

Senate Bill No. 594

CHAPTER 773

An act to add Sections 54964.5 and 54964.6 to the Government Code, relating to campaign activity.

[Approved by Governor October 12, 2013. Filed with
Secretary of State October 12, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 594, Hill. Use of public resources.

(1) Existing law prohibits the use of public funds for campaign activities.

This bill would prohibit a nonprofit organization or an officer, employee, or agent of a nonprofit organization from using, or permitting another to use public resources received from a local agency for campaign activity, as defined, and not authorized by law. This bill would define, among other terms, "public resources" to mean any property or asset owned by a local agency and funds received by a nonprofit organization which have been generated from any activities related to conduit bond financing by those entities subject to specified conduit financing and transparency and accountability provisions, and "nonprofit organization" to mean an entity incorporated under the Nonprofit Corporation Law or a nonprofit organization that qualifies for exempt status under the federal Internal Revenue Code of 1986, except as specified. This bill would authorize a civil cause of action for a violation of these prohibitions and damages that include, but are not limited to, 3 times the value of the unlawful use of the public resources. This bill would authorize the Attorney General, a district attorney, and a city attorney of a city having a population in excess of 750,000 to seek these civil remedies.

(2) Existing law requires qualifying individuals and political organizations to report specified information, including, but not limited to, political contributions, in statements filed with the Fair Political Practices Commission.

This bill would require a reporting nonprofit organization that engages in campaign activity to deposit into a separate bank account all "specific source or sources of funds" it receives and to pay for all campaign activity from that separate bank account. This bill would define, among other terms, "reporting nonprofit organization" to mean a nonprofit organization for which public resources from one or more local agencies account for more than 20% of the organization's annual gross revenue, as specified, and "specific source or sources of funds" to mean any funds received by the reporting nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit organization, as specified.

This bill would further require a reporting nonprofit organization that engages in campaign activity of specified amounts or more to periodically disclose to the Franchise Tax Board, and post on its Internet Web site in a certain manner, the identity and amount of each specific source or sources of funds it receives for campaign activity, a description of the campaign activity, and the identity and amount of payments the organization makes from the required separate bank account, as specified. This bill would authorize the Franchise Tax Board to conduct an audit of any reporting nonprofit organization, require the board to conduct an audit of any reporting nonprofit organization that engages in campaign activity in excess of \$500,000 in a calendar year, issue a written audit report, and transmit the report to the Attorney General and the district attorney for the county in which the reporting nonprofit organization is domiciled. This bill would authorize the Attorney General or the district attorney for the county in which the reporting nonprofit organization is domiciled to assess a monetary civil penalty of up to \$10,000 against a reporting nonprofit organization for each violation of these disclosure requirements, as specified.

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

SECTION 1. Section 54964.5 is added to the Government Code, to read:

54964.5. (a) A nonprofit organization or an officer, employee, or agent of a nonprofit organization shall not use, or permit another to use, public resources, received from any local agency for any campaign activity not authorized by law.

(b) As used in this section and Section 54964.6, the following terms shall have the following meanings:

(1) "Ballot measure" means a state or local initiative, referendum, or recall measure certified to appear on a regular or special election ballot or other measure submitted to the voters by the Legislature or the governing body of a local agency at a regular or special election.

(2) "Campaign activity" means a payment that is used for communications that expressly advocate for or against the qualification of a clearly identified ballot measure, the approval or rejection of a clearly identified ballot measure, or the election or defeat of a clearly identified candidate by the voters, or that constitutes a campaign contribution.

(A) "Campaign activity" does not include the costs of adopting a position or a resolution supporting or opposing a clearly identified ballot measure or candidate, including, but not limited to, posting the position or resolution on the nonprofit organization's Internet Web site, communicating the position or resolution to members of the nonprofit organization, or issuing a press statement.

(B) "Campaign activity" does not include incidental or minimal use of public resources.

(C) "Campaign activity" does not include incidental costs related to the establishment or administration of a sponsored committee as defined in

Section 82048.7. A reasonable accounting method may be used to determine the use of nonpublic resources to pay for that cost. “Establishment and administration” means the cost of office space, telephones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in establishing and operating a sponsored committee.

(3) “Candidate” means an individual who has qualified to have his or her name listed on the ballot, or who has qualified to have write-in votes on his or her behalf counted by elections officials, for nomination or election to an elective office at any regular or special primary or general election, and includes any officeholder who is the subject of a recall election.

(4) “Expenditure” means a payment used for communications that expressly advocate the approval or rejection of a clearly identified ballot measure, or the election or defeat of a clearly identified candidate, by the voters or that constitutes a campaign contribution.

(5) “Local agency” shall have the same meaning as that term is defined in paragraph (4) of subdivision (b) of Section 54964 and shall also include a public entity created pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1) by one or more entities described in Section 54964.

(6) “Nonprofit organization” means any entity incorporated under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) or a nonprofit organization that qualifies for exempt status under Section 115 or 501(c) of the Internal Revenue Code, provided, however, that “nonprofit organization” does not include any nonprofit organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(7) “Public resources” means the following:

(A) Any property or asset owned by a local agency, including, but not limited to, cash, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and local government compensated work time that is provided to a nonprofit organization, except funds received in exchange for consideration for goods or services.

(B) Funds received by a nonprofit organization which have been generated from any activities related to conduit bond financing by those entities subject to the conduit financing and transparency and accountability provisions of Chapter 10.7 (commencing with Section 5870) of Division 6 of Title 1, whether or not those funds are received by the nonprofit in exchange for consideration for goods or services.

(8) “Use” means a use of public resources from one or more local agencies that is substantial enough to result in a gain or advantage to the user or a loss to any local agency for which any monetary value may be estimated.

(c) This section does not prohibit the use of public resources for providing information to the public about the possible effects of any ballot measure on the activities, operations, or policies of the state or a local agency, provided that the informational activities meet both of the following conditions:

(1) The informational activities are not otherwise prohibited by the California Constitution or the laws of this state.

(2) The information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the ballot measure.

(d) (1) Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000. If two or more persons are responsible for any violation, they shall be jointly and severally liable for the penalty. If the action is brought by the Attorney General, the moneys recovered shall be paid into the General Fund. If the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney, the moneys recovered shall be paid to the treasury of that city.

(2) A civil action alleging a violation of this section shall not be commenced more than four years after the date of the alleged violation.

SEC. 2. Section 54964.6 is added to the Government Code, to read:

54964.6. (a) A reporting nonprofit organization that engages in campaign activity, either directly or through the control of another entity, shall deposit into a separate bank account all specific source or sources of funds received and shall pay for all campaign activity from that separate bank account.

(b) As used in this section, the following terms shall have the following meanings:

(1) “Reporting nonprofit organization” means a nonprofit organization for which public resources from one or more local agencies account for more than 20 percent of the nonprofit organization’s annual gross revenue in the current fiscal year or either of the previous two fiscal years. A reporting nonprofit organization shall not include a nonprofit organization that sponsors a committee, as defined in Section 82048.7 of the Government Code, if the nonprofit organization reports all contributions it received and all expenditures it made on campaign disclosure statements filed by the sponsored committee and the nonprofit organization makes no payments from its general treasury to the sponsored committee other than payments for contributions by donors earmarked for the sponsored committee. For purposes of this subdivision, “earmarked” means a payment by a donor to a nonprofit organization subject to a condition, agreement, or understanding that the payment will be used for making contributions or independent expenditures by the sponsored committee of the sponsoring nonprofit organization.

(2) “Specific source or sources of funds” shall mean any funds received by the reporting nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit

organization that are used, in whole or in part, within a two-year period from receipt for campaign activity.

(3) Unless otherwise defined herein, the definitions found in subdivision (b) of Section 54964.5 shall apply to this section.

(c) Thirty days after the end of each quarter, a reporting nonprofit organization that engages in campaign activity of fifty thousand dollars (\$50,000) or more related to statewide candidates or ballot measures or engages in campaign activity of two thousand five hundred dollars (\$2,500) or more related to local candidates or ballot measures, either directly or through the control of another entity, at any point during that quarter shall disclose the following information for that quarter:

(1) The name and amount of each specific source or sources of funds used for campaign activity, provided that the aggregate amount of funds received since January 1 of the most recent odd year by a reporting nonprofit organization from that specific source or sources of funds is at least two hundred fifty dollars (\$250).

(2) The name of the payee and amount of all payments aggregating two hundred fifty dollars (\$250) or more made from the single bank account required under subdivision (a).

(3) A description of each campaign activity.

(d) Thirty days after the end of each even year, a reporting nonprofit organization that engages in campaign activity of one hundred thousand (\$100,000) or more related to statewide candidates or ballot measures or engages in campaign activity of ten thousand dollars (\$10,000) or more related to local candidates or ballot measures, either directly or through the control of another entity, at any point during that even year or the prior odd year shall disclose all the following information for those two calendar years:

(1) The name and amount of any specific source or sources of funds used for campaign activity, provided that the aggregate amount of funds received since January 1 of the most recent odd year by a reporting nonprofit organization from that specific source or sources of funds is at least two hundred fifty dollars (\$250).

(2) The name of the payee and amount of all payments made from the single bank account required under subdivision (a).

(3) A description of each campaign activity.

(e) Each reporting nonprofit organization that engages in campaign activity, either directly or through the control of another entity, shall provide to the Franchise Tax Board and display on its Internet Web site the information it is required to disclose under this section. The information shall be clearly described and identified on a separate Internet Web page, which shall be linked from the homepage of the organization's Internet Web site. The link to this Internet Web page from the homepage shall be as visible as all similar links.

(f) The Franchise Tax Board may conduct an audit of any reporting nonprofit organization that is required to provide records to the board pursuant to this section. The Franchise Tax Board shall conduct an audit of

any reporting nonprofit organization that engages in campaign activity in excess of five hundred thousand dollars (\$500,000) in a calendar year. The reporting nonprofit organization shall provide records to the Franchise Tax Board that substantiate the information required to be disclosed by this section. The Franchise Tax Board shall determine whether the organization complied with the requirements of Section 54964.5 and this section, issue a written audit report, and transmit the written audit report to the Attorney General and the district attorney for the county in which the reporting nonprofit organization is domiciled.

(g) If the Franchise Tax Board determines at the conclusion of an audit that a reporting nonprofit organization has violated Section 54964.5 or this section, the Attorney General or the district attorney for the county in which the reporting nonprofit organization is domiciled may impose a civil fine upon the reporting nonprofit organization in an amount up to ten thousand dollars (\$10,000) for each violation.