SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1174	**Hearing Date:**	4/2/24
Author:	Min		
Version:	3/18/24		
Urgency:	No	**Fiscal:**	No
Consultant:	Scott Matsumoto		

Subject: Elections: voter identification

DIGEST

This bill prohibits any local government from enacting or enforcing any charter provision, ordinance, or regulation requiring a person to present identification for the purpose of voting or submitting a ballot at any polling place, vote center, or other location where ballots are cast or submitted, unless required by state or federal law.

ANALYSIS

Existing law:

1) Requires the Legislature to prescribe uniform procedures for city formation and provide for city powers.

2) Permits a city or county to adopt a charter by majority vote of its electors, as specified.

3) Requires that any city charter for making and enforcing all ordinances and regulations in respect of municipal affairs, as specified.

4) Requires all city charters to provide for the conduct of city elections, in addition to other provisions allowable by the California Constitution, and by the laws of the State, as specified. Grants plenary authority, subject to limited restrictions, to provide the manner in which, the method by which, the times at which, and the terms for which several municipal officers and employees whose compensation if paid by the city shall be elected and appointed, and for their removal, as specified.

5) Permits a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

6) Provides that every person who willfully causes, procures, or allows themself or any other person to be registered as a voter, knowing that they or that other person is not entitled to registration, is punishable by imprisonment for 16 months or two or three years, or in a county jail for not more than one year, as specified. Provides that every person who knowingly and willfully signs, or causes or procures the signing of, an affidavit of registration of a nonexistent person, and who mails or delivers, or causes or procures the mailing or delivery of, that affidavit to a county

elections official is guilty of a crime punishable by imprisonment for 16 months or two or three years, or in a county jail for not more than one year, as specified.

7) Requires any person desiring to vote to state or provide their name and address and, upon the precinct officers finding the name in the roster, requires the voter to sign their name in the space provided. Requires that if the voter is unable to sign, their name is to be signed by another person on the roster provided for that purpose, whereupon a challenge may be interposed, as specified.

8) Provides that if any member of a precinct board receives, by mail or otherwise, any document or list concerning the residence or other voting qualifications of any person or persons, with the express or implied suggestion, request, or demand that the person or persons be challenged, the board member shall first determine whether the document or list contains or is accompanied by evidence constituting probable cause to justify or substantiate a challenge. Provides that before making any use whatever of such a list or document, the member of the precinct board shall immediately contact the elections official, charged with the duty of conducting the election, and describe the contents of the document or list and the evidence, if any, received bearing on voting qualifications. Requires the elections official to advise the members of the precinct board as to the sufficiency of probable cause for instituting and substantiating the challenge and as to the law as herein provided, relating to hearings and procedures for challenges by members of the precinct board and determination thereof by a precinct board. Permits the elections official, if necessary, to designate a deputy to receive and answer inquiries from precinct board members.

9) Provides that a challenged voter take a sworn oath of affirmation to remedy the challenge, as specified. Requires any doubt in the interpretation of the law be resolved in favor of the challenged voter.

10) Provides that any person who commits fraud or attempts to commit fraud, and any person who aids or abets fraud or attempts to aid or abet fraud, in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony, punishable by imprisonment for 16 months or two or three years.

11) Provides that every person who knowingly challenges a person's right to vote without probable cause or on fraudulent or spurious grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting, or who fraudulently advises any person that he or she is not eligible to vote or is not registered to vote when in fact that person is eligible or is registered, or who violates the provisions in 8), is punishable by imprisonment in the county jail for not more than 12 months or in the state prison.

This bill:

1) Prohibits any local government from enacting or enforcing any charter provision, ordinance, or regulation requiring a person to present identification for the purpose of voting or submitting a ballot at any polling place, vote center, or other location where ballots are cast or submitted, unless required by state or federal law.

2) Defines, for purposes of this bill, "local government" to mean any charter or general law city, charter or general law county, or any city and county.

3) Finds and declares that the provisions of this bill address a matter of statewide concern rather than a municipal affair and applies to all cities, including charter cities.

BACKGROUND

Charter Cities. The California Constitution allows cities and counties that adopt charters to control their own "municipal affairs," and makes these laws supreme over "all laws inconsistent therewith." This municipal affairs doctrine grants charter cities broad authority to enact laws governing local matters, including the power to tax for local purposes. In all other matters, charter cities must follow the general, statewide laws.

However, the Constitution does not define "municipal affairs," so the courts determine whether a topic is a municipal affair or an issue of statewide concern. In *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17, the California Supreme Court first laid out an analytical framework to determine whether the state's or the charter city's authority prevails:

1) A court must determine whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair."
2) The court must satisfy itself that the case presents an actual conflict between local and state law.
3) The court must decide whether the state law addresses a matter of "statewide concern."
4) The court must determine whether the law is "reasonably related to ... resolution" of that concern and "narrowly tailored" to avoid unnecessary interference in local governance.

If the Court finds that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution, then the conflicting charter city measure ceases to be a "municipal affair" and the Legislature is not prohibited from addressing the statewide dimension by its own tailored enactments.

Voter Identification in California. In California, an individual registering to vote declares under penalty of perjury that the information provided on the registration form is true and correct. The registration form includes questions related to a person's eligibility to vote, date of birth, California driver's license or identification card number, and the last four numbers of the registrant's social security number if it is available. This all typically occurs prior to voting during the registration process.

If a first-time voter does not provide a California driver's license or state identification number or the last four digits of their social security number when they register to vote, they must provide identification prior to being eligible to vote in a federal election. If a first-time voter does not provide the required information with their voted vote-by mail ballot, the county elections official is advised to reach out to the voter to request and receive the required proof prior to counting the ballot. The vote by mail ballot would be

treated as a provisional ballot where it is processed after the voter is verified. If the first time voter does not provide the necessary identification, then the vote by mail ballot is not accepted. For the November 8, 2022 statewide general election, there were 660 vote by mail ballots rejected for a lack of identification.

When voting in person, if the person is voting for the first time after registering to vote by mail and did not provide your driver license number, California identification number or the last four digits of your social security number on your registration form, then the person may be asked to show a form of identification when you go to the polling location. The Secretary of State provides a list of acceptable identification and includes, but is not limited to, a driver's license, an identification card, passport, student identification card, a credit/debit card, health club identification card, and an identification card provided by a commercial establishment. If no identification is provided by the first time voter, then the ballot is considered a provisional ballot.

Measure A in Huntington Beach. On March 5, 2024, voters in the City of Huntington Beach voted on an amendment to the city's charter related to voter identification when voting. This was known as Measure A. Among the provisions of Measure A, the measure specifically placed the following into the city's charter:

> Beginning in 2026, for all municipal elections:
>
> (1) "Elector" means a person who is a United States citizen 18 years of age or older, and a resident of the City on or before the day of an election.
> (2) The City may verify the eligibility of Electors by voter identification.
> (3) The City may provide at least 20 Americans with Disabilities Act compliant voting locations for in-person voting dispersed evenly throughout the City, in addition to any City facility voting locations.
> (4) The City may monitor ballot drop boxes located within the City for compliance with all applicable laws.

As of March 26, 2024, Measure A received 32,892 votes in support (53.40%) of amending the city charter and 28,701 votes opposed (46.60%) to the amendment.

Attorney General and Secretary of State's Response. When the City of Huntington Beach considered placing Measure A on the ballot (known as Charter Amendment 1 at the time), the Attorney General and the Secretary of State submitted a letter to the City with concerns about the legality of the ballot measure. Below is part of their letter:

> *The Elections Code also sets forth a detailed process for resolving questions of voter identity or eligibility at the polls. A voter's identity or eligibility to vote may only be questioned by election workers on narrow grounds, and only with evidence constituting probable cause to justify such a challenge. A challenged voter need only take a sworn oath of affirmation to remedy the challenge. All doubts are to be resolved in favor of the challenged voter. And any person who illegally casts a ballot is subject to criminal prosecution.*
>
> *This framework strikes a careful balance: it guards the ballot box against ineligible and/or fraudulent voters, while at the same time simplifying and facilitating the process of voting so as to avoid suppressing turnout and disenfranchising qualified*

voters. It also makes clear that the job of local elections officials is to supervise voting at the polls, not to take over voter-eligibility functions performed by the county registrar and the Secretary of State.

Huntington Beach's voter ID proposal would destroy this careful balance by placing the onus on the voter to establish their identity and right to vote with some form of identification at the time they cast their ballot. By requiring additional documentation to establish a voter's identity and eligibility to vote at the time of voting—a higher standard of proof than set out in the Elections Code—Huntington Beach's proposal conflicts with state law. Indeed, the City's proposal would arguably constitute "mass, indiscriminate, and groundless challenging of voters," in violation of Elections Code section 18543.

COMMENTS

1) According to the author: Healthy democracies rely on robust access to the polls. An overwhelming body of evidence proves that voter ID laws only subvert voter turnout and create barriers to law abiding voters. To register to vote in California, voters are already required to provide their driver's license number, California identification number, or the last four digits of their social security number. The state also conducts signature verification checks, automatically recounts a portion of ballots, and allows voters to track their ballots. Voter ID laws are discriminatory and only make it harder for seniors, people of color, and other vulnerable groups to participate in our democracy. SB 1174 prevents this practice by local jurisdictions and clarifies that local elections cannot mandate voter ID laws.

2) Charter Cities. California's constitutional home rule doctrine is more than 100 years old, and is based on the understanding that charter cities know their own local needs better than the state. However, the doctrine provides that city charters regulation of municipal affairs must cede to the Legislature on issues of statewide concern, and that state law is narrowly tailored to the state's interest. Courts have generally recognized elections are municipal affairs, so the state's interest would need to be clear.

3) Double Referral. If approved by this committee, SB 1174 will be referred to the Committee on Local Government for further consideration.

4) Argument in Support. In a letter supporting SB 1174, the American Civil Liberties Union (ACLU) California Action stated, in part, the following:

SB 1174 reaffirms that voter ID is a matter of statewide concern and makes it explicit that charter cities do not have home rule authority to impose a burdensome ID requirement for municipal elections. Huntington Beach's measure will no doubt be successfully challenged in court. In the meantime, SB 1174 will stop any other cities from attempting to pass similar measures that spread misinformation about the integrity of our elections. For these reasons, ACLU California Action supports SB 1174.

RELATED/PRIOR LEGISLATION

AB 2742 (Allen) of 2018 would have required a voter to provide specified identification in order to have their ballot counted. AB 2742 was not heard by a committee.

AB 1356 (Berryhill and Garrick) of 2009 would have required a voter to present photo identification before receiving a ballot at the polling place. AB 1356 failed passage in the Assembly Committee on Elections and Redistricting by a vote of 2-5.

POSITIONS

Sponsor: Author

Support: American Civil Liberties Union California Action
American Federation of State, County, and Municipal Employees
California Environmental Voters
California Hawaii State Conference of the NAACP
CFT — A Union of Educators & Classified Professionals, AFT, AFL-CIO
Culver City Democratic Club
Disability Rights California
League of Women Voters of California
1 individual

Oppose: 10 individuals

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SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1293	**Hearing Date:**	4/2/24
Author:	Ochoa Bogh		
Version:	2/15/24		
Urgency:	No	**Fiscal:**	No
Consultant:	Scott Matsumoto		

Subject: Recall elections: notice of intention

DIGEST

This bill requires the published copy of the notice of intention to omit recall proponents' signatures and residence addresses, as specified.

ANALYSIS

Existing law:

1) States, pursuant to the California Constitution, the recall is the power of the voters to remove an elective officer, and specifies that in the case of a recall of a state officer, the sufficiency of the reason for recalling the official is not reviewable by a court.

2) Requires, pursuant to the California Constitution, that the Legislature provide for the recall of local officers. Provides that this provision does not affect counties and cities whose charters provide for recall.

3) Requires the proponents of a recall to be registered voters of the electoral jurisdiction of the officer they seek to recall.

4) Authorizes recall proceedings to commence for the recall of any elective officer by the service, filing, and publication of a notice of intention to circulate a recall petition. Requires the notice of intention to contain all of the following:

   a) The name and title of the officer sought to be recalled.

   b) A statement, not exceeding 200 words in length, of the reasons for the proposed recall.

   c) The printed name, signature, and residence address, including street and number, city, and zip code, of each of the proponents of the recall. Provides that if a proponent cannot receive mail at the residence address, the proponent shall provide an alternative mailing address.

   d) The number of valid signature, as specified.

e) The text of Elections Code Section 11023, which describes how the officer sought to be recalled may file an answer.

5) Requires a copy of the notice of intention be served by personal delivery or by certified mail on the officer sought to be recalled. Provides that the original of the notice of intention, along with an affidavit of the time and manner of service, must be filed with the local elections official within seven days of being served.

6) Requires a copy of the notice of intention be published at the proponents' expense at least once in a newspaper of general circulation. Provides that the publication need not include the text of Elections Code Section 11023. Provides that if there is no newspaper of general circulation in the jurisdiction of the officer whose recall is being sought, the proponents may satisfy the publication requirement by posting the notice of intention in at least three public places within the jurisdiction.

This bill:

1) Requires the copy of the notice of intention to omit recall proponents' signatures and residence addresses when the notice is published in a newspaper of general circulation or posted in at least three public places within the jurisdiction if there is not a newspaper of general circulation in the jurisdiction, as specified.

BACKGROUND

Local Recalls and the Notice of Intention. The California Constitution requires that the Legislature provide for the recall of local officers. However, this provision does not affect counties and cities whose charters provide for recall. Additionally, local officer is defined as "an elective officer of a city, county, school district, community college district, or special district, or a judge of a trial court."

To commence recall proceedings of an elective officer, including any officer appointed in lieu of election or to fill a vacancy, the filing and publication or posting of a notice of intention to circulate a recall petition is required. The notice of intention is required to comply with existing law and must contain the following: (1) the name and title of the officer sought to be recalled, (2) a statement of the reasons for the recall that does not exceed 200 words, (3) the number of valid signatures, (4) the printed name, signature and residence address of each proponent of the recall, as specified, and (5) the text of Election Code Section 11023.

Then, the proponents are required to serve a copy of the notice of intention by personal delivery or by certified mail to the officer sought to be recalled. Existing law provides that the original of the notice of intention, along with an affidavit of the time and manner of service, must be filed with the local elections official within seven days of being served.

Following that, a copy of the notice of intention is required to be published at the proponents' expense at least once in a newspaper of general circulation. This includes the proponents signatures and address, but does not include the text of Elections Code Section 11023. If there is no newspaper of general circulation in the jurisdiction of the officer whose recall is being sought, the proponents may satisfy the publication

requirement by posting the notice of intention in at least three public places within the jurisdiction. Proof of the publication is provided to the local elections official.

Once the notice of intention is filed, the targeted official may file an answer (i.e. a response) to the recall and must be accompanied by the printed name and business or residence address. Following the response, the recall petition is prepared and followed by the next steps of the recall process.

Number of Recalls. Since the addition of recall provisions in the California Constitution in 1911, there have only been 11 recall elections against a state official. Of those, six were successful. The most recent statewide recall election was the effort in 2021 to recall Governor Newsom. In that election, voters chose to not recall the Governor.

The recall is more commonly used at the local level. According to data from the California Election Data Archive (CEDA), a joint project of the Center for California Studies at the California State University, Sacramento, and the Secretary of State's office, there were 368 local recall elections for county, city, or school district officials in California between 1995 and 2022, or an average of approximately 13 per year. Although CEDA does not maintain comprehensive information about the number of local recall attempts, most local efforts to qualify a recall election fail. It should be noted that for county, city, and school districts, recall efforts that do qualify for the ballot are generally successful. According to the CEDA data, from 2020 through 2022, there were 23 recall elections with 16 elections resulting in the recall of the local official. This equates to approximately 70% of recall elections.

COMMENTS

1) According to the author: The recall is a popular tool of electoral accountability that has been used by California's voters for more than a century. In this era of digital technology, it is critical we take steps to safeguard the personal information of voters who choose to engage in the electoral process.

2) Need for the Bill. While this may have been useful before the widespread use of the Internet, in the digital age where personal information can be easily obtained, it can be unsafe to publish the full addresses and signatures of voters who have signed the notice of intention in a recall election. The names, addresses and signatures will still be submitted to the elections official and the officer sought to be recalled, but the published version will only contain the names of the proponents.

3) Suggested Amendment – Street Number and Street Name. SB 1293 omits a recall proponent's signature and address when publicizing the notice of intention in a newspaper or, if needed, in at least three public places. The bill provides that the address include the street number, street name, city, and zip code. Committee staff recommends the bill amended to omit a proponent's street number and street name instead of the entire address from publication. In other words, the information being publicized will be the printed name, city, and zip code. The bill would continue to omit a proponent's signature when being published. This would allow the public to learn more about who is attempting to recall an official without revealing sensitive information.

4) Double Referral. If approved by this committee, SB 1293 will be referred to the Committee on Judiciary for further consideration.

RELATED/PRIOR LEGISLATION

AB 2286 (Obernotle) of 2020 is substantially similar to this bill and would have required the signatures and residence addresses of a recall's proponents be redacted from the copy of the notice that is published or posted pursuant to existing law. AB 2286 was referred to the Assembly Committee on Elections and Redistricting, but was not heard by the committee.

POSITIONS

Sponsor: Author

Support: None received

Oppose: None received

-- END --

SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1328	**Hearing Date:**	4/2/24
Author:	Bradford		
Version:	2/16/24		
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Scott Matsumoto		

Subject: Elections

DIGEST

This bill authorizes the Secretary of State (SOS) to impose additional conditions of approval for electronic poll books, ballot manufacturers and finishers, ballot on demand (BOD) systems, voting systems, and remote accessible vote by mail (RAVBM) systems, as specified. This bill updates existing election record retention, preservation, and destruction requirements to provide clear guidance for electronic voting data, as specified. This bill expands and clarifies two existing felonies related to voting technology security.

ANALYSIS

Existing law:

1) Provides that the SOS is the chief elections officer of the state, and may adopt regulations to ensure the uniform application and administration of state election laws.

2) Requires, generally, electronic poll books, ballot manufacturers and finishers, BOD systems, voting systems, and RAVBM systems be approved by the SOS before their use in an election.

3) Defines a "paper cast vote record" to mean an auditable document that corresponds to the selection made on the voter's ballot and lists the contests on the ballot and the voter's selections for those contests. Provides that a paper cast vote record is a ballot only if the paper cast vote record is generated on a voting device or machine that complies with ballot layout requirements and is tabulated by a separate device from the device that created the paper cast vote record.

4) Requires a ballot card manufacturer, ballot card finisher, or BOD system vendor to notify the SOS and affected local elections officials in writing within two business days after discovering any flaw or defect that could adversely affect the future casting or tallying of votes.

5) Requires an electronic poll book vendor to notify the SOS and affected local elections officials in writing within 24 hours after discovering any flaw or defect that could adversely affect the future casting or tallying of votes.

6) Requires any magnetic or electronic storage medium, used for a ballot tabulation program or containing election results, to be kept in a secure location, as specified.

7) Requires specified ballots and identification envelopes to be kept by an elections official unopened and unaltered, as specified, for 22 months following a federal election, and for six months following any other state or local election.

8) Makes it a felony for a person to knowingly, and without authorization, make or have in their possession a key to a voting machine that has been adopted and will be used in elections in California.

9) Prohibits any part of a voting system from doing any of the following: being connected to the internet at any time; electronically receiving or transmitting election data through an exterior communication network, including the public telephone system, if the communication originates from or terminates at a polling place, satellite location, or counting center; or receiving or transmitting wireless communications or wireless data transfers.

This bill:

1) Defines the term “jurisdiction” to mean any county, city and county, city, or special district that conducts elections pursuant to the Elections Code.

2) Authorizes the SOS to impose additional conditions of approval as deemed necessary by the SOS for the certification of electronic poll books, ballot manufacturers and finishers, BOD systems, voting systems, and RAVBM systems.

3) Reduces, from two business days to 24 hours, the amount of time that a ballot card manufacturer, ballot card finisher, or BOD system vendor has to notify the SOS and affected local elections officials after discovering any flaw or defect that could adversely affect the future casting or tallying of votes.

4) Adds paper cast vote records to the list of election materials required to be kept by a county elections official for 22 months for elections involving a federal office, or six months for all other elections.

5) Requires any copy of a magnetic or electronic storage medium, used for a ballot tabulation program or containing election results, to be kept in a secure location, as specified.

6) Defines the term “ballot printer” to mean any company or jurisdiction that manufactures, finishes, or sells ballot cards, including test ballots, for use in an election conducted pursuant to the Elections Code, and recasts provisions of law that require a ballot printer, as defined, to be approved by the SOS before manufacturing or finishing ballot cards, or accepting or soliciting orders for ballot cards.

7) Defines the following terms for the preservation of electronic data related to voting technology:

a) "Ballot image" to mean an electronically captured or generated image of a ballot that is created on a voting device or machine, which contains a list of contests on the ballot, may contain the voter selections for those contests, and complies with the ballot layout requirements. A ballot image can be considered a cast vote record.

b) "Certified voting technology" to mean any certified voting technologies certified by the SOS, including voting systems, BOD printing systems, electronic poll book systems, or adjudication systems, and the hardware, firmware, software, proprietary intellectual property they contain, any components, and any products they generate, including ballots, ballot images, reports, logs, cast vote records, or electronic data.

c) "Chain of custody" to mean a process used to track the movement and control of an asset through its lifecycle by documenting each person and organization who handles an asset, the date and time it was collected or transferred, and the purpose of the transfer. A break in the chain of custody refers to a period during which control of an asset is uncertain and during which actions taken on the asset are unaccounted for or unconfirmed.

d) "Electronic data" to include voting technology software, operating systems, databases, firmware, drivers, and logs.

e) "End of lifecycle" to mean the secure clearing or wiping of the certified voting technology so that no software, firmware, or data remains on the equipment and the equipment becomes a nonfunctioning piece of hardware.

f) "HASH" to mean a mathematical algorithm used to create a digital fingerprint of a software program, which is used to validate software as identical to the original.

g) "Lifecycle" of certified voting technology to mean the entire lifecycle of the certified voting technology from the time of certification and trusted build creation through the end of lifecycle of the certified voting technology.

8) Requires the following data to be kept by the elections official, on electronic media, stored and unaltered, for 22 months for those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States (US) Senator, and US Representative; and for six months for all other state and local elections:

a) All voting system electronic data.

b) All BOD system electronic data, if applicable.

c) All adjudication electronic data.

d) All RAVBM system electronic data, if applicable.

e) All electronic poll book electronic data, if applicable.

f) HASH values taken from the voting technology devices, if applicable.

g) All ballot images, if applicable.

9) Provides that if a contest is not commenced within the 22-month period or a six-month period, or if a criminal prosecution involving fraudulent use, using the ballot tally system to mark or falsify ballots, or manipulation of the ballot tally system, is not commenced within the relevant period, the elections official shall have the backups destroyed.

10) Authorizes certified voting technology equipment and components that are at the end of lifecycle to be securely disposed of or destroyed with the written approval of the manufacturer and the SOS.

11) Requires all of the following to occur for any part or component of certified voting technology for which the chain of custody has been compromised or the security or information has been breached or attempted to be breached:

a) The chief elections official of the city, county, or special district and the SOS be notified within 24 hours of discovery.

b) The equipment be removed from service immediately and replaced if possible.

c) The integrity and reliability of the certified voting technology system, components, and accompanying electronic data be evaluated to determine whether they can be restored to their original state and reinstated.

12) Expands an existing crime that makes it a felony to knowingly, and without authorization, possess a key to a voting machine that has been adopted and will be used in elections in California, to additionally include possessing credentials, passwords, or access keys to such a voting machine.

13) Clarifies an existing crime that makes it a felony to interfere or attempt to interfere with the secrecy of voting or ballot tally software program source codes, by adding a provision that states that interfering or attempting to interfere with, includes but is not limited to, knowingly, and without authorization, providing unauthorized access to, or breaking the chain of custody to, certified voting technology during the lifecycle of that certified voting technology, or any finished or unfinished ballot cards.

14) Prohibits a voting system from establishing a network connection to any device not directly used and necessary for voting system functions. Prohibits communication by or with any component of the voting system by wireless or modem transmission at any time. Prohibits a component of the voting system, or any device with network connectivity to the voting system, from being connected to the internet, directly or indirectly, at any time.

15) Requires a voting system to be used in a configuration of parallel central election management systems separated by an air-gap. Provides that an "air-gap" includes all of the following:

    a) A permanent central system known to be running unaltered, certified software and firmware that is used solely to define elections and program voting equipment and memory cards.

    b) A physically-isolated duplicate system, reformatted after every election to guard against the possibility of infection that is used solely to read memory cards containing vote results, accumulate and tabulate those results, and produce reports.

    c) A separate computer dedicated solely to this purpose that is used to reformat all memory devices before they are connected to the permanent system again.

16) Makes technical, clarifying, and conforming changes.

BACKGROUND

Voting Technology. The Legislature has approved various bills to ensure California has the most rigorous and stringent voting system and voting equipment standards and approval procedures. Notably, SB 360 (Padilla), Chapter 602, Statutes of 2013, made significant changes to procedures and criteria for the certification and approval of a voting system, required the SOS to adopt and publish voting system standards and regulations governing the use of voting systems, and required those standards to meet or exceed federal voluntary voting system guidelines (VVSG) set forth by the US Election Assistance Commission (EAC) or its successor agency, as specified.

Accordingly, in 2014, California established its own standards – California voting system standards (CVSS) – for electronic components of voting systems which were derived from the EAC's VVSG versions 1.1 and 2.0. The CVSS provides a set of specifications and requirements to which voting systems are required to be tested to determine if they provide all the basic functionality, accessibility, and security capabilities required of voting systems. All voting technology, including, but not limited to voting systems, electronic pollbooks, and RAVBM systems, are required to be certified for use prior to being sold or used in any California election.

In counties that use electronic voting systems, state law requires election officials to provide paper ballots at the polling place. State law additionally prohibits any part of a voting system from being connected to the Internet at any time, and CVSS prohibit voting systems from having the capability to communicate individual votes or vote totals over public communications networks or from having wireless communications capabilities.

Electronic Election Materials. Existing law specifies the requirements for retention, preservation, and destruction of certain election materials, such as ballots, voter rosters and indexes. However, according to the author and sponsor of this bill, existing law related to the storage, maintenance, preservation, and destruction of election data has not kept pace with the evolution of voting technologies and does not provide clear

guidance for retention of electronic voting data. Accordingly, this bill updates and clarifies existing procedures and requirements to ensure they include electronic election materials, such as paper cast records and magnetic or electronic storage mediums, and establishes specific requirements for the preservation of election data.

New Threats to Election Integrity. According to news articles, since the 2020 general election, there have been suspected or attempted "insider" security breaches in local election offices across the nation. One highly publicized breach occurred in Colorado in where a county clerk was indicted for her role in facilitating unauthorized access to voting machines.

Critical Infrastructure Designation. On January 6, 2017, then-Secretary of the federal Department of Homeland Security (DHS) Jeh Johnson announced that he was designating election infrastructure in the country as critical infrastructure, a decision that was later reaffirmed by the Trump administration. According to information from DHS, critical infrastructure is a designation "established by the Patriot Act and given to 'systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.'" In his announcement, Secretary Johnson noted that the designation generally gives DHS the ability to provide additional cybersecurity assistance to state and local elections officials, but does not mean that there will be new or additional federal regulation or oversight of the conduct of elections by state and local governments.

The DHS has prepared a Cybersecurity Services Catalog for Election Infrastructure that outlines the services and other assistance available to the election infrastructure community, including state and local elections officials. Among the services provided are various no-cost cybersecurity assessments, information sharing about cybersecurity threats, cybersecurity training, assistance in cyber incident planning and cyber incident response, and network protection. This bill includes various provisions that update and expand existing procedures and requirements related to election technology. For example, this bill codifies the authority for the SOS to impose additional conditions on voting equipment approved for use in any election, and requirements for a vendor to provide notice within 24 hours of any flaw or defect for certain voting equipment. Additionally, this bill clarifies current prohibitions and specifies that a voting system is prohibited from establishing a network connection to any device not directly used and necessary for the voting system functions, and any communication by or with any component of the voting system by wireless or modem transmission.

COMMENTS

1) According to the author: There are current election code sections regarding the retention and preservation of election materials. Our proposal is expanding upon the already existing law to clarify procedures and practices that are already in place. Further, this proposal provides uniform application throughout the state regarding the retention of voting technology election related materials.

2) Need for the Bill. According to the author, SB 1328 offers clarification to the chain of custody, security parameters, retention, and certification procedures around voting

technology. The bill also offers further clarification on the certification of ballot printers and ballot on demand systems and the reporting of issues to the Secretary of State's office.

3) Additional Prosecution and Civil Action Available under Existing Law. Conduct included in this bill can also be prosecuted as a misdemeanor or felony under the State's hacking statute, Penal Code Section 502. Under this law, a person is guilty of an offense if they knowingly access, without permission, any data, computer, computer system, or computer network in order to wrongfully control or obtain property or data. This would include voting systems. If convicted for a felony, the offense is punishable by imprisonment for 16 months, or two or three years and a fine not exceeding $10,000, or as a misdemeanor, by imprisonment in a county jail not exceeding one year, by a fine not exceeding $5,000, or by both. In addition to fines and imprisonment, a court can also order forfeiture of any computer system used by the person to commit the offense and prohibit the person from accessing and using computers. In addition, existing law authorizes the SOS, and in some cases the Attorney General (AG) and county elections officials, to take civil legal action regarding the security of voting systems and the conduct of elections. The penalty is not to exceed $50,000 for each act and for injunctive relief.

4) Too Much Authority? Among SB 1328's provisions, the bill provides the SOS with the ability to impose additional conditions of approval as deemed necessary by the SOS. This expansion of authority includes the certification of electronic poll books, ballot printers, ballot on demand systems, voting systems, and RAVBM systems. The SOS has the ability to promulgate regulations for all of these systems under existing law. Even though the language of this bill might be used to provide the SOS with explicit authority to promulgate regulations, it might not be absolutely necessary and the language concerning this additional regulatory authority is open-ended.

5) Double Referral. If approved by this committee, SB 1328 will be referred to the Committee on Public Safety.

RELATED/PRIOR LEGISLATION

AB 2249 (Pellerin) of 2024, similar to the retention of election records of this bill, requires specified election records to be destroyed or recycled after the end of the required retention period, as specified.

AB 1559 (Jackson) of 2023 is substantially similar to this bill. AB 1559 was held on the Senate Committee on Appropriation's Suspense File.

AB 1539 (Berman), Chapter 692, Statutes of 2023, made it a misdemeanor for any person to vote or to attempt to vote both in an election held in this state and in an election held in another state on the same date.

AB 777 (Harper) of 2017 would have increased the maximum fine amount from $1,000 to $10,000 for fraudulently signing a ballot. AB 777 failed passage in the Assembly Committee on Elections and Redistricting.

SB 360 (Padilla), Chapter 602, Statutes of 2013, made significant changes to procedures and criteria for the certification and approval of a voting system, required the SOS to adopt and publish voting system standards and regulations governing the use of voting systems, and required those standards to meet or exceed federal voluntary voting system guidelines

SB 1376 (Perata), Chapter 813, Statutes of 2004, authorized the SOS, and in some cases the AG and county elections officials, to take legal actions regarding the security of voting systems and the conduct of elections.

POSITIONS

Sponsor: Secretary of State Shirley N. Weber, Ph.D.

Support: California Association of Clerks and Election Officials

Oppose: None received

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SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1404	**Hearing Date:**	4/2/24
Author:	Glazer		
Version:	3/21/24		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Scott Matsumoto		

Subject: Political Reform Act of 1974: audits

DIGEST

This bill transfers the responsibility for conducting audits of lobbying disclosure reports and statements from the Franchise Tax Board (FTB) to the Fair Political Practices Commission (FPPC) and increases a fee to fund these audits.

ANALYSIS

Existing law:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.

2) Requires a fee of $50 per year to be charged to each lobbying firm and lobbyist employer required to file a registration statement. Provides that $25 be deposited to the General Fund and $25 be deposited to the Political Disclosure, Accountability, Transparency, and Access Fund. Provides that the Political Disclosure, Accountability, Transparency, and Access Fund is subject to appropriation by the Legislature and shall be expended for the maintenance, repair, and improvement of CAL-ACCESS, the Secretary of State's online disclosure system, as specified.

3) Requires audits and investigations to be made with respect to reports and statements required by the PRA of the following:

    a) Candidates for office, and their controlled committees, as follows:

        i) All candidates for statewide office, Supreme Court, court of appeal, and Board of Equalization (BOE) that raised or spent $25,000 or more in a primary or general election, as specified.

        ii) 10% of statewide candidates who raised or spent less than $25,000 in a primary or general election, selected at random, as specified.

        iii) All candidates in 25% of Senate districts, Assembly districts, and superior court offices, selected at random, who raised or spent $15,000 or more in a primary or general election, as specified.

iv) All candidates for the Legislature in a special primary or special runoff election who raised or spent $15,000 or more in the election, as specified.

b) All committees primarily supporting or opposing a candidate selected for audit and spent more than $10,000 on the candidate's race, except as specified.

c) All committees primarily supporting or opposing a state ballot measure that spent more than $10,000 supporting or opposing that measure, as specified.

d) State general purpose committees, except as specified, that raised or spent more than $10,000 as follows:

i) All such committees that have not previously been audited, or that were audited and where the FPPC determined based on the audit that the committee was not in substantial compliance with the PRA.

ii) 25% of such committees that were previously audited and where the FPPC determined based on the audit that the committee was in substantial compliance with the PRA, selected at random.

e) Local candidates, their controlled committees, and candidates for the Board of Administration of the Public Employees' Retirement System as determined pursuant to regulations adopted by the FPPC.

f) 25% of lobbying firms and lobbyist employers, selected at random. Any lobbyist employed by a firm or employer that is selected is audited as part of the firm's or employer's audit.

4) Requires the FTB to perform the audits and field investigations detailed above, except in the case of audits and investigations of candidates for Controller and member of the BOE, and committees primarily supporting or opposing those candidates, which are performed by the FPPC instead.

5) Permits the FTB and the FPPC, in addition to the audits and investigations required by the PRA, to make investigations and audits of any other reports and statements required by the PRA.

6) Requires a person who acts as a placement agent, as defined, in connection with a potential investment made by a state public retirement system, to register as a lobbyist.

This bill:

1) Transfers the responsibility for conducting audits of lobbying disclosure reports and statements from the FTB to the FPPC and increases a fee to fund these audits, as specified. Requires the FPPC to begin conducting these audits starting with the audits selected in 2027, as specified.

2) Provides that lobbying firms and lobbyist employers with less than one dollar in payments or contributions shall be excluded from being selected for audit under this

section. Provides that placement agents who qualify as a lobbyist as well as a lobbying firm or lobbyist employer that qualifies as a lobbying firm or lobbyist employer solely due to their employment of a placement agent would not be subject to audits and investigations prescribed by this bill, as specified.

3) Establishes the Field Audits and Investigations Fund within the State Treasury and requires the fund to be continuously appropriated to the FPPC to conduct lobbyist audits and field investigations, as specified.

4) Raises the fee charged to each lobbying firm and lobbyist employer required to file a registration statement from $50 per year to $500 per year. Provides that $250 be deposited to the General Fund and $250 be deposited to the Political Disclosure, Accountability, Transparency, and Access Fund.

5) Permits the FPPC to establish a fee to offset costs associated with conducting the required audits and field investigations for each lobbyist required to be listed on its registration statement, as specified. Requires that funds collected from this fee be deposited in the Field Audits and Investigations Fund.

6) Requires an audit conducted by the FPPC be publicly posted on the FPPC's website for at least 10 years from the conclusion of the audit. Requires the FPPC to annually report to the Legislature on the number and type of audits completed by the FPPC.

7) Requires the FPPC to adopt regulations or policies to ensure the operational independence of audit personnel from enforcement operations.

BACKGROUND

Political Reform Act of 1974 and Audits. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

As part of its regulation of campaigns and lobbying, the PRA requires candidates, political committees, and lobbyists to prepare periodic reports disclosing their activities. These statements and reports are submitted to specified government agencies, where they are made available to the public. Additionally, the PRA requires these statements and reports to be audited, typically by the FTB.

A report issued by the FPPC in February 1979, titled *California's Fair Political Practices Commission: The First Four Years*, explains that the PRA split enforcement and investigatory responsibilities among multiple agencies in an effort to ensure impartial and effective enforcement. The report states, "Mindful of the lessons of Watergate, the authors of the Political Reform Act assigned enforcement of the law to more than one agency, creating a system of 'checks and balances' to offset any potential political favoritism or unwillingness to take action."

This idea of a system of "checks and balances" aligns with a provision in the PRA that assigns certain audits to an entity other than the FTB. Specifically, audits related to candidates for Controller and the BOE, as well as committees supporting or opposing those candidates, are entrusted to the FPPC. This arrangement protects against an appearance that the Controller and the Chair of the BOE, who are members of the FTB, could improperly seek to influence those audits.

When the PRA was enacted, it established two types of audits: mandatory audits and discretionary audits. The mandatory audits required by the PRA included audits of all lobbyists, all candidates who received more than 15% of the vote in a general or special election, all candidates who spent more than $25,000 and committees supporting such candidates, and other committees that spent more than $10,000 in a calendar year. In addition to these mandatory audits, the PRA permitted the FTB and the FPPC to conduct discretionary audits.

Four years after the PRA's enactment, AB 3667 (McVittie), Chapter 1411, Statutes of 1978, created a third type of audits: random audits. These replaced mandatory audits for certain candidates and committees, and for lobbyists under certain situations. Unlike mandatory audits that require auditing all entities meeting certain criteria, random audits require auditing a specified percentage of entities that meet the selection criteria. The FPPC determines on a random basis the persons or political districts that must be audited.

AB 3667 was sponsored by the FPPC in response to an audit report prepared by Arthur Anderson & Co. and released by the Auditor General in August 1977. That report, titled *Efficiencies and Economies of the Administration of the Political Reform Act of 1974*, concluded that requiring the FTB to audit 100% of entities meeting the mandatory selection criteria "results in an unnecessarily high level of auditing" and that "[i]t is not necessary to audit every candidate, lobbyist, and committee to ensure compliance with the [PRA]." In a cover letter to the audit report, the Chair of the Joint Legislative Audit Committee indicated that the FTB's costs for PRA audits alone exceeded $2.5 million, even though the proponents had estimated that the total costs of the PRA would be approximately $1 million. Legislative records related to AB 3667 indicated that the bill was expected to save up to $1 million in FTB auditing costs per year.

Previous Legislation and Lobbying Audit Workloads. In 2010, the Legislature passed and Governor Schwarzenegger signed AB 1743 (Hernandez), Chapter 668, Statutes of 2010. AB 1743 required a person who acts as a placement agent in connection with a potential investment made by a state public retirement system to register as a lobbyist pursuant to the PRA, among other provisions. Taking effect in 2011, the enactment of AB 1743 significantly increased the number of lobbying firms and lobbyist employers registered in California.

Under the PRA, lobbying registration is tied to two-year legislative sessions. In February of each odd-numbered year, the FPPC selects the lobbyist employers and lobbying firms to be audited for the preceding two-year session. For the 2009-10 Legislative Session (the last session before AB 1743 went into effect), 58 lobbyist employers and 91 lobbying firms were selected for audit, totaling 149 required lobbying audits. However, after AB 1743 went into effect, the number of lobbying audits required by the PRA increased substantially. For the 2011-12 Session, 238 lobbying audits were

required (136 lobbyist employers and 102 lobbying firms), and for the 2013-14 Session, 304 lobbying audits were required (183 lobbyist employers and 121 lobbying firms). Since the 2013-14 Session, the required number of lobbying audits has remained steady at around 310 audits per two-year session. Since the implementation of AB 1743, the number of lobbying audits required by the PRA has more than doubled, with a corresponding increase in the FTB's lobbying audit workload.

Activity Thresholds for Audits. Currently, the PRA requires random audits of lobbying firms and lobbyist employers that employ one or more lobbyists, regardless of their level of activity. Candidates and campaign committees generally are subject to audits only if they meet specified monetary thresholds for contributions received or expenditures made. The only exception is for statewide candidates. The PRA requires all such candidates that raised or spent $25,000 or more to be audited, and requires random audits of 10% of the candidates that raised and spent less than $25,000.

Senate Oversight Hearing on Lobbyist Audits. On March 7, 2023, this committee held an oversight hearing on the subject: Status of Lobbying Audits—Franchise Tax Board. Background materials revealed that the FTB completed just four audits of lobbying firms and lobbyist employers for the two most recent legislative sessions for which the auditing period has ended—none for the 2017-18 session, and two lobbying firms and two lobbyist employers for the 2019-20 session. Based on the number of registered lobbying firms and lobbyist employers, the PRA required that more than 300 lobbying audits be conducted for each of those two legislative sessions.

At the hearing, an FTB representative testified that it had never received sufficient resources to conduct all PRA audits since the PRA was enacted in 1974. The representative further testified that FTB staff is responsible for PRA audits for 17 different workloads, and that in the last six fiscal years, FTB audits for those workloads generally had approached 10-50% of the levels required by the PRA. However, for lobbying audits the FTB completed 3% or less of the required audits during that period.

FTB Budget and Positions for PRA Audits. At the oversight hearing, FTB staff indicated that the unit responsible for completing all of the PRA audits assigned to the FTB has 13 authorized positions—nine of whom conduct audits (the remaining staff serve in support roles). The Governor similarly proposed 13 authorized positions for that unit in the 2023-24 budget year, and the adopted version of the state budget did not alter the proposed budget for that unit.

Based on a review of historical budget documents, it appears that the number of authorized positions in the Political Reform Audit unit of the FTB has not changed since the unit lost two authorized positions in the 2009-10 budget year, even though the number of audits required by the PRA has increased as a result of policy changes described in more detail below. For each budget year between 1999-2000 and 2008-09, the Political Reform Audit unit of the FTB had 15 authorized positions.

Prior Effort to Shift Lobbying Audits. The Governor's May revision for the proposed state budget for the 2021-22 fiscal year included a proposal to redirect the responsibility for performing lobbying audits and investigations from the FTB to the FPPC. At the time, the FPPC requested five positions and $637,000 in funding from the general fund in 2021-22, and $602,000 annually thereafter, to handle the required audits and

investigations. The FPPC also sought trailer bill language to make necessary statutory changes for this transfer of responsibility. However, the relevant budget subcommittees in the Assembly and the Senate both rejected that request. The subcommittees voted to allocate the proposed funding to the FTB so that they could continue to conduct those audits. However, the final version of the budget for the 2021-22 fiscal year did not include additional funding for the FTB, nor did it include the funding and authority for the FPPC to take over the responsibility for lobbying audits and investigations.

FPPC Audit Division. In late 2021, the FPPC created an Audits and Assistance Division, with the responsibility for conducting mandatory and discretionary audits, and for selecting local candidates, controlled committees, and jurisdictions for audit by the FTB. Prior to the creation of that new division, the Audits and Assistance staff was housed within the FPPC's Enforcement Division.

COMMENTS

1) According to the author: Auditing is an important public accountability measure. The failure to hold more than 2,000 lobbying firms accountable has major implications for how legislators do their work. When you allow dark money to operate unimpeded, corruption can follow. The media can't thoroughly cover the activities of lobbyists if there is no audit trail. This results in the public remaining uninformed about who is influencing whom, eroding confidence in our public institutions.

   Any political group that is allowed to operate without scrutiny on their activities can amass unfair power advantages. Audits are a way to check those power advantages.

   This bill will transfer the duties of performing lobbying audits from the Franchise Tax Board to the Fair Political Practices Commission. It would raise the lobbyist and lobbyist employer registration fee from $50 to $500 to make this transfer revenue neutral on the state general fund. Importantly, audits can encourage compliance with the law, as individuals may be more likely to self-regulate if they know that they may be subject to an audit.

   The FPPC has a successful track record in enforcing our campaign finance laws. They are more properly equipped to carry out the longstanding requirement to keep lobbyists and lobbyist employers accountable for honest reporting. The FPPC can bring a renewed and fresh outlook on the work required to apply sunshine to an area that has existed largely in the dark for too long.

2) Lobbyist Fees – Suggested Amendment. This bill increases the current $50 per year fee for lobbyists to $500 per year. This bill also permits the FPPC to establish an additional fee to offset costs associated with conducting the required audits and field investigations pursuant to this bill. This could be potentially two fees, an increased fee and a new fee. Committee staff recommends the bill be amended to revert the increased fee back to the original $50 per year and provide that the new fee established by the FPPC cannot exceed $500 per year. The fee established by the FPPC would only apply to those being audited by the FPPC. This was a drafting error and the author is accepting the amendments.

3) Argument in Support. In letter supporting SB 1404, the FPPC stated, in part, the following:

The PRA mandates that 25% of lobbying firms and lobbyist employers be elected for audit following every 2-year election cycle. These audits are crucial tools for upholding transparency and accountability and are the main and most consistent vehicles for monitoring compliance and discovering lobbying violations. Potential violations found through audits can be serious and include failure to file lobbying reports, omitting expenses or payments on reports, and impermissibly giving gifts or contributions to officials or candidates.

SB 1404 would transfer the duty to conduct these audits from the Franchise Tax Board to the FPPC. The FPPC has unique and robust expertise in the subject matter and would be well-suited to take on these audits, given appropriate resources. The bill would also establish a new funding mechanism for the lobbying audit program by imposing an additional fee on lobbyists, set at an amount to offset the costs of the program.

4) Argument in Opposition. In a letter opposing SB 1404, the Institute of Governmental Advocates (IGA) stated, in part, the following:

IGA cannot support SB 1404 for two reasons. First, IGA supports maintaining the FTB's role over the existing audit program, as the Political Reform Act originally required. There is no justification or need to transfer this duty to the FPPC, create a new division in the FPPC, and then fund the NEW staffing needed. Even your bill acknowledges that housing the audit program at the FPPC requires the Commission to "adopt regulations or policies to ensure the operational independence of audit personnel from enforcement operations under the [Political Reform Act]". Leaving the audit function with FTB serves this important objective without the need for any regulation or policy.

Second, in order to fund the creation of an "independent audit" division within the FPPC, SB 1404 proposes to change every lobbying firm and lobbyist employer an undetermined amount to "offset costs associated" with the new program. There is no cap on this charge and we believe, based on the estimate associated with your legislative effort last year, will exceed $1 million annually. This charge will be imposed on top of the existing biannual registration fee ($50) and biannual ethics fee ($50) charged for the privilege of engaging in constitutionally protected activity (See, Cal. Const. Art. I, § 3). Since the PRA's inception, mandatory audits of all candidates, committees, and others subject to the Act were part of the FTB's annual budget appropriation. No valid reason exists to transfer this role to another agency and charge those subject to the duty so transferred to fund the new newly created division of the FPPC.

RELATED/PRIOR LEGISLATION

SB 569 (Glazer) of 2023 would have transferred the responsibility for conducting audits of lobbying disclosure reports and statements from the FTB to the FPPC. SB 569 was held under submission in the Assembly Committee on Appropriations.

AB 1743 (Hernandez), Chapter 668, Statutes of 2010, required a person who acts as a placement agent in connection with a potential investment made by a state public retirement system to register as a lobbyist pursuant to the PRA, among other provisions.

SB 1001 (Yee), Chapter 506, Statutes of 2012, among other provisions, increased the filing fee for lobbyists from the existing fee of up to $25 per year to a fee of $50 per year and established the Political Disclosure, Accountability, Transparency, and Access Fund.

POSITIONS

Sponsor: Author

Support: California Common Cause
California Taxpayers Association

Oppose: Institute of Governmental Advocates

-- END --

SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1476	**Hearing Date:**	4/2/24
Author:	Blakespear		
Version:	2/16/24		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Scott Matsumoto		

Subject: Political Reform Act of 1974: State Bar of California

DIGEST

This bill specifies that the State Bar of California (State Bar) maintain conflict of interest codes in compliance with the PRA and provides that members of the State Bar's Board of Trustees and designated employees are subject to the enforcement of violations of the PRA.

ANALYSIS

Existing law:

1) Establishes the State Bar as a public corporation governed by a board of trustees. Provides that every person admitted and licensed to practice law in California is and shall be a member of the State Bar except while holding office as a judge of a court of record.

2) Provides that protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Provides that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

3) Provides that the State Bar's board of trustees and employees of the State Bar shall be subject to the conflicts of interest provisions relating to contracts, pursuant to a specific code sections in the Government Code, and members of the board of trustees of the State Bar shall be deemed state officers and employees of the State Bar shall be deemed state employees thereunder.

4) Requires any member of the State Bar's board of trustees to disqualify themself from making, participating in the making of, or attempting to influence any decisions of the State Bar in which the member has a financial interest that it is reasonably foreseeable may be affected materially by the decision. Requires any member of the State Bar's board of trustees to disqualify themself when there exists a personal interest that may prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.

5) Provides that no member of the State Bar shall be prevented from making or participating in the making of any decision to the extent that the member's participation is legally required for the action or decision to be made, as specified.

6) Requires a member of the State Bar who disqualifies themself because of a conflict of interest to (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that the member has a disqualifying financial or personal interest.

7) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

8) Requires every state and local agency to adopt a conflict of interest code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. The individuals in the designated positions must disclose their financial interests, as specified in the agency's conflict of interest code.

This bill:

1) Specifies that the State Bar maintain conflict of interest codes in compliance with the PRA and provides that members of the State Bar's Board of Trustees and designated employees are subject to the enforcement of violations of the PRA.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

Conflict of Interest Codes. The PRA prohibits a public official from using their official position to influence a governmental decision in which the individual has a financial interest. Every state and local agency must adopt a conflict of interest code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. The individuals in the designated positions must disclose their financial interests, as specified in the agency's conflict of interest code. Existing law also requires public officials and employees in designated positions in a conflict of interest code to report their financial interests on a form called Statement of Economic Interests (Form 700).

According to the FPPC's website, a conflict of interest code must:

1) Provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented;

2) Provide to each affected person a clear and specific statement of his or her duties under the conflict of interest code; and
3) Adequately differentiate between designated employees with different powers and responsibilities.

Each agency is required to review its conflict of interest code at least every other year - state agencies in odd-numbered years and local agencies in even-numbered years.

State Bar of California. Attorneys who wish to practice law in California generally must be admitted and licensed by the State Bar. The State Bar of California is the largest state bar in the country, with approximately over 195,000 active licensees and 64,000 inactive licensees. The mission of the State Bar is, "to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system."

Over the past few years, the State Bar has been a topic of concern within the Legislature and legal community. Recently, these concerns have appropriately focused on seemingly irresponsible management of the agency's funds and a failure to implement an effective disciplinary process, highlighted by the downfall of Thomas Girardi and his law firm. These issues have engendered significant skepticism about the State Bar and have triggered renewed calls for reform.

Thomas Girardi. In 2020, the *Los Angeles Times* broke the story of Thomas V. Girardi, a renowned plaintiff's attorney, who allegedly embezzled millions of dollars from his clients.

In response to the scandal, the State Bar initiated an investigation into Girardi. However, the issues relating to the State Bar's involvement with Girardi came to public attention when the *Los Angeles Times* published a series of articles detailing how "the powerful lawyer cultivated close relationships with investigators and bar executives and showered them with gifts, including private plane rides, boozy lunches at Morton's, free legal representation and Vegas shindigs." In June of 2021, the State Bar made what was described as a "stunning public admission" that an audit of Girardi's disciplinary file "revealed mistakes made in some investigations over the many decades of Mr. Girardi's career going back some 40 years and spanning the tenure of many Chief Trial Counsels."

According to the State Bar, it began investigating its own misconduct related to Girardi on an unspecified date "in 2021." In an Open Letter from the State Bar in November of 2022, the State Bar described its efforts to get to the bottom of what they did and did not do vis-à-vis Girardi and how it handled repeated complaints from the public about Girardi's serious misconduct as follows:

> *The State Bar began the process of righting the wrongs brought to light by the Girardi matters in 2021, when [the State Bar] conducted an audit of all closed disciplinary matters concerning Girardi. That was followed by a comprehensive investigation into prior actions taken by any staff or other State Bar affiliated persons, to determine whether the State Bar's handling of matters involving Girardi*

was affected by his connections to, or relationships or influence with these individuals.

Throughout the decades, Girardi's clients and colleagues submitted reports of misconduct to the State Bar. The State Bar failed to issue any form of discipline against Girardi until 2021. Girardi's law license was ordered inactive on March 9, 2021, and was disbarred by the California Supreme Court in July of the same year.

Lazar Report. In order to obtain an outside investigation about the matter, the State Bar commissioned a report by attorney Alyse Lazar to examine State Bar files regarding Girardi in early 2021. The Lazar investigation was conducted between March and May 2021. The report found that the State Bar's investigative files did not include documentation of misconduct by State Bar staff or leadership within the files. Therefore, also not surprisingly, the Lazar investigation also "found no evidence of influence by Girardi in the files themselves." In the report prepared after the investigation (known as the Lazar Report), Lazar noted "errors in how cases were handled over the four decades of Girardi's career" and "significant issues regarding the investigation and evaluation of high-dollar, high-volume trust accounts."

May Report. In response, the State Bar's Board of Trustees hired the Los Angeles law firm Halpern May Ybarra Gelberg LLP to conduct an in-depth investigation of the State Bar's handling of the Girardi matters. This report, known as the May Report, uncovered Girardi's efforts to buy relationships and exercise influence at the State Bar and "the State Bar's handling of past discipline complaints against Girardi was more likely than not affected by Girardi's connections to and influence at the State Bar, and that there were multiple State Bar insiders who did not properly disclose their connections to Girardi, including employees who handled Girardi discipline cases."

Legislative Response. In 2023, the Legislature passed and Governor Newsom signed SB 40 (Umberg), Chapter 697, Statutes of 2023. SB 40 provided a number of reforms relating to the State Bar. In particular, the legislation tightened disclosure and conflict requirements as well as conformed the State Bar with conflict provisions in existing law (i.e. Government Code 1090).

COMMENTS

1) According to the author: Following an investigation that found regulators at the State Bar had ties to now disbarred attorney Thomas V. Girardi, the State Bar has taken a number of actions to restore the public's trust, including making changes to their conflict of interest provisions. During the process of enacting reforms, it became evident that a clarification was needed that specifically requires the enforcement provisions of the PRA to apply to the State Bar. Therefore, SB 1476 requires the State Bar's conflict of interest codes to be in compliance with the PRA and clarifies the FPPC's administrative enforcement authority with respect to the State Bar.

2) Double Referral. If approved by this committee, SB 1476 will be referred to the Committee on Judiciary for further consideration.

3) Argument in Support. In a letter sponsoring SB 1476, the State Bar stated, in part, the following:

SB 1476 makes explicit in the Political Reform Act the requirement for the State Bar to maintain conflict of interest codes for its Board of Trustees and staff that meet the requirements of the Political Reform Act. The bill clarifies that violations of the State Bar's conflict of interest codes are violations of law enforceable under the Political Reform Act. Importantly, the bill also makes it explicit that the enforcement provisions of the Act apply to the State Bar. These are important changes to bolster the State Bar's efforts to strengthen our conflict of interest rules, policies, and procedures and ensure the conflict of interest codes have teeth, by making clear there are consequences for violations.

RELATED/PRIOR LEGISLATION

SB 40 (Umberg), Chapter 697, Statutes of 2023, among other provisions, provided that members of the State Bar's Board of Trustees and employees are subject to the conflicts of interest provisions relating to contracts.

POSITIONS

Sponsor: State Bar of California

Support: Consumer Protection Policy Center

Oppose: None received

-- END --