

AMENDED IN ASSEMBLY AUGUST 21, 2013

AMENDED IN ASSEMBLY AUGUST 7, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 18, 2013

SENATE BILL

No. 594

Introduced by Senator Hill

February 22, 2013

An act to add Sections ~~8314.1, 8314.2, and~~ 54964.5 and 54964.6 to the Government Code, relating to campaign activity.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as amended, 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, including but not limited to, public resources received in exchange for consideration, from a local agency for campaign activities. ~~This bill would also prohibit an officer, employee, or agent of a nonprofit organization from expending, or authorizing the expenditure of, public resources from a local agency to support or oppose a ballot measure or candidate.~~ *activity, as defined and not authorized by law.* This bill would define, among other terms, "public resources" to include, but not be limited to, cash, lands, buildings, funds, and ~~facilities,~~ *facilities owned by a local agency,* and "nonprofit organization" to mean an entity incorporated under the California 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 ~~the~~ *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 an auditable 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, “auditable 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 auditable nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit organization, including funds received in exchange for consideration, as specified.

This bill would further require an auditable nonprofit organization that engages in campaign activity to periodically disclose to the Attorney General, 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 require the Attorney General to ~~regularly~~ *biennially* audit each auditable nonprofit organization, issue a written audit report, and transmit the report to the district attorney for the county in which the auditable nonprofit organization is domiciled. This bill would ~~require~~ *authorize* the Attorney General to assess a monetary *civil* penalty *of up to \$10,000* against an auditable nonprofit organization for ~~a~~ *each* violation of these disclosure requirements, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. ~~Section 8314.1 is added to the Government Code,~~
2 ~~to read:~~

3 8314.1. (a) ~~It is unlawful for any nonprofit organization to use~~
4 ~~or permit others to use public resources, including, but not limited~~
5 ~~to, public resources received in exchange for consideration, from~~
6 ~~any local agency for any campaign activity not authorized by law.~~

7 (b) ~~For purposes of this section:~~

8 (1) ~~“Campaign activity” means a payment that is used for~~
9 ~~communications that expressly advocates for the approval or~~
10 ~~rejection of a clearly identified ballot measure or the election or~~
11 ~~defeat of a clearly identified candidate by the voters, or constitutes~~
12 ~~a campaign contribution.~~

13 (2) ~~“Local agency” shall include those entities listed in Section~~
14 ~~54951 and a public entity created pursuant to the Joint Exercise~~
15 ~~of Powers Act (Chapter 5 (commencing with Section 6500) of~~
16 ~~Division 7 of Title 1) by one or more entities listed in Section~~
17 ~~54951, but “local agency” shall not include a county superintendent~~
18 ~~of schools, a school district, or a community college district.~~

19 (3) ~~“Nonprofit organization” means an entity incorporated under~~
20 ~~the Nonprofit Corporation Law (Division 2 (commencing with~~
21 ~~Section 5000) of Title 1 of the Corporations Code) or a nonprofit~~
22 ~~organization that qualifies for exempt status under Section 115 or~~
23 ~~501(e), excluding Section 501(e)(3), of the Internal Revenue Code~~
24 ~~of 1986.~~

25 (4) ~~“Public resources” means any property or asset owned by~~
26 ~~a local agency, including, but not limited to, cash, land, buildings,~~
27 ~~facilities, funds, equipment, supplies, telephones, computers,~~
28 ~~vehicles, travel, and local government compensated time that is~~
29 ~~provided to a nonprofit organization.~~

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

34 (e) ~~This section does not prohibit the use of public resources~~
35 ~~for providing information to the public about the possible effects~~
36 ~~of any bond issuance or other ballot measure on state activities,~~
37 ~~operations, or policies, provided that the informational activities~~
38 ~~are otherwise authorized by the California Constitution or the laws~~
39 ~~of this state, and the information provided constitutes a fair and~~
40 ~~impartial presentation of relevant facts to aid the electorate in~~

1 reaching an informed judgment regarding the bond issue or ballot
2 measure.

3 ~~(d) (1) Any nonprofit organization that intentionally or~~
4 ~~negligently violates this section is liable for a civil penalty not to~~
5 ~~exceed one thousand dollars (\$1,000) for each day on which a~~
6 ~~violation occurs, plus three times the value of the unlawful use of~~
7 ~~public resources. The penalty shall be assessed and recovered in~~
8 ~~a civil action brought in the name of the people of the State of~~
9 ~~California by the Attorney General or by any district attorney or~~
10 ~~any city attorney of a city having a population in excess of 750,000.~~
11 ~~If two or more nonprofit organizations are responsible for a~~
12 ~~violation, they shall be jointly and severally liable for the penalty.~~
13 ~~If the action is brought by the Attorney General, the moneys~~
14 ~~recovered shall be paid into the General Fund. If the action is~~
15 ~~brought by a district attorney, the moneys recovered shall be paid~~
16 ~~to the treasurer of the county in which the judgment was entered.~~
17 ~~If the action is brought by a city attorney, the moneys recovered~~
18 ~~shall be paid to the treasury of that city.~~

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

22 ~~SEC. 2.~~ Section 8314.2 is added to the Government Code, to
23 read:

24 ~~8314.2. (a) An auditable nonprofit organization that engages~~
25 ~~in campaign activity, either directly or through the control of~~
26 ~~another entity, shall deposit into a separate bank account all specific~~
27 ~~source or sources of funds received and shall pay for all campaign~~
28 ~~activity from that separate bank account.~~

29 ~~(b) For purposes of this section:~~

30 ~~(1) "Auditable nonprofit organization" means a nonprofit~~
31 ~~organization for which public resources from one or more local~~
32 ~~agencies account for more than 20 percent of the organization's~~
33 ~~annual gross revenue in the current fiscal year or either of the~~
34 ~~previous two fiscal years, including gross revenue from public~~
35 ~~resources received in exchange for consideration.~~

36 ~~(2) "Specific source or sources of funds" shall mean any funds~~
37 ~~received by the auditable nonprofit organization that have been~~
38 ~~designated for campaign activity use or any other funds received~~
39 ~~by the nonprofit organization, including, but not limited to, funds~~

1 received in exchange for consideration, that are used, in whole or
2 in part, within a two-year period from receipt for campaign activity.

3 ~~(3) Unless otherwise defined herein, the definitions found in~~
4 ~~subdivision (b) of Section 8314.1 shall apply to this section.~~

5 ~~(e) Fifteen days after the end of each quarter, beginning with~~
6 ~~the first quarter of each odd year through the fourth quarter of the~~
7 ~~following even year, an auditable nonprofit organization that~~
8 ~~engages in campaign activity, either directly or through the control~~
9 ~~of another entity, at any point during that quarter shall disclose the~~
10 ~~following information for that quarter:~~

11 ~~(1) The name and amount of each specific source or sources of~~
12 ~~funds used for campaign activity, provided that the aggregate~~
13 ~~amount of funds received since January 1 of the most recent odd~~
14 ~~year by an auditable nonprofit corporation from that specific source~~
15 ~~or sources of funds is at least two hundred fifty dollars (\$250).~~

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

19 ~~(3) A description of each campaign activity.~~

20 ~~(d) Fifteen days after the end of each even year, an auditable~~
21 ~~nonprofit organization that engages in campaign activity, either~~
22 ~~directly or through the control of another entity, at any point during~~
23 ~~that even year or the prior odd year shall disclose all the following~~
24 ~~information for those two calendar years:~~

25 ~~(1) The name and amount of any specific source or sources of~~
26 ~~funds used for campaign activity, provided that the aggregate~~
27 ~~amount of funds received since January 1 of the most recent odd~~
28 ~~year by an auditable nonprofit corporation from that specific source~~
29 ~~or sources of funds is at least two hundred fifty dollars (\$250).~~

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

32 ~~(3) A description of each campaign activity.~~

33 ~~(e) Each auditable nonprofit organization that engages in~~
34 ~~campaign activity, either directly or through the control of another~~
35 ~~entity, shall display on its Internet Web site the information it is~~
36 ~~required to disclose under this section. The information shall be~~
37 ~~clearly described and identified on a separate Internet Web page,~~
38 ~~which shall be linked from the home page of the organization's~~
39 ~~Internet Web site. The link to this Internet Web page from the~~
40 ~~home page shall be as visible as all similar links.~~

1 ~~(f) The Attorney General shall conduct a biennial audit of each~~
 2 ~~auditable nonprofit organization. Each auditable nonprofit~~
 3 ~~organization shall provide records to the Attorney General that~~
 4 ~~substantiate the information required to be disclosed by this section.~~
 5 ~~The audit shall determine whether the organization complied with~~
 6 ~~the requirements of Sections 8314.1 and this section. The Attorney~~
 7 ~~General shall issue a written audit report and transmit it to the~~
 8 ~~district attorney for the county in which the auditable nonprofit~~
 9 ~~organization is domiciled.~~

10 ~~(g) If the audit determines that an auditable nonprofit~~
 11 ~~organization has violated Section 8314.1 or this section, the~~
 12 ~~Attorney General may impose a fine upon the auditable nonprofit~~
 13 ~~organization in an amount up to ten thousand dollars(\$10,000) for~~
 14 ~~each violation.~~

15 ~~SEC. 3.~~

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

18 54964.5. (a) ~~An~~*A nonprofit organization or an officer,*
 19 *employee, or agent of a nonprofit organization may not expend or*
 20 *authorize the expenditure of any public resources from any local*
 21 *agency to support or oppose the approval or rejection of a ballot*
 22 *measure or the election or defeat of a candidate by the voters. shall*
 23 *not use, or permit another to use, public resources, including, but*
 24 *not limited to, public resources received by the nonprofit*
 25 *organization in exchange for consideration, from any local agency*
 26 *for any campaign activity not authorized by law.*

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

29 (1) “Ballot measure” means a state or local initiative,
 30 referendum, or recall measure certified to appear on a regular or
 31 special election ~~ballot. ballot or other measure submitted to the~~
 32 *voters by the Legislature or the governing body of a local agency*
 33 *at a regular or special election.*

34 (2) “Campaign activity” means a payment that is used for
 35 *communications that expressly advocate for or against the*
 36 *qualification of a clearly identified measure, the approval or*
 37 *rejection of a clearly identified ballot measure, or the election or*
 38 *defeat of a clearly identified candidate by the voters, or that*
 39 *constitutes a campaign contribution.*

1 (A) For the purposes of this section, “campaign activity” does
2 not include the costs of an endorsement of a clearly identified
3 ballot measure or candidate by a nonprofit organization through
4 the adoption of a resolution supporting or opposing the ballot
5 measure or candidate, including, but not limited to, posting the
6 endorsement on the nonprofit organization’s Internet Web site,
7 communicating the endorsement to members of the nonprofit
8 organization, or issuing a press statement.

9 (B) For the purposes of this section, “campaign activity” does
10 not include incidental or minimal inadvertent use of public
11 resources.

12 (C) For purposes of this section, “campaign activity” does not
13 include incidental costs related to the establishment or
14 administration of a sponsored committee as defined in Section
15 82048.7, provided public resources are not used to pay for that
16 cost. A reasonable accounting method may be used to determine
17 the use of nonpublic resources to pay for that cost. “Establishment
18 and administration” means the cost of office space, telephones,
19 salaries, utilities, supplies, legal and accounting fees, and other
20 expenses incurred in establishing and operating a sponsored
21 committee.

22 (2)

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

29 (3)

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

35 (4)

36 (5) “Local agency” shall include those entities listed in Section
37 54951 and a public entity created pursuant to the Joint Exercise
38 of Powers Act (Chapter 5 (commencing with Section 6500) of
39 Division 7 of Title 1) by one or more entities listed in Section
40 54951, but “local agency” shall not include a county superintendent

1 of schools, ~~an elementary school, high school, or unified school~~
2 ~~district, or a community college district 54951.~~

3 ~~(5)~~

4 (6) “Nonprofit organization” means any entity incorporated
5 under the Nonprofit Corporation Law (Division 2 (commencing
6 with Section 5000) of Title 1 of the Corporations Code) or a
7 nonprofit organization that qualifies for exempt status under
8 Section 115 or ~~501(e), excluding 501(c) of the Internal Revenue~~
9 ~~Code. “Nonprofit organization” shall not include a nonprofit~~
10 ~~organization exempt under Section 501(e)(3), 501(c)(3) of the~~
11 ~~Internal Revenue Code of 1986.~~

12 ~~(6)~~

13 (7) “Public resources” means any property or asset owned by
14 ~~any~~ a local agency, including, but not limited to, cash, land,
15 buildings, facilities, funds, equipment, supplies, telephones,
16 computers, vehicles, travel, and local government compensated
17 time that is provided to a nonprofit organization.

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

22 (c) This section does not prohibit the use of public resources
23 for providing information to the public about the possible effects
24 of any ~~bond issuance or other~~ ballot measure on ~~state~~ the activities,
25 operations, or ~~policies; policies of the state or a local agency,~~
26 provided that the informational activities ~~are otherwise authorized~~
27 ~~by the California Constitution or the laws of this state, and the~~
28 ~~information provided constitutes a fair and impartial presentation~~
29 ~~of relevant facts to aid the electorate in reaching an informed~~
30 ~~judgment regarding the bond issue or ballot measure. meet both~~
31 ~~of the following conditions:~~

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

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

37 (d) (1) Any person who intentionally or negligently violates
38 this section is liable for a civil penalty not to exceed one thousand
39 dollars (\$1,000) for each day on which a violation occurs, plus
40 three times the value of the unlawful use of public resources. The

1 penalty shall be assessed and recovered in a civil action brought
2 in the name of the people of the State of California by the Attorney
3 General or by any district attorney or any city attorney of a city
4 having a population in excess of 750,000. If two or more persons
5 are responsible for any violation, they shall be jointly and severally
6 liable for the penalty. If the action is brought by the Attorney
7 General, the moneys recovered shall be paid into the General Fund.
8 If the action is brought by a district attorney, the moneys recovered
9 shall be paid to the treasurer of the county in which the judgment
10 was entered. If the action is brought by a city attorney, the moneys
11 recovered shall be paid to the treasury of that city.

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

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

17 *54964.6. (a) An auditable nonprofit organization that engages*
18 *in campaign activity, either directly or through the control of*
19 *another entity, shall deposit into a separate bank account all*
20 *specific source or sources of funds received and shall pay for all*
21 *campaign activity from that separate bank account.*

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

24 *(1) "Auditable nonprofit organization" means a nonprofit*
25 *organization for which public resources from one or more local*
26 *agencies account for more than 20 percent of the nonprofit*
27 *organization's annual gross revenue in the current fiscal year or*
28 *either of the previous two fiscal years, including gross revenue*
29 *from public resources received by the nonprofit organization in*
30 *exchange for consideration. An auditable nonprofit organization*
31 *shall not include a nonprofit organization that sponsors a*
32 *committee, as defined in Section 82048.7 of the Government Code,*
33 *if the nonprofit organization reports all contributions it received*
34 *and all expenditures it made on campaign disclosure statements*
35 *filed by the sponsored committee and the nonprofit organization*
36 *makes no payments from its general treasury to the sponsored*
37 *committee other than payments for contributions by donors*
38 *earmarked for the sponsored committee. For purposes of this*
39 *subdivision, "earmarked" means a payment by a donor to a*
40 *nonprofit organization subject to a condition, agreement, or*

1 understanding that the payment will be used for making
2 contributions or independent expenditures by the sponsored
3 committee of the sponsoring nonprofit organization.

4 (2) “Specific source or sources of funds” shall mean any funds
5 received by the auditable nonprofit organization that have been
6 designated for campaign activity use or any other funds received
7 by the nonprofit organization, including, but not limited to, funds
8 received by the nonprofit in exchange for consideration, that are
9 used, in whole or in part, within a two-year period from receipt
10 for campaign activity.

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

13 (c) Fifteen days after the end of each quarter, an auditable
14 nonprofit organization that engages in campaign activity, either
15 directly or through the control of another entity, at any point during
16 that quarter shall disclose the following information for that
17 quarter:

18 (1) The name and amount of each specific source or sources of
19 funds used for campaign activity, provided that the aggregate
20 amount of funds received since January 1 of the most recent odd
21 year by an auditable nonprofit organization from that specific
22 source or sources of funds is at least two hundred fifty dollars
23 (\$250).

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

27 (3) A description of each campaign activity.

28 (d) Fifteen days after the end of each even year, an auditable
29 nonprofit organization that engages in campaign activity, either
30 directly or through the control of another entity, at any point during
31 that even year or the prior odd year shall disclose all the following
32 information for those two calendar years:

33 (1) The name and amount of any specific source or sources of
34 funds used for campaign activity, provided that the aggregate
35 amount of funds received since January 1 of the most recent odd
36 year by an auditable nonprofit organization from that specific
37 source or sources of funds is at least two hundred fifty dollars
38 (\$250).

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

1 (3) *A description of each campaign activity.*

2 (e) *Each auditable nonprofit organization that engages in*
3 *campaign activity, either directly or through the control of another*
4 *entity, shall display on its Internet Web site the information it is*
5 *required to disclose under this section. The information shall be*
6 *clearly described and identified on a separate Internet Web page,*
7 *which shall be linked from the homepage of the organization's*
8 *Internet Web site. The link to this Internet Web page from the*
9 *homepage shall be as visible as all similar links.*

10 (f) *The Attorney General shall conduct a biennial audit of each*
11 *auditable nonprofit organization that engages in campaign activity.*
12 *Each auditable nonprofit organization shall provide records to*
13 *the Attorney General that substantiate the information required*
14 *to be disclosed by this section. The Attorney General shall*
15 *determine whether the organization complied with the requirements*
16 *of Section 54964.5 and this section, issue a written audit report,*
17 *and transmit the written audit report to the district attorney for*
18 *the county in which the auditable nonprofit organization is*
19 *domiciled.*

20 (g) *If the Attorney General determines at the conclusion of an*
21 *audit that an auditable nonprofit organization has violated Section*
22 *54964.5 or this section, the Attorney General may impose a civil*
23 *fine upon the auditable nonprofit organization in an amount up*
24 *to ten thousand dollars (\$10,000) for each violation.*

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