

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 267 (Pan) – As Amended June 20, 2017

SENATE VOTE: 37-0

SUBJECT: Political Reform Act of 1974: City of Sacramento.

SUMMARY: Allows the City of Sacramento (City) to enter into an agreement with the Fair Political Practices Commission (FPPC) for the FPPC to administer and enforce the City's local campaign finance reform ordinance. Specifically, **this bill:**

- 1) Authorizes, upon mutual agreement between the FPPC and the City Council of the City (City Council), the FPPC to assume primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance reform ordinance (campaign finance ordinance) passed by the City Council.
- 2) Authorizes the FPPC to be the civil prosecutor responsible for the civil enforcement of the City's campaign finance ordinance in accordance with existing law, as specified.
- 3) Allows the FPPC, as the civil prosecutor of the City's campaign finance ordinance, to do both of the following:
 - a) Investigate possible violations of the campaign finance ordinance; and,
 - b) Bring administrative actions in accordance with existing law, as specified.
- 4) Requires any campaign finance ordinance of the City enforced by the FPPC pursuant to this bill to comply with existing law, as specified.
- 5) Requires the City Council to consult with the FPPC before adopting and amending any campaign finance ordinance that is subsequently enforced by the FPPC pursuant to this bill.
- 6) Allows the City Council 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 city funds for costs incurred by the FPPC in administering, implementing, or enforcing a campaign finance ordinance pursuant to this bill.
- 7) Prohibits an agreement entered into pursuant to this bill from containing any form of a cancellation fee, a liquidated damages provision, or other financial disincentive to the exercise of the right to terminate the agreement pursuant to 8), below, except that the FPPC may require the City Council 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 if the City Council terminates the agreement.

- 8) Allows the City Council or the FPPC, at any time, by ordinance or resolution, to terminate any agreement made pursuant to this bill for the FPPC to administer, implement, or enforce a campaign finance ordinance or any provision of the ordinance.
- 9) 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, 2022, and to submit that report in compliance with existing law, as specified. The FPPC must develop the report in consultation with the City Council and the report must include, but is not limited to, all of the following:
 - a) The status of the agreement;
 - b) The estimated annual cost savings, if any, for the City;
 - 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 City relative to the operation of the agreement; and,
 - e) Legislative recommendations.
- 10) Finds and declares the following:
 - a) A special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the necessity to avoid an appearance of corruption in the City's electoral process;
 - b) The proposed campaign finance ordinance is intended to make it more difficult for candidates and influential individuals and entities to engage in quid pro quo corruption, make the financing of campaigns for elective city offices more transparent, and to make more information, especially financial information, regarding candidates and their supporters available to voters;
 - c) Enforcement of the campaign finance ordinance by the FPPC is needed to ensure the integrity of the ordinance; and,
 - d) This bill furthers the purposes of the Political Reform Act (PRA) of 1974, as specified.
- 11) Declares that this bill is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect, and the facts constituting the necessity are: in order to facilitate timely contract negotiations between the City and the FPPC, it is necessary that this act take effect immediately.
- 12) Contains a sunset date of January 1, 2023.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires a local government agency that adopts or amends a local campaign finance ordinance to file a copy of the ordinance with the FPPC.
- 3) 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.
- 4) Authorizes the FPPC, upon mutual agreement between the FPPC and the San Bernardino County Board of Supervisors, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local San Bernardino County campaign finance reform ordinance. Requires the San Bernardino County Board of Supervisors to consult with the FPPC prior to adopting and amending any local campaign finance reform ordinance that is subsequently enforced by the FPPC.
- 5) Allows the FPPC, until January 1, 2020, upon mutual agreement between the FPPC and the City Council of the City of Stockton, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local City of Stockton campaign finance reform ordinance. Requires the City Council of the City of Stockton to consult with the FPPC prior to adopting and amending any local campaign finance reform ordinance that is subsequently enforced by the FPPC.
- 6) Authorizes the FPPC, pursuant to the aforementioned agreements, to investigate possible violations of the San Bernardino County or the City of Stockton 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 and the City Council of the City of Stockton 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 the San Bernardino County Board of Supervisors, the City Council of the City of Stockton 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) Requires the FPPC to report to the Legislature with specified information on or before January 1, 2017, if the FPPC enters 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.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Bill Summary.** This bill expands a limited authority that allows the FPPC to enter agreements with San Bernardino County and the City of Stockton for the FPPC to administer and enforce those jurisdictions' campaign finance ordinances. This bill extends this authority to the City of Sacramento, until January 1, 2023. This bill is sponsored by the City of Sacramento.
- 2) **Author's Statement.** According to the author, "SB 267 seeks to authorize the City of Sacramento and the FPPC to enter into a voluntary contract for enforcement of Sacramento's local campaign finance ordinance. SB 267 will help reduce costs for the City, while also ensuring that enforcement and compliance of the City's campaign finance ordinance is carried out in an effective and professional manner."
- 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 extend 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.

Last session, the Legislature passed and the Governor signed 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. According to the FPPC, no steps have been taken to enter into an agreement with the City of Stockton at this time.

- 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) **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.

- 6) **Previous Legislation.** AB 2558 (Steinorth), Chapter 202, Statutes of 2016, removed the January 1, 2018, sunset date from statutes authorizing the FPPC to enforce San Bernardino County's local campaign finance reform ordinance, as specified.

AB 1083 (Eggman), Chapter 186, Statutes of 2015, allowed the City of Stockton to enter into an agreement with the FPPC for the FPPC to administer and enforce the City's local campaign finance ordinance.

AB 910 (Harper) of 2015 would have allowed any city or county to enter into an agreement with the FPPC for the FPPC to administer and enforce a local campaign finance ordinance. AB 910 was held in the Assembly Elections and Redistricting Committee.

SB 1226 (Correa) of 2014 would have allowed any city or county to enter into an agreement with the FPPC for the FPPC to administer and enforce a local campaign finance ordinance. SB 1226 was amended to address an unrelated issue.

AB 2146 (Cook), Chapter 169, Statutes of 2012, allowed San Bernardino County and the FPPC to enter into an agreement for the FPPC to enforce the County's local campaign finance ordinance.

- 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. This bill also requires a two-thirds vote because of the urgency clause contained in the bill.
- 8) **Arguments in Support.** The City of Sacramento, sponsor of this measure, writes, "Mayor Darrell Steinberg is making increased transparency, accountability, and governmental ethics a cornerstone of his administration. The City faces many policy issues with demands on our budget and contracting with the FPPC will allow us to investigate and enforce the law at the local level in the most cost-effective manner. It will also give the City the benefit of relying on the expertise of an agency whose sole purpose for over 40 years has been to aggressively investigate these types of cases."
- 9) **Arguments in Opposition.** None on file.
- 10) **Double-Referral.** This bill was heard by the Elections and Redistricting Committee on June 14, 2017, where it passed on a 6-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Sacramento [SPONSOR]
California Common Cause
League of Women Voters of California

Opposition

None on file

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