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AB-2318 Nonprofit organizations: use of public resources. (2015-2016)

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Assembly Bill No. 2318

CHAPTER 825

An act to amend Section 54964.5 of, to add Section 84222.5 to, and to repeal Section 54964.6 of, the Government Code, relating to nonprofit organizations.

[Approved by Governor September 29, 2016. Filed with Secretary of State September 29, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2318, Low. Nonprofit organizations: use of public resources.

(1) Existing law prohibits a nonprofit organization or an officer, employee, or agent of a nonprofit organization from using, or permitting another to use, public resources received from a local agency for any campaign activity not authorized by law. Existing law authorizes the Attorney General, any district attorney, or any city attorney of a city with a population over 750,000 to bring a civil action to recover a civil penalty against any person who intentionally or negligently violates that prohibition.

This bill would clarify that the prohibition applies to making contributions or expenditures not authorized by law, and would specify certain expenditures authorized by law that are not subject to the prohibition.

(2) Existing law requires a reporting nonprofit organization that engages in campaign activity to deposit into a separate bank account all specific sources of funds it receives and to pay for all campaign activity from that separate bank account. Existing law defines "reporting nonprofit organization" as a nonprofit organization for which public resources from one or more local agencies account for more than 20% of the nonprofit organization's annual gross revenue, as specified.

Existing law requires a reporting nonprofit organization that engages in campaign activity of specified amounts or more to periodically disclose to the Franchise Tax Board, 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. Existing law authorizes, and in some instances requires, the Franchise Tax Board to audit a reporting nonprofit organization, requires the board to issue a written audit report, and requires the board to transmit the audit 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 impose a monetary civil penalty of up to \$10,000 against a reporting nonprofit organization for misusing public resources received from a local agency, as described in (1), for failing to maintain the separate bank account, or for not complying with the disclosure requirements described above.

This bill would recast and relocate those provisions within the Political Reform Act of 1974, thereby making the Fair Political Practices Commission responsible for their administration and enforcement, except as specified. The bill would change the term "reporting nonprofit organization" to "publicly funded nonprofit organization," defined as a nonprofit organization for which public resources from one or more local agencies account for more than 20% of the nonprofit organization's annual gross revenue, as specified. The bill would require certain publicly funded nonprofit organizations to register as recipient committees and file the

campaign statements that those committees are required to file under the act. This bill would shift the Franchise Tax Board's authority and duties under these provisions to the Commission and would authorize the Commission, in addition to the Attorney General or the district attorney, to impose the monetary civil penalty of up to \$10,000 against a publicly funded nonprofit organization.

The Political Reform Act of 1974 makes a willful violation of its provisions a misdemeanor. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

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: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 54964.5 of the Government Code is amended to read:

54964.5. (a) A nonprofit organization or an officer, employee, or agent of a nonprofit organization shall not use, or permit another to use, public resources received from any local agency to make a contribution or expenditure not authorized by law.

(b) As used in this section and Section 84222.5, the following terms have the following meanings:

(1) "Local agency" has the same meaning as that term is defined in paragraph (4) of subdivision (b) of Section 54964 and shall also include a public entity created pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1) by one or more entities described in Section 54964.

(2) "Nonprofit organization" means an entity incorporated under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) or a nonprofit organization that qualifies for tax-exempt status under Section 115 or 501(c) of the federal Internal Revenue Code. "Nonprofit organization" does not include a nonprofit organization that qualifies for tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

(3) "Public resources" means either of the following:

(A) Any property or asset owned by a local agency, including, but not limited to, cash, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and local government compensated work time that is provided to a nonprofit organization, except funds received in exchange for consideration for goods or services.

(B) Funds received by a nonprofit organization that have been generated from any activities related to conduit bond financing by those entities subject to the conduit financing and transparency and accountability provisions of Chapter 10.7 (commencing with Section 5870) of Division 6 of Title 1, whether or not those funds are received by the nonprofit organization in exchange for consideration for goods or services.

(4) "Publicly funded nonprofit organization" means 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 in the current fiscal year or either of the previous two fiscal years.

(5) "Use" means a use of public resources from one or more local agencies that is substantial enough to result in a gain or advantage to the user or a loss to a local agency for which a monetary value may be estimated.

(c) This section does not prohibit the use of public resources for expenditures authorized by law, including all of the following:

(1) The costs of adopting a position or resolution supporting or opposing a clearly identified ballot measure or candidate, including posting the position or resolution on the nonprofit organization's Internet Web site, communicating the position or resolution to members of the nonprofit organization, or issuing a press statement.

(2) Incidental or minimal use of public resources.

(3) Incidental costs related to the establishment or administration of a sponsored committee, as defined in Section 82048.7. A reasonable accounting method may be used to determine the use of nonpublic resources to pay for that cost. For purposes of this paragraph, "establishment and administration" means the cost of office space, telephones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in establishing and operating a sponsored committee.

(4) Providing information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the state or a local agency if the informational activities meet both of the following conditions:

(A) The informational activities are not otherwise prohibited by the California Constitution or the laws of this state.

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

(d) (1) Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000. If two or more persons are responsible for a violation, they shall be jointly and severally liable for the penalty. If the action is brought by the Attorney General, the moneys recovered shall be paid into the General Fund. If the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney, the moneys recovered shall be paid to the treasury of that city.

(2) A civil action alleging a violation of this section shall not be commenced more than four years after the date of the alleged violation.

SEC. 2. Section 54964.6 of the Government Code is repealed.

SEC. 3. Section 84222.5 is added to the Government Code, to read:

84222.5. (a) A publicly funded nonprofit organization that makes contributions or expenditures, either directly or through the control of another entity, shall establish and deposit into a separate bank account all funds that will be used to make contributions and expenditures, and those contributions and expenditures shall come from that separate bank account.

(b) In addition to subdivisions (b) and (c) of Section 84222, a publicly funded nonprofit organization is a recipient committee within the meaning of subdivision (a) of Section 82013 if any of the following occur:

(1) It makes contributions or expenditures totaling fifty thousand dollars (\$50,000) or more related to statewide candidates or ballot measures or makes contributions or expenditures totaling two thousand five hundred dollars (\$2,500) or more related to local candidates or ballot measures, either directly or through the control of another entity, during the prior quarter.

(2) By January 31 of each odd-numbered year, it makes contributions or expenditures totaling one hundred thousand dollars (\$100,000) or more related to statewide candidates or ballot measures or makes contributions or expenditures totaling ten thousand dollars (\$10,000) or more related to local candidates or ballot measures, either directly or through the control of another entity, during the previous two years.

(c) If a publicly funded nonprofit organization qualifies as a recipient committee pursuant to subdivision (b), it shall comply with the registration and reporting requirements of Section 84222.

(d) Each publicly funded nonprofit organization that makes contributions or expenditures, either directly or through the control of another entity, shall provide to the Commission, and display on the organization's Internet Web site, the information it is required to disclose under this section. The information shall be clearly described and identified on a separate Internet Web page that is linked from the homepage of the organization's Internet Web site. The link to this Internet Web page from the homepage shall be as visible as all similar links.

(e) The Commission may require an audit of a publicly funded nonprofit organization that is required to provide records to the Commission pursuant to this section. The Commission shall require an audit of any publicly funded nonprofit organization that makes contributions or expenditures in excess of five hundred thousand dollars (\$500,000) in a calendar year. The publicly funded nonprofit organization shall provide records to the Commission to substantiate the information required to be disclosed by this section.

(f) If the Commission determines at the conclusion of an audit that a publicly funded nonprofit organization has violated this section, the Commission, the Attorney General, or the district attorney for the county in which the organization is domiciled may impose a civil fine upon the organization in an amount up to ten thousand dollars (\$10,000) for each violation.

(g) The definitions in subdivision (b) of Section 54964.5 apply to this section.

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

SEC. 5. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.