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AB-867 Political Reform Act of 1974: contributions. (2017-2018)

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Assembly Bill No. 867

CHAPTER 749

An act to amend Sections 82015 and 85400 of, and to add Sections 82004.5, 82022.5, 82041.3, and 84224 to, the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 13, 2017. Filed with Secretary of State October 13, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 867, Cooley. Political Reform Act of 1974: contributions.

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing and related matters, including campaign contributions. The act defines "contribution" as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. The act further describes types of payments that are expressly included or excluded from the definition, including specified payments made at the behest of a committee, elected officer, or member of the Public Utilities Commission. The act requires that certain behested payments that are made principally for legislative, governmental, or charitable purposes be reported, as specified.

This bill would recast the provisions that define the term "contribution" for purposes of the act, including provisions describing behested payments that are not contributions and the reporting requirements for behested payments, as defined. The bill would also make technical, nonsubstantive conforming changes.

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 of the Legislature 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: no

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

SECTION 1. The Legislature finds and declares each of the following:

(a) In the years since the voters enacted the Political Reform Act of 1974 by initiative measure, the definition of "contribution" has been amended several times for the purpose of clarifying the types of payments that are appropriately subject to contribution limits and campaign reporting requirements.

(b) The incremental revisions to the definition of "contribution" in Section 82015 of the Government Code have rendered that section increasingly convoluted, unreadable, and difficult to navigate. Specifically, Section 82015 includes, within the definition of

“contribution,” definitions of other terms as well as substantive reporting requirements, all of which should be relocated to independent code sections in appropriate areas of the act.

(c) Reorganizing these provisions of Section 82015 serves not only to conform them to the accepted drafting style for statutory codes, but also to improve their readability for the benefit of the public generally as well as the public officials who must comply with them, thereby furthering the purpose of the act.

(d) The organizational changes made by this act are intended to be technical and clarifying in nature.

SEC. 2. Section 82004.5 is added to the Government Code, to read:

82004.5. “Behested payment” means a payment that is made at the behest of a committee, an elected officer, a member of the Public Utilities Commission, or an agent thereof, under any of the following circumstances:

(a) Full and adequate consideration is received from the committee or elected officer.

(b) The payment is made to a different candidate or to a committee not controlled by the behesting candidate.

(c) As to an elected officer, it is clear from the surrounding circumstances that the payment was made for purposes unrelated to the officer’s seeking or holding of elective office. For purposes of this subdivision, a payment is made for purposes related to an elected officer’s seeking or holding of elective office if all or a portion of the payment is used for election-related activities, as defined in Section 82022.5. The following types of payments are presumed to be for purposes unrelated to an elected officer’s seeking or holding of elective office:

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

(2) A payment made by a state, local, or federal governmental agency.

(3) A payment made by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(4) A payment made principally for charitable purposes.

(5) A payment made principally for legislative or governmental purposes by a person other than a state, local, or federal governmental agency.

SEC. 3. Section 82015 of the Government Code is amended to read:

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

(b) “Contribution” includes all of the following:

(1) The purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate’s own money or property used on behalf of his or her candidacy, other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

(2) The transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

(3) The payment of public moneys by a state or local governmental agency for a communication to the public that satisfies both of the following:

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

(B) The communication is made at the behest of the affected candidate or committee.

(4) A payment made by a person to a multipurpose organization as defined and described in Section 84222.

(5) (A) A payment made by a lobbyist or a cohabitant of a lobbyist for costs related to a fundraising event held at the home of the lobbyist, including the value of the use of the home as a fundraising event venue. A payment described in this paragraph is attributable to the lobbyist for purposes of Section 85702.

(B) A payment made by a lobbying firm for costs related to a fundraising event held at the office of the lobbying firm, including the value of the use of the office as a fundraising event venue.

(c) "Contribution" does not include any of the following:

(1) Amounts received pursuant to an enforceable promise to the extent those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.

(2) Except as provided in paragraph (5) of subdivision (b), a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less.

(3) Volunteer personal services or payments made by any individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they will be, directly or indirectly, repaid to him or her.

(4) A behested payment, as defined in Section 82004.5, but only as to the behesting committee, elected officer, or member of the Public Utilities Commission.

SEC. 4. Section 82022.5 is added to the Government Code, to read:

82022.5. "Election-related activities" include, but are not limited to, the following with respect to candidate-based elections:

(a) Communications that contain express advocacy of the nomination or election of a candidate or the defeat of his or her opponent.

(b) Communications that contain reference to a candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.

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

(d) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in subdivisions (a) to (c), inclusive.

(e) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

(f) Preparing campaign budgets.

(g) Preparing campaign finance disclosure statements.

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

SEC. 5. Section 82041.3 is added to the Government Code, to read:

82041.3. "Made at the behest of" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.

SEC. 6. Section 84224 is added to the Government Code, to read:

84224. (a) A behested payment described in subdivision (b) shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the behesting officer or member of the Public Utilities Commission with the officer's or member's agency and is a public record subject to inspection and copying pursuant to Section 81008. The report shall contain all of the following information: name of payor; address of payor; amount of the payment or payments; date or dates the payment or payments were made; the name and address of the payee; a brief description of the goods or services provided or purchased, if any; and a description of the specific purpose or event for which the payment or payments were made. Once the five-thousand-dollar (\$5,000) aggregate threshold from a single source has been reached for a

calendar year, all payments for the calendar year made by that source shall be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies, including the Public Utilities Commission, shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(b) The reporting requirement imposed by this section applies to a behested payment that satisfies each of the following:

- (1) The payment is made at the behest of an elected officer or member of the Public Utilities Commission.
- (2) The behesting elected officer or member of the Public Utilities Commission does not provide full and adequate consideration in exchange for the payment.
- (3) The payment is made principally for a legislative, governmental, or charitable purpose.
- (4) If made principally for a legislative or governmental purpose, the payment is made by a person other than a state, local, or federal governmental agency.

SEC. 7. Section 85400 of the Government Code is amended to read:

85400. (a) A candidate for elective state office, other than the Board of Administration of the Public Employees' Retirement System, who voluntarily accepts expenditure limits shall not make campaign expenditures in excess of the following:

- (1) For an Assembly candidate, four hundred thousand dollars (\$400,000) in the primary or special primary election and seven hundred thousand dollars (\$700,000) in the general or special general election.
- (2) For a Senate candidate, six hundred thousand dollars (\$600,000) in the primary or special primary election and nine hundred thousand dollars (\$900,000) in the general or special general election.
- (3) For a candidate for the State Board of Equalization, one million dollars (\$1,000,000) in the primary election and one million five hundred thousand dollars (\$1,500,000) in the general election.
- (4) For a statewide candidate other than a candidate for Governor or the State Board of Equalization, four million dollars (\$4,000,000) in the primary election and six million dollars (\$6,000,000) in the general election.
- (5) For a candidate for Governor, six million dollars (\$6,000,000) in the primary election and ten million dollars (\$10,000,000) in the general election.

(b) For purposes of this section, "campaign expenditures" has the same meaning as "election-related activities" as defined in Section 82022.5.

(c) A campaign expenditure made by a political party on behalf of a candidate shall not be attributed to the limitations on campaign expenditures set forth in this section.

SEC. 8. 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.