

Assembly Bill No. 800

CHAPTER 9

An act to amend Sections 84303, 89519, 90002, 90003, 90004, and 90005 of, and to add Sections 90008 and 90009 to, the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 3, 2014. Filed with
Secretary of State April 3, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 800, Gordon. Political Reform Act of 1974

(1) The Political Reform Act of 1974 prohibits an agent or independent contractor from making an expenditure of \$500 or more, other than overhead or normal operating expenses, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The act requires an agent or independent contractor to make known to the candidate or committee all information subject to this reporting requirement.

This bill, in addition, would require a subagent or subcontractor who provides goods or services to or for the benefit of a candidate or committee to make known to the agent or independent contractor all of the information subject to the reporting requirement described above, and would require that disclosure of this information by a subagent or subcontractor to the agent or independent contractor or by the agent or independent contractor to the candidate or committee occur no later than three working days prior to the time the campaign statement reporting the expenditure is required to be filed, except that an expenditure that is required to be reported as a late contribution or late independent expenditure must be reported to the candidate or committee within 24 hours of the time that it is made.

(2) The act defines as "surplus campaign funds" campaign funds that are under the control of a former candidate or former elected officer as of the date of leaving elective office or the end of the postelection reporting period following the defeat of the candidate for elective office, whichever occurs last. The act restricts the purposes for which surplus campaign funds may be expended.

This bill would increase the time at which campaign funds become surplus campaign funds by 90 days following either the officer leaving elective office or the end of the postelection reporting period following the defeat of a candidate, whichever occurs last.

(3) The act requires the Franchise Tax Board to conduct audits and field investigations of various financial statements required to be submitted by lobbying firms, lobbyist employers, candidates, and specified committees.

The act prohibits the commencement of an audit or investigation of a candidate, controlled committee, or committee primarily supporting or opposing a candidate or a measure in connection with a report or statement required by specified provisions of the act until after the last date for filing the first report or statement following the general, runoff, or special election for the office for which the candidate ran, or following the election at which the measure was adopted or defeated, except as provided. The act prescribes the scope of campaign statements and reports to be included in audits and investigations of candidates, controlled committees, or committees primarily supporting or opposing a candidate or a measure.

This bill would delete these provisions that delay the commencement of an audit or investigation and prescribe the scope of audits and investigations.

In addition to the general auditing requirements imposed on the Franchise Tax Board as described above, the act authorizes the Franchise Tax Board and the Fair Political Practices Commission to make investigations and audits with respect to any reports or statements required by specified provisions of the act regarding campaign disclosure, limitations on contributions, and lobbyists.

This bill would expand this authority to allow the Franchise Tax Board and the Fair Political Practices Commission to make investigations and audits with respect to any reports or statements required under the act.

The act requires the Franchise Tax Board periodically to prepare reports regarding its audit and investigations under the act and send them to the Commission, the Secretary of State, and the Attorney General. The act requires the board to complete its report of any audit conducted on a random basis pursuant to a specified statute within one year after the person or entity subject to the audit is selected by the Commission to be audited.

This bill would extend the deadline for the Franchise Tax Board to complete its report of an audit conducted on a random basis from one to two years after the person or entity to be audited is selected by the Fair Political Practices Commission.

The act prohibits a member, employee, or agent of the Franchise Tax Board from divulging or making known in any manner any particulars of any record, documents, or information which he or she receives by virtue of conducting audits and investigations, except as provided.

This bill, in addition, would make this prohibition applicable to a member, employee, or agent of the Fair Political Practices Commission.

This bill would authorize the Fair Political Practices Commission, and the Franchise Tax Board at the direction of the Commission, to audit any record required to be maintained under the act in order to ensure compliance with the act prior to an election, even if the record is a report or statement that has not yet been filed. The bill would authorize the Commission to seek injunctive relief in a superior court to compel disclosure consistent with the act, and would require a court to grant expedited review of an action filed pursuant to this provision, as specified.

(4) Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

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.

(5) 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.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

The bill would delay the operative date of its provisions until July 1, 2014.

The people of the State of California do enact as follows:

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

(a) The people of this state have a compelling interest in ensuring that the political contributions and expenditures of nonprofit entities, multipurpose organizations, and other committees are subject to prompt public disclosure prior to elections in order to provide as much information to the public as possible in a timely manner.

(b) If the Fair Political Practices Commission determines that an audit or investigation is in the best interests of the public in order to detect violations of the Political Reform Act of 1974, judicial review of an action in this regard should receive expedited review.

(c) It is therefore the intent of the Legislature to ensure that the Fair Political Practices Commission be given the authority to carry out the provisions of the Political Reform Act of 1974 in a manner that ensures information regarding political contributions and expenditures is provided to the public in an expedited manner prior to elections.

SEC. 2. Section 84303 of the Government Code is amended to read:

84303. (a) An expenditure of five hundred dollars (\$500) or more shall not be made, other than for overhead or normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of or for the benefit of a candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee.

(b) A subagent or subcontractor who provides goods or services to or for the benefit of a candidate or committee shall make known to the agent or independent contractor all of the information required to be reported by

this section, and the agent or independent contractor shall then make known to the candidate or committee all of the information required to be reported by this section no later than three working days prior to the time the campaign statement reporting the expenditure is required to be filed, except that an expenditure that is required to be reported by Section 84203 or 84204 shall be reported to the candidate or committee within 24 hours of the time that it is made.

SEC. 3. Section 89519 of the Government Code is amended to read:

89519. (a) Upon the 90th day after leaving an elective office, or the 90th day following the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds under the control of the former candidate or elected officer shall be considered surplus campaign funds and shall be disclosed pursuant to Chapter 4 (commencing with Section 84100).

(b) Surplus campaign funds shall be used only for the following purposes:

(1) The payment of outstanding campaign debts or elected officer's expenses.

(2) The repayment of contributions.

(3) Donations to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.

(4) Contributions to a political party committee, provided the campaign funds are not used to support or oppose candidates for elective office. However, the campaign funds may be used by a political party committee to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers as that term is defined in Section 82048.3.

(5) Contributions to support or oppose a candidate for federal office, a candidate for elective office in a state other than California, or a ballot measure.

(6) The payment for professional services reasonably required by the committee to assist in the performance of its administrative functions, including payment for attorney's fees for litigation that arises directly out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

(c) For purposes of this section, the payment for, or the reimbursement to the state of, the costs of installing and monitoring an electronic security system in the home or office, or both, of a candidate or elected officer who has received threats to his or her physical safety shall be deemed an outstanding campaign debt or elected officer's expense, provided that the threats arise from his or her activities, duties, or status as a candidate or elected officer and that the threats have been reported to and verified by an appropriate law enforcement agency. Verification shall be determined solely

by the law enforcement agency to which the threat was reported. The candidate or elected officer shall report an expenditure of campaign funds made pursuant to this section to the Commission. The report to the Commission shall include the date that the candidate or elected officer informed the law enforcement agency of the threat, the name and the telephone number of the law enforcement agency, and a brief description of the threat. No more than five thousand dollars (\$5,000) in surplus campaign funds may be used, cumulatively, by a candidate or elected officer pursuant to this subdivision. Payments made pursuant to this subdivision shall be made during the two years immediately following the date upon which the campaign funds become surplus campaign funds. The candidate or elected officer shall reimburse the surplus fund account for the fair market value of the security system no later than two years immediately following the date upon which the campaign funds became surplus campaign funds. The campaign funds become surplus campaign funds upon sale of the property on which the system is installed, or prior to the closing of the surplus campaign fund account, whichever comes first. The electronic security system shall be the property of the campaign committee of the candidate or elected officer.

SEC. 4. Section 90002 of the Government Code is amended to read:

90002. (a) Audits and investigations of lobbying firms and lobbyist employers shall be performed on a biennial basis and shall cover reports filed during a period of two years.

(b) If a lobbying firm or lobbyist employer keeps a separate account for all receipts and payments for which reporting is required by this chapter, the requirement of an audit under subdivision (a) of Section 90001 shall be satisfied by an audit of that account and the supporting documentation required to be maintained by Section 86110.

SEC. 5. Section 90003 of the Government Code is amended to read:

90003. In addition to the audits and investigations required by Section 90001, the Franchise Tax Board and the Commission may make investigations and audits with respect to any reports or statements required by this title.

SEC. 6. Section 90004 of the Government Code is amended to read:

90004. (a) The Franchise Tax Board shall periodically prepare reports, which, except as otherwise provided in this section, shall be sent to the Commission, the Secretary of State, and the Attorney General. If the reports relate to candidates for or committees supporting or opposing candidates for the office of Attorney General, the reports shall be sent to the Commission, the Secretary of State, and the District Attorneys of the Counties of Los Angeles, Sacramento, and San Francisco. If the reports relate to local candidates and their controlled committees, the reports shall be sent to the Commission, the local filing officer with whom the candidate or committee is required to file the originals of campaign reports pursuant to Section 84215, and the district attorney for the candidate's county of domicile.

(b) The Franchise Tax Board shall complete its report of any audit conducted on a random basis pursuant to Section 90001 within two years after the person or entity subject to the audit is selected by the Commission to be audited.

(c) The reports of the Franchise Tax Board shall be public documents and shall contain in detail the Franchise Tax Board's findings with respect to the accuracy and completeness of each report and statement reviewed and its findings with respect to any report or statement that should have been but was not filed. The Secretary of State and the local filing officer shall place the audit reports in the appropriate campaign statement or lobbying files.

SEC. 7. Section 90005 of the Government Code is amended to read:

90005. A member, employee, or agent of the Franchise Tax Board or the Commission shall not divulge or make known in any manner the particulars of any record, documents, or information that he or she receives by virtue of this chapter, except in furtherance of the work of the Franchise Tax Board or the Commission or in connection with a court proceeding or the lawful investigation of any agency.

SEC. 8. Section 90008 is added to the Government Code, to read:

90008. (a) It is the intent of the Legislature that the people of California have timely access to information concerning the campaign contributions and expenditures of all committees, corporations, and individuals, and that this information be provided before the election, when it is relevant, in accordance with the requirements of this title. It is the further intent of the Legislature that the Commission ensure that these disclosures are being made, and that this title be liberally construed and any judicial process be expedited to achieve this purpose.

(b) The Commission, and the Franchise Tax Board at the direction of the Commission, may audit any record required to be maintained under this title to ensure compliance with this title prior to an election, even if the record is a report or statement that has not yet been filed.

SEC. 9. Section 90009 is added to the Government Code, to read:

90009. (a) To further the purposes of this title, the Commission may seek injunctive relief in a superior court to compel disclosure consistent with this title.

(b) A court shall grant expedited review to an action filed pursuant to subdivision (a) as follows:

(1) The court shall conduct an expedited hearing with an opportunity for the defendant to respond.

(2) Briefs of the parties shall be required pursuant to an expedited schedule.

(c) A superior or appellate court may, at its discretion, grant a stay of an order granting relief pursuant to subdivision (a).

SEC. 10. 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. 11. Sections 1, 8, and 9 of this act shall become operative on July 1, 2014. The changes made to Sections 84303, 89519, 90002, 90003, 90004, and 90005 of the Government Code by Sections 2 to 7, inclusive, of this act shall become operative on July 1, 2014.

SEC. 12. 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.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement these proposals at the earliest possible time prior to the 2014 General Election, it is necessary that this act take immediate effect.