



August 24, 2021

The Honorable Ben Allen
California State Senate
State Capital Building, Room 4076
Sacramento, CA 95814

RE: Opposition to SB 459 (as amended 7/6/2021)

Dear Senator Allen:

The Institute of Governmental Advocates (“IGA”) remains opposed to SB 459 (as amended 7/6/2021).

As you may know, IGA was formed after the enactment of the Political Reform Act in 1974 to protect the constitutional rights of its lobbyist members and their clients to “instruct their representatives [and] petition government for redress of grievances” as provided for in section 3(a) of article I of the California Constitution. In litigation undertaken by IGA to protect this constitutional right, our Supreme Court has warned that the government must have a compelling interest when seeking certain disclosures relating to constitutionally-protected activity and that such disclosures must be drawn with “specificity” to avoid arbitrary and unnecessary infringement of the constitutional right to petition government (See, e.g. *Fair Political Practices Commission v. Superior Court, and Real Party in Interest the Institute of Governmental Advocates* (1979) 25 Cal.3d 33; *Institute of Governmental Advocates v. Younger* (1977) 70 Cal.App.3d 878). As presently drafted, we believe that SB 459 impermissibly encroaches on this constitutional right. Indeed, the current version of the bill is so poorly drafted that it would be impossible to implement or comply with, thus violating the specificity demanded by the Supreme Court.

As a matter of public policy, IGA believes that the current reporting system adequately provides the public with detailed financial information regarding lobbying activity in California as well as identification of the “matters lobbied” by lobbyists, lobbying firms, lobbyist employers and others. SB 459 (“the Bill”) intrudes into information that is not connected to actual financial disclosure. For example, the Bill would require the disclosure of amounts “to be paid” to a lobbyist, rather than disclosure of amounts actually paid to a lobbyist. There are serious constitutional questions that arise from this requirement alone.

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Moreover, the bill now requires almost immediate disclosures during the last 60 days of a legislative session. It is clear that this requirement will require the Secretary of State and Fair Political Practices Commission to design a new form for such a report and a new process for the receipt and public display of such a report. As we have noted from the outset, the Secretary of State is attempting to update its current reporting system. Adding new forms and processes immediately after the new system goes live will inevitably interfere with the Secretary's ability to stabilize and modify the new system at its infancy.

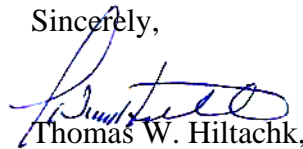
Lastly, the new disclosure provisions relating to "issue lobbying advertising" are still hopelessly vague and burdensome. Just today, the staff of the Fair Political Practices Commission alerted the Commission that substantial and costly litigation is likely to occur if these provisions are enacted. A copy of the staff memo is attached, but the cost estimate was stated as follows:

Cost Estimate: FPPC – 2 PRC I and 1 Commission Counsel (\$387,000 in the first year and \$336,000 ongoing), plus additional potential litigation costs (\$120,00-\$200,000); SOS – costs pending

IGA has discussed these matters with you and your staff over the last several months and appreciate your courtesy in listening to our concerns. However, we believe there are still many technical flaws in the Bill and that there is public policy basis for the new disclosure requirements.

Thank you for your consideration of this important matter.

Sincerely,



Thomas W. Hiltachk,
General Counsel,
Institute of Governmental Advocates

cc: Honorable Lorena Gonzalez, Chair
Assembly Committee on Appropriations



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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Cardenas, Wilson, and Wood
From: Lindsey Nakano, Legislative Counsel
Subject: **Legislative Update – August 2021**
Date: August 9, 2021

Report Contents

- General update
- Upcoming legislative deadlines
- FPPC priority legislation
- Other Commission-related bills

General Update

As of the date of this report, staff has secured authors for four legislative proposals previously approved by the Commission as priority legislation for 2021. The Commission has additionally voted to support or sponsor two other bills this session.

Staff is continuing to advocate for the Commission's priority legislation, track and analyze other Commission-related bills, and express the Commission's preference for bipartisan support on bills for which the Commission has adopted a "support" or "sponsor" position.

Upcoming Legislative Deadlines

- Aug. 27 – Last day for fiscal committees to meet and report bills to the Floor
- Sept. 3 – Last day to amend bills
- Sept. 10 – Last day for each house to pass bills
- Oct. 10 – Last day for Governor to sign or veto bills

FPPC Priority Legislation

Updates:

- AB 1367 (Low) will be heard in the Senate Appropriations Committee on 8/16/21.
- AB 775 (Berman) was amended on 7/13/21 to make technical changes.

Status and Summaries:

AB 378 (Bauer-Kahan) – Gendered language cleanup.

Status: Approved by the Governor and Chaptered (7/9/21)

Coauthors: Assembly Members Aguiar-Curry, Boerner Horvath, Burke, Calderon, Carrillo,

Cristina Garcia, Petrie-Norris, Quirk-Silva, Reyes, Blanca Rubio, and Wicks; Senators Durazo, Eggman, Gonzalez, Laird, Limón, Skinner, and Wiener.

Summary: AB 378 would remove gendered language from certain portions of the Government Code and other codes, including from the Political Reform Act.

FPPC Position: Support

Cost Estimate: Minor and absorbable

AB 1367 (Low) – Campaign funds: egregious personal use of campaign funds.

Status: Set for hearing in the Senate Appropriations Committee (8/16/21)

Summary: AB 1367 would increase penalties for egregious personal use of campaign funds to two times the amount of the unlawful expenditure.

FPPC Position: Sponsor

Cost Estimate: Minor and absorbable

AB 1590 (Committee on Elections (Assembly Members Berman (Chair), Bennett, Low, Mayes, Mullin, and Blanca Rubio) – PRA omnibus bill.

Status: Passed in the Senate Committee on Elections and Constitutional Amendments on 6/28/21 (5-0); Ordered to third reading (6/29/21)

Summary: AB 1590 transfers the responsibility for collecting the \$150 penalty for failure to pay the annual \$50 committee fee from the FPPC to the Secretary of State. Under existing law, the SOS is responsible for collecting the original \$50 fee, and referrals for nonpayment are sent to the FPPC. AB 1590 also makes other nonsubstantive changes to the PRA.

FPPC Position: Support

Cost Estimate: Minor and absorbable

SB 686 (Glazer) – Campaign disclosure: limited liability companies.

Status: Placed on the suspense file in the Assembly Appropriations Committee (7/7/21)

Principal coauthor: Assembly Member Berman

Coauthors: Senator Umberg; Assembly Members Bennett and Kalra

Summary: SB 686 would require an LLC, if it qualifies as a committee or committee sponsor, to file a statement of members with the Secretary of State. The bill would require the statement of members to include certain information about the LLC, including a list of all persons who have a membership interest in the LLC of at least 10% or who made a cumulative capital contribution of at least \$10,000 to the LLC after it qualified as a committee or sponsor of a committee, or within the 12 months before it qualified.

FPPC Position: Sponsor

Cost Estimate: FPPC – 1 Special Investigator (\$126,000 for the first year) and \$119,000 ongoing); SOS – One-time cost of \$561,000 and \$121,000 ongoing

SB 775 (Berman and Lorena Gonzalez) – Recurring contributions.

Status: Passed in the Senate Committee on Elections and Constitutional Amendments on 7/12/21 (5-0); Amended and Re-referred to the Senate Appropriations Committee (7/13/21)

Summary: SB 775 would require a candidate or committee to obtain affirmative consent from a person making a recurring contribution at the time of the initial contribution. The bill would also require a candidate or committee that accepts a recurring contribution to provide a receipt for each contribution, to provide information necessary to cancel the recurring contribution, and to immediately cancel a recurring contribution upon request.

Cost Estimate: Minor and absorbable

FPPC Position: Sponsor

Remaining FPPC proposals that do not have authors:

- Proposals relating to enforcement:
 - o FPPC Special Investigator Authority
 - o Tax Record Inspection Authority
- Proposals relating to increasing transparency:
 - o Lobbyist Audits and Reports
- Proposals for modernization, efficiency, and consistency:
 - o E-filing for Statements of Economic Interests and Gift Cap
 - o Behested Payment Report E-filing

Other Commission-Related Bills

Status and Summaries:

AB 319 (Valladares) – Campaign contributions: foreign contribution prohibitions.

Status: Ordered to the second reading file and ordered to the Consent Calendar (7/15/21)

Summary: AB 319 would prohibit a foreign government or principal from making contributions, expenditures, or independent expenditures in connection with the election of a candidate to state or local office, and would prohibit a person or a committee from soliciting or accepting those contributions. Existing law currently prohibits these foreign contributions and expenditures if they are made in connection with state or local ballot measures.

FPPC Position: Support

Cost Estimate: Minor and absorbable

SB 459 (Allen) – Lobbying transparency.

Status: Amended and Re-referred to the Assembly Appropriations Committee (7/6/21)

Coauthors: Senators Cortese, Glazer, and Newman; Assembly Member Mullin

Summary: SB 459 would require lobbyists, lobbying firms, and lobbyist employers to include information in their quarterly periodic reports that identifies each bill or administrative action subject to lobbying activity, the respective position advocated for, and each bill or administrative action for which issue lobbying advertisements, as defined, were issued. The bill would require a lobbyist employer to file a new 24-hour report if it retains a lobbying firm to influence legislative action during the 60-day period before the Legislature is scheduled to adjourn in a calendar year, and would require, during that same period, a supplemental 24-hour report to be filed within 24 hours of engaging in direct communication with specified officials for the purpose of influencing legislative action. The bill would impose new requirements relating to issue lobbying advertisement and would require a lobbyist employer to file specified reports within 72-hours of incurring costs \$5,000 or more for issue lobbying advertisements within a calendar quarter.

Cost Estimate: FPPC – 2 PRC I and 1 Commission Counsel (\$387,000 in the first year and \$336,000 ongoing), plus additional potential litigation costs (\$120,00-\$200,000);
SOS – costs pending

SB 752 (Allen) – Campaign advertisements.

Status: Amended (7/1/21); Placed on the suspense file in the Assembly Appropriations Committee (7/14/21)

Principal coauthors: Senator Stern; Assembly Member Cervantes

Coauthors: Senators Cortese, Glazer, and Gonzalez

Summary: SB 752 would make several changes to the disclosure requirements for political advertisements, including changes to the required form, content, and presentation of the disclosures depending on the medium in which the advertisement appears. The bill would revise the minimum contribution thresholds for the “top contributor” advertisement disclosure. The bill would also make changes in the Elections Code relating to initiative, referendum, and recall petitions.

Cost Estimate: FPPC – 1 Enforcement Attorney (\$145,000 in the first year and \$138,000 ongoing)

Bills Unlikely to Move Forward This Year

AB 20 (Lee and Kalra) – Contribution prohibitions: business entities.

Status: Heard in the Assembly Committee on Elections on 4/29/21; held without recommendation

AB 40 (Lorena Gonzalez) – Slate mailer disclosures.

Status: Ordered to the inactive file at the request of the author (6/3/21)

AB 227 (Davies) – Contribution prohibitions: Governor’s appointees.

Status: Set for hearing in the Assembly Committee on Elections on 4/15/21; hearing cancelled at the request of the author

AB 236 (Berman) – Campaign disclosure: limited liability companies.

Status: Ordered to the inactive file at the request of the author (6/3/21)

AB 975 (Luz Rivas) – SEI electronic filing and gift rules.

Status: Ordered to the inactive file at the request of the author (6/1/21)

SB 305 (Jones) – Effective date of electronic filing requirements.

Status: Heard in the Senate Appropriations Committee on 5/20/21; held in committee and under submission

AB 871 (Kiley) – Contribution prohibitions: investor-owned utilities.

Status: Heard in the Assembly Committee on Elections on 4/15/21; held without recommendation

AB 1379 (Eduardo Garcia) – Online platform disclosures.

Status: Amended and Re-referred to the Assembly Committee on Elections (4/13/21)

SB 78 (Nielsen) – Paid campaign or political consultants.

Status: Set for hearing on 3/15/21; hearing cancelled at the request of the author