

BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Low	AB 2318

SUBJECT

Modify Definitions and Transfer Responsibility Relating to Certain Contributions or Expenditures of Nonprofits Receiving Public Resources from the FTB to the FPPC

SUMMARY

This bill would, under the Government Code, modify reporting requirements and related enforcement activity relating to nonprofits receiving public resources.

This bill would modify various provisions of the Government Code. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

REASON FOR THE BILL

The reasons for the bill are to improve upon existing accountability and transparency provisions by providing enforcement authority to the Fair Political Practices Commission (FPPC), and making conforming changes to reporting thresholds, in order to provide consistency with more recent enactments related to "publicly funded nonprofit organizations."

EFFECTIVE/OPERATIVE DATE

If enacted in the 2016 legislative session, this bill would be effective January 1, 2017, and operative as of that date.

PROGRAM BACKGROUND

The Political Reform Act of 1974 (PRA) provides for the comprehensive regulation of campaign financing in California, including requirements for reporting campaign contributions, expenditures and reporting and recordkeeping requirements on campaign committees. The FPPC has the primary responsibility for the impartial and effective administration of the PRA.

In 2013, the Legislature enacted several important reforms related to the prohibition on the use of public funds for campaign activities, as well as additional accountability and transparency measures applicable to specified reporting nonprofit organizations.

Most importantly, those reforms clarified that a nonprofit organization is prohibited from using, or permitting another to use, public resources received from a local agency for campaign activity and included in the definition of "public resources" any property or asset owned by a local agency and funds received by a nonprofit organization, which have been generated from any activities related to conduit bond financing by those entities.

FEDERAL LAW

Under federal law, a civic league and social welfare organization, labor organization, and business league (trade association) may engage in political campaigns on behalf of or in opposition to candidates for public office if such intervention does not constitute the organization's primary activity.

Federal law permits campaign activity in compliance with both the Internal Revenue Code and the Federal Election Campaign Act (Federal Act) Administered under the Federal Election Commission (Federal Commission).

The Federal Act prohibits an incorporated organization from using general treasury funds for independent expenditures and limits electioneering communications. The Federal Act also requires organizations to establish a political action committee because registered political committees must raise and spend funds subject to the Federal Act contribution limits, source restrictions, and disclosure requirements.

STATE LAW

State law,¹ similar to federal law, requires civic leagues and social welfare organizations to operate exclusively to promote social welfare and must operate primarily to further the common good and general welfare of the people of the community (such as by bringing about civic betterment and social improvements).

The FPPC was created by the PRA, a ballot initiative passed by California voters in 1974. To meet its responsibilities under the PRA, the FPPC adopts and amends regulations. The FPPC also investigates alleged violations of the PRA and is similar to the Federal Commission.

Under the Government Code, existing state law prohibits an officer, employee, or consultant of a local agency to expend or authorize the expenditure of any funds of the local agency to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.

State law does not prohibit the expenditure of local agency funds to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency, if both of the following conditions are met:

- The informational activities are not otherwise prohibited by the Constitution or laws of this state, and

¹ Revenue and Taxation Code sections 23701a through 23701z set forth the tax-exemption requirements for certain organizations, which are organized and operated for nonprofit purposes or which relate to certain title-holding companies.

- The information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

Existing law includes the following provisions relating to nonprofits that engage in campaign activity:

- Requires a reporting nonprofit organization that engages in campaign activity to deposit into a separate bank account all “specific source or sources of funds” it receives and to pay for all campaign activity from that separate bank account. Existing law defines, among other terms, “reporting nonprofit organization” to mean a nonprofit organization for which public resources from one or more local agencies account for more than 20 percent of the nonprofit organization’s annual gross revenue, as specified, and “specific source or sources of funds” to mean any funds received by the reporting nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit organization.
- Requires a reporting nonprofit organization that engages in campaign activity of specified amounts or more to periodically disclose to the Franchise Tax Board (FTB),² 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.
- Authorizes the FTB to conduct an audit of any reporting nonprofit organization and requires the FTB to conduct an audit of any reporting nonprofit organization that engages in campaign activity in excess of \$500,000 in a calendar year.
- Requires the FTB to issue a written audit report and to transmit the 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 assess a monetary civil penalty of up to \$10,000 against a reporting nonprofit organization for each violation of these disclosure requirements.

THIS BILL

This bill would shift, from the FTB to the FPPC, the following responsibilities relating to certain contributions and expenditures of nonprofit organizations that receive public resources:

- Each publicly funded nonprofit organization that makes certain contributions or expenditures, either directly or through the control of another entity, would be required to provide to the FPPC information it is required to disclose.
- The FPPC may require an audit of any publicly funded nonprofit organization that is required to provide records to the FPPC.

² [Form 3589 - Nonprofit Organization Report of Funds Received and Used for Campaign Activity.](#)

- The FPPC would require an audit of any publicly funded nonprofit organization that makes contributions or expenditures in excess of \$500,000 in a calendar year. The publicly funded nonprofit organization would provide records to the FPPC that substantiate the information required to be disclosed as specified.
- If the FPPC determines at the conclusion of an audit that a publicly funded nonprofit organization has violated the requirements as specified, the FPPC, the Attorney General, or the district attorney for the county in which the publicly funded nonprofit organization is domiciled may impose a civil fine upon the publicly funded nonprofit organization in an amount up to \$10,000 for each violation.

The bill would repeal existing law that authorizes, and in some instances requires, the FTB to audit a reporting nonprofit organization for compliance with campaign activity reporting requirements.

LEGISLATIVE HISTORY

SB 594 (Hill, Chapter 773, Statutes of 2013), among other things, requires the FTB to perform audits of certain nonprofit organizations engaged in campaign activity. SB 594 also requires the FTB to issue a written audit report and to transmit the report to the Attorney General and the district attorney for the county in which the nonprofit organization is domiciled.

AB 621 (Wagner, 2013/2014) would have prohibited a local agency from entering into specified relationships with an individual or firm with respect to a new issue of bonds requiring voter approval if the individual or firm provides bond campaign services to the bond campaign. AB 621 was held in the Senate Governance and Finance Committee.

OTHER STATES' INFORMATION

A comparison with other states would not be meaningful as this bill pertains to administrative procedures that are specific to California.

FISCAL IMPACT

To date, the FTB has received reporting from two nonprofit organizations that did not meet the \$500,000 audit threshold; therefore, no audit costs have been incurred. Because the department did not receive funding to administer this workload, this bill would not significantly impact department costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

APPOINTMENTS

None.

SUPPORT/OPPOSITION³

Support: California Professional Firefighters (Sponsor), California Labor Federation, California School Employees Association, and California State Council of the Service Employees International Union.

Opposition: None provided.

VOTES

	Date	Yes	No
Concurrence	08/31/16	79	0
Senate Floor	08/29/16	39	0
Assembly Floor	05/31/16	80	0

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³ Source of information: Author's fact sheet.