause undue harm, threats, harassment, or reprisals to the donor, or that the donor did not know or have reason to know that his or her donation would be used to make a contribution, expenditure, or independent expenditure, as specified.

(2) The Supervision of Trustees and Fundraisers for Charitable Purposes Act provides the Attorney General with enforcement and supervisory powers relating to certain entities, including charitable corporations, unincorporated associations, and trustees. Existing law requires these entities to file with the Attorney General periodic written reports, under oath, that set forth information as to the nature of the assets held for charitable purposes and the administration of these assets by the corporation or the trustee in accordance with rules and regulations of the Attorney General. These requirements do not apply to an entity that is a committee for purposes of the Political Reform Act of 1974 that is required to file specified campaign statements pursuant to that act.

This bill would additionally require a charitable corporation, unincorporated association, or trustee that is required to file periodic written reports with the Attorney General to file a Nonprofit and Multipurpose Organization Disclosure Statement as an attachment to its periodic written reports if the entity made combined contributions, expenditures, or independent expenditures in this State aggregating \$50,000 or more during the entity's fiscal year, as specified.

This bill would authorize an entity or its donors to petition the Attorney General to maintain the confidentiality of certain donor information in the same manner described above with respect to similar statements filed with the Commission, as specified.

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.

~~This bill would declare the intent of the Legislature to enact legislation that would strengthen the act by requiring greater accountability and disclosure by multipurpose groups and nonprofit organizations that make campaign contributions and independent expenditures.~~

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. Section 12586 of the Government Code is
2 amended to read:

3 12586. (a) Except as otherwise provided and except corporate
4 trustees—~~which~~ *that* are subject to the jurisdiction of the
5 Commissioner of Financial Institutions of the State of California
6 under Division 1 (commencing with Section 99) of the Financial
7 Code or to the Comptroller of the Currency of the United States,
8 every charitable corporation, unincorporated association, and
9 trustee subject to this article shall, in addition to filing copies of
10 the instruments previously required, file with the Attorney General
11 periodic written reports, under oath, setting forth information as
12 to the nature of the assets held for charitable purposes and the
13 administration thereof by the corporation, unincorporated
14 association, or trustee, in accordance with rules and regulations of
15 the Attorney General.

16 (b) The Attorney General shall make rules and regulations as
17 to the time for filing reports, the contents thereof, and the manner
18 of executing and filing them. The Attorney General may classify
19 trusts and other relationships concerning property held for a
20 charitable purpose as to purpose, nature of assets, duration of the
21 trust or other relationship, amount of assets, amounts to be devoted
22 to charitable purposes, nature of trustee, or otherwise, and may
23 establish different rules for the different classes as to time and
24 nature of the reports required to the ends (1) that he or she shall

1 receive reasonably current, periodic reports as to all charitable
2 trusts or other relationships of a similar nature, which will enable
3 him or her to ascertain whether they are being properly
4 administered, and (2) that periodic reports shall not unreasonably
5 add to the expense of the administration of charitable trusts and
6 similar relationships. The Attorney General may suspend the filing
7 of reports as to a particular charitable trust or relationship for a
8 reasonable, specifically designated time upon written application
9 of the trustee filed with the Attorney General and after the Attorney
10 General has filed in the register of charitable trusts a written
11 statement that the interests of the beneficiaries will not be
12 prejudiced thereby and that periodic reports are not required for
13 proper supervision by his or her office.

14 (c) A copy of an account filed by the trustee in any court having
15 jurisdiction of the trust or other relationship, if the account
16 substantially complies with the rules and regulations of the
17 Attorney General, may be filed as a report required by this section.

18 (d) The first periodic written report, unless the filing thereof is
19 suspended as herein provided, shall be filed not later than four
20 months and 15 days following the close of the first calendar or
21 fiscal year in which property is initially received. If any part of
22 the income or principal of a trust previously established is
23 authorized or required to be applied to a charitable purpose at the
24 time this article takes effect, the first report shall be filed at the
25 close of the calendar or fiscal year in which it was registered with
26 the Attorney General or not later than four months and 15 days
27 following the close of the calendar or fiscal period.

28 (e) Every charitable corporation, unincorporated association,
29 and trustee required to file reports with the Attorney General
30 pursuant to this section that receives or accrues in any fiscal year
31 gross revenue of two million dollars (\$2,000,000) or more,
32 exclusive of grants from, and contracts for services with,
33 governmental entities for which the governmental entity requires
34 an accounting of the funds received, shall do *all of* the following:

35 (1) Prepare annual financial statements using generally accepted
36 accounting principles that are audited by an independent certified
37 public accountant in conformity with generally accepted auditing
38 standards. For any nonaudit services performed by the firm
39 conducting the audit, the firm and its individual auditors shall
40 adhere to the standards for auditor independence set forth in the

1 latest revision of the Government Auditing Standards, issued by
2 the Comptroller General of the United States (the Yellow Book).
3 The Attorney General may, by regulation, prescribe standards for
4 auditor independence in the performance of nonaudit services,
5 including standards different from those set forth in the Yellow
6 Book. If a charitable corporation or unincorporated association
7 that is required to prepare an annual financial statement pursuant
8 to this subdivision is under the control of another organization,
9 the controlling organization may prepare a consolidated financial
10 statement. The audited financial statements shall be available for
11 inspection by the Attorney General and by members of the public
12 no later than nine months after the close of the fiscal year to which
13 the statements relate. A charity shall make its annual audited
14 financial statements available to the public in the same manner
15 that is prescribed for IRS Form 990 by the latest revision of Section
16 6104(d) of the Internal Revenue Code and associated regulations.

17 (2) If it is a corporation, have an audit committee appointed by
18 the board of directors. The audit committee may include persons
19 who are not members of the board of directors, but the member or
20 members of the audit committee shall not include any members
21 of the staff, including the president or chief executive officer and
22 the treasurer or chief financial officer. If the corporation has a
23 finance committee, it must be separate from the audit committee.
24 Members of the finance committee may serve on the audit
25 committee; however, the chairperson of the audit committee may
26 not be a member of the finance committee and members of the
27 finance committee shall constitute less than one-half of the
28 membership of the audit committee. Members of the audit
29 committee shall not receive any compensation from the corporation
30 in excess of the compensation, if any, received by members of the
31 board of directors for service on the board and shall not have a
32 material financial interest in any entity doing business with the
33 corporation. Subject to the supervision of the board of directors,
34 the audit committee shall be responsible for recommending to the
35 board of directors the retention and termination of the independent
36 auditor and may negotiate the independent auditor's compensation;
37 on behalf of the board of directors. The audit committee shall
38 confer with the auditor to satisfy its members that the financial
39 affairs of the corporation are in order, shall review and determine
40 whether to accept the audit, shall assure that any nonaudit services

1 performed by the auditing firm conform with standards for auditor
2 independence referred to in paragraph (1), and shall approve
3 performance of nonaudit services by the auditing firm. If the
4 charitable corporation that is required to have an audit committee
5 pursuant to this subdivision is under the control of another
6 corporation, the audit committee may be part of the board of
7 directors of the controlling corporation.

8 (f) If, independent of the audit requirement set forth in paragraph
9 (1) of subdivision (e), a charitable corporation, unincorporated
10 association, or trustee required to file reports with the Attorney
11 General pursuant to this section prepares financial statements that
12 are audited by a certified public accountant, the audited financial
13 statements shall be available for inspection by the Attorney General
14 and shall be made available to members of the public in conformity
15 with paragraph (1) of subdivision (e).

16 (g) The board of directors of a charitable corporation or
17 unincorporated association, or an authorized committee of the
18 board, and the trustee or trustees of a charitable trust shall review
19 and approve the compensation, including benefits, of the president
20 or chief executive officer and the treasurer or chief financial officer
21 to assure that it is just and reasonable. This review and approval
22 shall occur initially upon the hiring of the officer, whenever the
23 term of employment, if any, of the officer is renewed or extended,
24 and whenever the officer's compensation is modified. Separate
25 review and approval shall not be required if a modification of
26 compensation extends to substantially all employees. If a charitable
27 corporation is affiliated with other charitable corporations, the
28 requirements of this section shall be satisfied if review and approval
29 is obtained from the board, or an authorized committee of the
30 board, of the charitable corporation that makes retention and
31 compensation decisions regarding a particular individual.

32 (h) (1) *This subdivision applies only to a charitable corporation,*
33 *unincorporated association, or trustee that is required to file*
34 *reports with the Attorney General pursuant to this section and that*
35 *makes combined contributions, expenditures, and independent*
36 *expenditures in this state aggregating fifty thousand dollars*
37 *(\$50,000) or more during the entity's fiscal year.*

38 (2) *The Fair Political Practices Commission shall develop a*
39 *Nonprofit and Multipurpose Organization Disclosure Statement*
40 *form that an entity described in paragraph (1) shall file with the*

1 *Attorney General, as required by this subdivision. The form, which*
2 *may be identical to the form created for nonprofit corporations*
3 *pursuant to Section 84350, shall provide for the disclosure of all*
4 *of the following information:*

5 (A) *The aggregate combined dollar amount of contributions,*
6 *expenditures, and independent expenditures that are made during*
7 *the reporting period.*

8 (B) *The amount of expenses attributable to contributions,*
9 *expenditures, and independent expenditures as a percentage of*
10 *the entity's total expenses that are made during the reporting*
11 *period.*

12 (C) *For purposes of an entity for which the combined amounts*
13 *of contributions, expenditures, and independent expenditures made*
14 *during the reporting period exceed 10 percent of the entity's total*
15 *expenses, each of the following with respect to contributions,*
16 *expenditures, and independent expenditures made during that*
17 *period:*

18 (i) *The amount of any funds, or the fair market value of any*
19 *services or assets, that are provided in relation to a contribution,*
20 *expenditure, or independent expenditure.*

21 (ii) *The amount or fair market value of any liabilities incurred*
22 *in relation to a contribution, expenditure, or independent*
23 *expenditure.*

24 (iii) *The date that the funds, services, or assets were provided*
25 *or the liabilities were incurred.*

26 (iv) *The name and address of the recipient of the contribution,*
27 *expenditure, or independent expenditure.*

28 (v) *A description of the contribution, expenditure, or independent*
29 *expenditure and its purpose, including whether the contribution,*
30 *expenditure, or independent expenditure was made in support of*
31 *or opposition to a candidate, political party, ballot measure, or*
32 *other question put before the voters in an election.*

33 (vi) *Information related to each donation received by the entity*
34 *during the reporting period, including the name and address of*
35 *each donor who made donations in an aggregate amount of ten*
36 *thousand dollars (\$10,000) or more during the reporting period,*
37 *the name of the employer of each individual donor, if available,*
38 *and the date and amount of each donation.*

39 (3) (A) *Except as otherwise provided in this paragraph, an*
40 *entity described in paragraph (1) shall file a Nonprofit and*

1 *Multipurpose Organization Disclosure Statement as an attachment*
2 *to its periodic written reports required by this section with the*
3 *Attorney General for any year in which the entity meets the fifty*
4 *thousand dollar (\$50,000) threshold for combined aggregate*
5 *contributions, expenditures, and independent expenditures made*
6 *during a fiscal year. Except as provided in paragraph (4), the*
7 *Attorney General shall make the filed Nonprofit and Multipurpose*
8 *Organization Disclosure Statement available to the public through*
9 *the Register of Charitable Corporations and Trustees established*
10 *pursuant to Section 12584.*

11 *(B) An entity is not required to disclose the information*
12 *described in subparagraph (C) of paragraph (2) if that information*
13 *has been previously disclosed by the entity in any other campaign*
14 *statement or report required by the Political Reform Act of 1974*
15 *(Title 9 (commencing with Section 81000)).*

16 *(C) If an entity required to file a Nonprofit and Multipurpose*
17 *Organization Disclosure Statement pursuant to this subdivision*
18 *maintains one or more segregated bank accounts for the purpose*
19 *of making election-related contributions, expenditures, or*
20 *independent expenditures, and those accounts represent the*
21 *exclusive source of the entity's election-related contributions,*
22 *expenditures, and independent expenditures in this state, the entity*
23 *is only required to report information described in clause (vi) of*
24 *subparagraph (C) of paragraph (2) with respect to donations*
25 *deposited into the segregated election-related accounts.*

26 *(4) A charitable corporation, unincorporated association, or*
27 *trustee that is subject to the reporting requirements of this*
28 *subdivision, or a donor to any of these entities, may petition the*
29 *Attorney General, no later than 45 days prior to the date on which*
30 *the Nonprofit and Multipurpose Organization Disclosure Statement*
31 *must be filed, to maintain the confidentiality of donor information*
32 *that is disclosed on the statement. If a petitioner demonstrates by*
33 *clear and convincing evidence that the public disclosure of donor*
34 *information reported on the Nonprofit and Multipurpose*
35 *Organization Disclosure Statement will cause undue harm, threats,*
36 *harassment, or reprisals to the donor or that the donor did not*
37 *know or have reason to know that his or her donation would be*
38 *used to make a contribution, expenditure, or independent*
39 *expenditure in this state, the Attorney General shall treat the donor*
40 *and donation information as confidential and shall redact the*

1 donor and donation information from any documents that are
2 made available to the public. The Attorney General shall inform
3 the petitioner, in writing, whether the petition to maintain the
4 confidentiality of donor and donation information has been granted
5 or denied. The Attorney General’s grant or denial determination
6 shall include a statement of findings and conclusions, and the
7 reasons or basis for the determination.

8 (5) The Attorney General shall immediately provide a copy of
9 each filed Nonprofit and Multipurpose Organization Disclosure
10 Statement to the Fair Political Practices Commission. If the
11 Attorney General has approved a petition to maintain the
12 confidentiality of donor and donation information disclosed on
13 the Nonprofit and Multipurpose Organization Disclosure Statement
14 pursuant to paragraph (4), the Fair Political Practices Commission
15 shall also treat that information as confidential and shall not make
16 that information publicly available.

17 (6) For purposes of this subdivision, the following terms have
18 the following meanings:

19 (A) “Contribution” has the same meaning as set forth in Section
20 82015.

21 (B) “Expenditure” has the same meaning as set forth in Section
22 82025.

23 (C) “Independent expenditure” has the same meaning as set
24 forth in Section 82031.

25 SEC. 2. Article 3.5 (commencing with Section 84350) is added
26 to Chapter 4 of Title 9 of the Government Code, to read:

27

28 Article 3.5. Nonprofit and Multipurpose Organizations

29

30 84350. (a) This section shall apply only to a nonprofit
31 corporation, as defined in Section 501(c) of the Internal Revenue
32 Code, that is not required to file periodic written reports with the
33 Attorney General under the Supervision of Trustees and
34 Fundraisers for Charitable Purposes Act (Article 7 (commencing
35 with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title
36 2) and that makes combined contributions, expenditures, and
37 independent expenditures in this state aggregating fifty thousand
38 dollars (\$50,000) or more during the nonprofit corporation’s fiscal
39 year.

1 (b) The Commission shall develop a Nonprofit and Multipurpose
2 Organization Disclosure Statement form that provides for the
3 disclosure of all of the following information:

4 (1) The aggregate combined dollar amount of contributions,
5 expenditures, and independent expenditures that are made during
6 the reporting period.

7 (2) The amount of expenses attributable to contributions,
8 expenditures, and independent expenditures as a percentage of
9 the nonprofit organization's total expenses that are made during
10 the reporting period.

11 (3) For purposes of a nonprofit organization for which the
12 combined amounts of contributions, expenditures, and independent
13 expenditures made during the reporting period exceed 10 percent
14 of the nonprofit organization's total expenses, each of the following
15 with respect to contributions, expenditures, and independent
16 expenditures made during that period:

17 (A) The amount of any funds, or the fair market value of any
18 services or assets, that are provided in relation to a contribution,
19 expenditure, or independent expenditure.

20 (B) The amount or fair market value of any liabilities incurred
21 in relation to a contribution, expenditure, or independent
22 expenditure.

23 (C) The date that the funds, services, or assets were provided
24 or the liabilities were incurred.

25 (D) The name and address of the recipient of the contribution,
26 expenditure, or independent expenditure.

27 (E) A description of the contribution, expenditure, or
28 independent expenditures and its purpose, including whether the
29 contribution, expenditure, or independent expenditure was made
30 in support of or opposition to a candidate, political party, ballot
31 measure, or other question put before the voters in an election.

32 (F) Information related to each donation received by the
33 nonprofit corporation during the reporting period, including each
34 of the following:

35 (i) The name and address of each donor who made donations
36 in an aggregate amount of ten thousand dollars (\$10,000) or more
37 during the reporting period.

38 (ii) The name of the employer of each individual donor, if
39 available.

40 (iii) The date and amount of each donation.

1 (c) (1) *Except as otherwise provided in this subdivision, a*
2 *nonprofit corporation described in subdivision (a) shall file, at a*
3 *time to be determined by the Commission, a Nonprofit and*
4 *Multipurpose Organization Disclosure Statement with the*
5 *Commission for any year in which the nonprofit corporation meets*
6 *the fifty thousand dollar (\$50,000) threshold for combined*
7 *aggregate contributions, expenditures, and independent*
8 *expenditures made during a fiscal year. Except as provided in*
9 *subdivision (d), the Commission shall make the filed Nonprofit*
10 *and Multipurpose Organization Disclosure Statement available*
11 *to the public, as required by Section 81008.*

12 (2) *A nonprofit corporation is not required to disclose the*
13 *information described in paragraph (3) of subdivision (b) if that*
14 *information has been previously disclosed by the nonprofit*
15 *corporation in any other campaign statement or report required*
16 *by this title.*

17 (3) *If a nonprofit corporation required to file a Nonprofit and*
18 *Multipurpose Organization Disclosure Statement pursuant to this*
19 *section maintains one or more segregated bank accounts for the*
20 *purpose of making election-related contributions, expenditures,*
21 *or independent expenditures, and those accounts represent the*
22 *exclusive source of the nonprofit corporation's election-related*
23 *contributions, expenditures, and independent expenditures in this*
24 *state, the nonprofit corporation is only required to report*
25 *information described in subparagraph (F) of paragraph (3) of*
26 *subdivision (b) with respect to donations deposited into the*
27 *segregated election-related accounts.*

28 (d) *A nonprofit corporation or a donor to a nonprofit*
29 *corporation that is subject to the reporting requirements of this*
30 *section may petition the Commission, no later than 45 days prior*
31 *to the date on which the Nonprofit and Multipurpose Organization*
32 *Disclosure Statement must be filed, to maintain the confidentiality*
33 *of donor information that is disclosed on the statement. If a*
34 *petitioner demonstrates by clear and convincing evidence that the*
35 *public disclosure of donor information reported on the Nonprofit*
36 *and Multipurpose Organization Disclosure Statement will cause*
37 *undue harm, threats, harassment, or reprisals to the donor or that*
38 *the donor did not know or have reason to know that his or her*
39 *donation would be used to make a contribution, expenditure, or*
40 *independent expenditure in this state, the Commission shall,*

1 notwithstanding Section 81008, treat the donor and donation
2 information as confidential and shall redact the donor and
3 donation information from any documents that are made available
4 to the public. The Commission shall inform the petitioner, in
5 writing, whether the petition to maintain the confidentiality of
6 donor and donation information has been granted or denied. The
7 Commission's grant or denial determination shall include a
8 statement of findings and conclusions, and the reasons or basis
9 for the determination.

10 SEC. 3. 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. 4. The Legislature finds and declares that this bill furthers
20 the purposes of the Political Reform Act of 1974 within the meaning
21 of subdivision (a) of Section 81012 of the Government Code.

22 ~~SECTION 1. It is the intent of the Legislature to enact~~
23 ~~legislation that would strengthen the Political Reform Act of 1974~~
24 ~~by requiring greater accountability and disclosure by multipurpose~~
25 ~~groups and nonprofit organizations that make campaign~~
26 ~~contributions and independent expenditures.~~