

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2880 (Harper) – As Amended April 17, 2018

**SUBJECT:** Political Reform Act of 1974: local enforcement.

**SUMMARY:** Authorizes the Fair Political Practices Commission (FPPC) to administer and enforce a local campaign finance or government ethics law upon mutual agreement between the FPPC and a local agency with a population of less than three million people. Specifically, **this bill:**

- 1) Authorizes the FPPC, upon mutual agreement between the FPPC and the governing body of a local government agency, to assume primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance or government ethics law passed by the local agency.
- 2) Requires, upon approval of an agreement pursuant to 1), above, the FPPC to be the civil prosecutor responsible for the civil enforcement of the local campaign finance or government ethics law of the local agency in accordance with the Political Reform Act of 1974 (PRA).
- 3) Authorizes the FPPC, as the civil prosecutor, to do all of the following with respect to the local campaign finance or government ethics law:
  - a) Provide advice;
  - b) Investigate possible violations;
  - c) Bring administrative actions in accordance with the PRA and existing law governing administrative adjudication procedures for specified agencies; and,
  - d) Bring civil actions.
- 4) Provides that the FPPC shall not be required to obtain authorization from the local agency to bring an administrative or civil action pursuant to 3), above.
- 5) Requires a local campaign finance or government ethics law of the local agency enforced by the FPPC to comply with the PRA.
- 6) Requires the governing body of the local agency to consult with the FPPC before adopting and amending any local campaign finance or government ethics law that is subsequently enforced by the FPPC pursuant to this bill.
- 7) Allows the governing body of the local agency and the FPPC to enter into any agreements necessary and appropriate to carry out the provisions of this bill, including agreements pertaining to any necessary reimbursement of state costs with local funds for costs incurred by the FPPC in administering, implementing, or enforcing a local campaign finance or government ethics law pursuant to this bill.

- 8) Prohibits an agreement entered into pursuant to this bill from containing a cancellation fee, a liquidated damages provision, or other financial disincentive to terminate the agreement pursuant to 9), below, except that, if the local agency terminates the agreement, the FPPC may require the governing body of the local agency to pay the FPPC for services rendered and any other expenditures reasonably made by the FPPC in anticipation of services to be rendered pursuant to the agreement.
- 9) Allows the governing body of the local agency or the FPPC, at any time, by ordinance or resolution, to terminate an agreement made pursuant to this bill for the FPPC to administer, implement, or enforce a local campaign finance ordinance or any provision thereof.
- 10) Requires the FPPC to conspicuously post on its Internet Web site a list of every local agency that it has entered into agreement with pursuant to this bill.
- 11) Provides that an agreement in effect on December 31, 2018, for the enforcement of a local campaign finance or government ethics law that was entered into between the FPPC and the County of San Bernardino, the City of Stockton, or the City of Sacramento pursuant to existing law shall be deemed to comply with this bill, and repeals provisions of law specific to these authorizations for the City of Stockton and the City of Sacramento.
- 12) Requires, if an agreement is entered into pursuant to this bill, the FPPC to report to the Legislature regarding the performance of that agreement on or before January 1, 2025, and to submit that report in compliance with existing law governing the submission of reports to the Legislature.
- 13) Requires the FPPC to develop the report required by this bill in consultation with the governing body of the local agency, and requires the report to include, but not be limited to, all of the following:
  - a) The status of the agreement;
  - b) The estimated annual cost savings, if any, for the local agency;
  - c) A summary of relevant annual performance metrics, including measures of use, enforcement, and customer satisfaction;
  - d) Public comments submitted to the FPPC or the local agency relative to the operation of the agreement; and,
  - e) Legislative recommendations.
- 14) Provides that this bill does not apply to a jurisdiction with a population of three million or more.
- 15) Provides a sunset date for this bill of January 1, 2026.
- 16) Finds and declares that this bill furthers the purposes of the PRA within the meaning of existing law governing changes to or repeal of the PRA.

**EXISTING LAW:**

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Defines, for the purposes of the PRA, "local government agency" to mean a county (including a city and county), city (including a charter city) or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.
- 3) Requires a local government agency that adopts or amends a local campaign finance ordinance to file a copy of the ordinance with the FPPC.
- 4) Prohibits a local government agency from enacting a campaign finance ordinance that imposes campaign reporting requirements that are additional to or different from those set forth in the PRA for elections held in its jurisdiction, unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification or passage of a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.
- 5) Authorizes the FPPC, upon mutual agreement between the FPPC and the San Bernardino County Board of Supervisors, the City Council of the City of Stockton, and the City Council of the City of Sacramento, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of those jurisdictions' campaign finance reform ordinances.
- 6) Authorizes the FPPC, pursuant to the aforementioned agreements, to investigate possible violations of those jurisdictions' campaign finance reform ordinances and bring administrative actions against persons who violate the ordinances, as specified.
- 7) Permits the San Bernardino County Board of Supervisors, the City Council of the City of Stockton, and the City Council of the City of Sacramento to enter into any agreements with the FPPC that are necessary and appropriate for the operation of these provisions, including agreements for reimbursement of state costs with county or city funds, as specified. Permits these governing boards or the FPPC, at any time, by ordinance or resolution, to terminate any agreement for the FPPC to administer, implement, or enforce the local campaign finance reform ordinances or any provisions thereof.
- 8) Required the FPPC to report to the Legislature with specified information on or before January 1, 2017, if the FPPC entered into such an agreement with the San Bernardino County Board of Supervisors.
- 9) Requires the FPPC to report to the Legislature with specified information on or before January 1, 2019, if the FPPC enters into such an agreement with the City Council of the City of Stockton.

- 10) Requires the FPPC to report to the Legislature with specified information on or before January 1, 2022, if the FPPC enters into such an agreement with the City Council of the City of Sacramento.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Bill Summary.** This bill allows the FPPC to enter an agreement with any local government agency with a population of less than three million people for the FPPC to administer and enforce the local agency's campaign finance or government ethics law, upon mutual agreement between the parties. This bill is consistent with prior law authorizing such agreements for San Bernardino County and the cities of Stockton and Sacramento, with the addition of FPPC administration and enforcement of a local agency's government ethics law. This bill also allows the FPPC to provide advice to, and bring civil actions on behalf of, the local agency.

This bill is sponsored by California Common Cause.

- 2) **Author's Statement.** According to the author, "Under the PRA, local governments can adopt their own campaign finance ordinances to govern campaigns for political office in that jurisdiction. The FPPC does not have authority, absent special legislation, to enforce local campaign finance or government ethics ordinances. Instead, enforcement of these ordinances is typically left to the local city attorney or county district attorney. However, because few local governments have experience investigating or prosecuting these types of violations, enforcement tends to be rare. Most local ordinances only provide for civil or criminal enforcement, and the lack of an administrative option makes the prosecution of local violations more costly and time-consuming.

"Additionally, local enforcement can open the door to allegations of political bias. For example, a city attorney may be reluctant to enforce a campaign finance violation against an incumbent versus a challenger, since most city attorneys serve at the will of the council. Similarly, an elected district attorney may be responsible for prosecuting a political ally or enemy.

"AB 2880 would give local governments the purely permissive statutory authority to contract with the FPPC, by mutual agreement, for the administration and enforcement of its local campaign finance ordinance. Because the FPPC bills the local government for the cost of this enforcement, there is no net cost to the state. By contracting with the FPPC, local governments would have the ability to bring in a cost-effective, experienced, independent, and impartial entity to investigate possible local campaign finance or government ethics violations and bring appropriate administrative action against these violators."

- 3) **Background.** Existing law, pursuant to AB 2146 (Cook), Chapter 169, Statutes of 2012, allows San Bernardino County and the FPPC to enter into a mutual agreement that permits the FPPC to enforce the County's local campaign finance reform ordinance. AB 2146 was prompted by several high-profile campaign finance corruption cases in San Bernardino County, which subsequently developed and enacted a campaign finance reform ordinance. Prior to AB 2146, the FPPC did not enforce any local campaign finance ordinances.

San Bernardino County asked for legislative authority to contract with the FPPC to administer and enforce its campaign finance ordinance instead of creating an ethics commission as a means to avoid financial and conflict-of-interest challenges. San Bernardino County also wished to retain the services of the FPPC to provide for the enforcement and interpretation of San Bernardino County's local campaign finance ordinance because the FPPC has special skills, knowledge, experience, and expertise in the area of enforcement and interpretation of campaign laws necessary to effectively advise, assist, litigate, and otherwise represent the County on such matters. The FPPC and San Bernardino County entered into a mutual agreement on January 1, 2013, which they have extended twice. The current agreement ends December 31, 2018.

As required by law, the FPPC submitted a report to the Legislature on March 24, 2016. According to the report, the agreement between the FPPC and San Bernardino County resulted in substantial savings when compared to the cost of other public ethics commissions and aided in enforcement proceedings by removing any semblance of conflict of interest. The report concluded by stating that the partnership between the FPPC and San Bernardino County has been successful. Both the FPPC and San Bernardino County supported removing the January 1, 2018, sunset date from the statute. Consequently, the Legislature passed AB 2558 (Steinorth), Chapter 202, Statutes of 2016, which removed the sunset date.

The Legislature subsequently passed two additional bills with similar authorizations: AB 1083 (Eggman), Chapter 186, Statutes of 2015, which authorized the City of Stockton and the FPPC to enter into an agreement that allows the FPPC to enforce the City of Stockton's campaign finance ordinance; and, SB 267 (Pan), Chapter 622, Statutes of 2017, which allowed the City of Sacramento to enter into an agreement with the FPPC to administer and enforce the City of Sacramento's local campaign finance reform ordinance

- 4) **Local Campaign Ordinances and the PRA.** Current law allows local government agencies to adopt campaign ordinances that apply to elections within their jurisdictions, though the PRA imposes certain limited restrictions on those local ordinances. Several cities and counties have adopted campaign finance ordinances, some of which are very extensive. In some cases, these ordinances include campaign contribution limits, reporting and disclosure requirements that supplement the requirements of the PRA, restrictions on when campaign funds can be raised, and voluntary public financing of local campaigns, among other provisions. In many cases, local campaign finance ordinances are enforced by the district attorney of the county or by the city attorney. However, some local jurisdictions have established independent boards or commissions to enforce local campaign finance laws.

The FPPC does not currently enforce any local campaign finance ordinances other than San Bernardino County's. However, the FPPC brings enforcement actions in response to violations of the PRA that occur in campaigns for local office, even in cases where the local jurisdiction brings separate enforcement actions for violations of a local campaign finance ordinance.

- 5) **Government Ethics Laws.** Unlike previous bills that have authorized the FPPC to enter into an agreement to enforce a local campaign finance ordinance, this bill is broader and permits the FPPC to enter into an agreement with a local government agency to enforce a government ethics law passed by the local agency.

In general, ethics laws are designed to preserve the public's trust in its public institutions and those who serve in them by setting a framework to guide conduct and behavior. California has established complex ethics laws that govern both state and local officials. Current state laws prohibit public officials from using their office for personal financial gain, prohibit elected officials from receiving favors or money for official actions, require officials to recuse themselves from the decision-making processes in which they have an economic interest in the outcome, and restrict certain activities of public officials after they leave public office (also known as the revolving door ban). Additionally, the PRA requires public agencies to adopt conflict of interest codes.

State ethics laws also include restrictions on the use of public resources, gifts to public officials, and the use of campaign funds. The PRA also prohibits an elected official from sending certain mass mailings at the public's expense. Existing laws provide transparency and require disclosure of campaign contributions, economic interests, and charitable fundraising. Finally, existing law prohibits vote trading (bribes) and places restrictions on personal loans and travel payments.

Some local government agencies have adopted ethics laws that go beyond the minimum standards established in various state laws. These include laws that relate to campaign finance, laws regulating lobbyists, open government or "sunshine" ordinances, and laws prohibiting nepotism and requiring more stringent gift rules.

- 6) **Penalties Under Local Campaign Finance Ordinances and the PRA.** Violations of the PRA are subject to administrative, civil, and criminal penalties. Generally speaking, the Attorney General (AG) and district attorneys have responsibility for enforcing the criminal provisions of the PRA, though any elected city attorney of a charter city also has the authority to act as the criminal prosecutor for violations of the PRA that occur within the city. The FPPC, the AG, district attorneys, and elected city attorneys of charter cities all have responsibility for enforcement of the civil penalties and remedies provided under the PRA, depending on the nature and location of the violation. In addition, any member of the public may file a civil action to enforce the civil provisions of the PRA, subject to certain restrictions.

The FPPC has the sole authority to bring administrative proceedings for enforcement of the PRA. When the FPPC determines on the basis of such a proceeding that a violation of the PRA has occurred, it has the authority to impose monetary penalties of up to \$5,000 per violation, in addition to ordering the violator to cease and desist violation of the PRA and to file any reports, statements, or other documents or information required by the PRA.

In the case of local campaign ordinances, there is no single approach as to the types of penalties that are available for the violations of those ordinances. Many local ordinances provide for misdemeanor or civil penalties for violations, while some ordinances do not establish any penalties for violations. In some local jurisdictions that have independent boards or commissions to enforce the local campaign finance ordinances, those boards or commissions have the authority to bring administrative enforcement proceedings, similar to the authority the FPPC has under the PRA.

In the case of local ethics laws, some local government agencies have created or adopted ethics committees, commissions, or task forces to enforce those laws. The type of role these entities play depends on the jurisdiction. For example, a local ethics committee may be

designed to be a source of advice on policy implementation and play an educational and training role. Local ethics commissions are usually independent bodies that provide external oversight and enforce and interpret local ethics laws by conducting audits and investigations, issuing subpoenas, and levying fines or imposing penalties.

- 7) **Two-thirds Vote.** California voters in 1974 passed Proposition 9, commonly known as the PRA, which created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the PRA and require a two-thirds vote of each house of the Legislature.
- 8) **Arguments in Support.** California Common Cause, sponsor of this bill, writes, "A proven alternative to current local enforcement practices is for a city or county to contract with the FPPC for campaign finance and ethics enforcement...AB 2880 provides an important enforcement option to make local campaign finance and ethics ordinances more easily and effectively enforceable. AB 2880 also eliminates the need for future special legislation, which can delay by more than a year the time it takes for a local government to get a contract in place with the FPPC."
- 9) **Arguments in Opposition.** None on file.
- 10) **Double-Referral.** This bill was heard in the Elections and Redistricting Committee on April 11, 2018, where it passed with a 7-0 vote.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Common Cause [SPONSOR]  
City of Sacramento Mayor Darrell Steinberg

##### **Opposition**

None on file

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