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 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 authorize the Attorney General to assess a monetary civil penalty of up to $10,000 against an auditable 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 8314.1 is added to the Government Code, to read:

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

(b) For purposes of this section:

(1) "Campaign activity" means a payment that is used to communicate that expressly advocates for the approval or rejection of a clearly identified ballot measure or the election or defeat of a clearly identified candidate by the voters, or constitutes a campaign contribution.

(2) "Local agency" shall include those entities listed in Section 54951 and 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 listed in Section 54951, but "local agency" shall not include a county superintendent of schools, a school district, or a community college district.

(3) "Nonprofit organization" means an 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), excluding Section 501(c)(3), of the Internal Revenue Code of 1986.

(4) "Public resources" means 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 time that is provided to a nonprofit organization.

(5) "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 bond issuance or other ballot measure on state activities, operations, or policies, provided that the informational activities are otherwise authorized by the California Constitution or the laws of this state, and the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in
reaching an informed judgment regarding the bond issue or ballot measure.

(d) (1) Any nonprofit organization that 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 nonprofit organizations are responsible for a 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 8314.2 is added to the Government Code, to read:

8314.2. (a) An auditable 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) For purposes of this section:

(1) “Auditable nonprofit organization” means a nonprofit organization for which public resources from one or more local agencies account for more than 20 percent of the organization’s annual gross revenue in the current fiscal year or either of the previous two fiscal years, including gross revenue from public resources received in exchange for consideration.

(2) “Specific source or sources of funds” shall 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, but not limited to, funds
received in exchange for consideration, 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 8314.1 shall apply to this section.
(c) Fifteen days after the end of each quarter, beginning with
the first quarter of each odd year through the fourth quarter of the
following even year, an auditable nonprofit organization that
engages in campaign activity, 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 an auditable nonprofit corporation 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) Fifteen days after the end of each even year, an auditable
nonprofit organization that engages in campaign activity, 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 an auditable nonprofit corporation 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 auditable nonprofit organization that engages in
campaign activity, either directly or through the control of another
t entity, shall 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 home page of the organization’s
Internet Web site. The link to this Internet Web page from the
home page shall be as visible as all similar links.
(f) The Attorney General shall conduct a biennial audit of each auditable nonprofit organization. Each auditable nonprofit organization shall provide records to the Attorney General that substantiate the information required to be disclosed by this section. The audit shall determine whether the organization complied with the requirements of Sections 8314.1 and this section. The Attorney General shall issue a written audit report and transmit it to the district attorney for the county in which the auditable nonprofit organization is domiciled.

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

SEC. 3.
SECTION 1. Section 54964.5 is added to the Government Code, to read:

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

(b) As used in this section, 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 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) For the purposes of this section, “campaign activity” does not include the costs of an endorsement of a clearly identified ballot measure or candidate by a nonprofit organization through the adoption of a resolution supporting or opposing the ballot measure or candidate, including, but not limited to, posting the endorsement on the nonprofit organization’s Internet Web site, communicating the endorsement to members of the nonprofit organization, or issuing a press statement.

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

(C) For purposes of this section, “campaign activity” does not include incidental costs related to the establishment or administration of a sponsored committee as defined in Section 82048.7, provided public resources are not used to pay for that cost. 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.

(2)

(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.

(3)

(4) “Expenditure” means a payment that is 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.

(4)

(5) “Local agency” shall include those entities listed in Section 54951 and 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 listed in Section 54951, but “local agency” shall not include a county superintendent
of schools, an elementary school, high school, or unified school district, or a community college district.

(5) “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), excluding 501(c) of the Internal Revenue Code. “Nonprofit organization” shall not include a nonprofit organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1986.

(6)

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

(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 bond issuance or other ballot measure on state the activities, operations, or policies of the state or a local agency, provided that the informational activities are otherwise authorized by the California Constitution or the laws of this state, and the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the ballot measure. 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) An auditable 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) “Auditable 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, including gross revenue from public resources received by the nonprofit organization in exchange for consideration. An auditable 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 auditable nonprofit organization that have been designated for campaign activity use or any other funds received by the nonprofit organization, including, but not limited to, funds received by the nonprofit in exchange for consideration, 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) Fifteen days after the end of each quarter, an auditable nonprofit organization that engages in campaign activity, 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 an auditable 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) Fifteen days after the end of each even year, an auditable nonprofit organization that engages in campaign activity, 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 an auditable 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 auditable nonprofit organization that engages in campaign activity, either directly or through the control of another entity, shall 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 Attorney General shall conduct a biennial audit of each auditable nonprofit organization that engages in campaign activity. Each auditable nonprofit organization shall provide records to the Attorney General that substantiate the information required to be disclosed by this section. The Attorney General 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 district attorney for the county in which the auditable nonprofit organization is domiciled.

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