

CITY OF OAKLAND
BILL ANALYSIS



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Date: June 6, 2013

Bill Number: SB 52
Bill Authors: Senators Mark Leno and Jerry Hill

DEPARTMENT INFORMATION

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RECOMMENDED POSITION: SUPPORT SB 52, California DISCLOSE Act of 2013

Summary of the Bill:

The Supreme Court's *Citizens United* decision, which said that there could be no limits on independent expenditures, has led to an unprecedented rise in campaign spending. It also has led to the public's interest in real disclosure of the sources of campaign funding. Last year's AB 1148, the California DISCLOSE Act, requiring disclosure of the major funders to campaigns, fell two votes short of the two-thirds supermajority required for passage.

SB 52, the California DISCLOSE Act of 2013, requires all state and local political ads in California, except those paid for by candidate-controlled committees for their own races, to clearly and prominently list their top three funders of \$10,000 or more (\$2,000 for local races). It also requires committees to maintain a campaign website that lists all funders of \$10,000 or more for state races (\$2,000 for local races). It sets specific requirements for TV ads, radio ads, robocalls, print ads, mass mailings, and other mediums such as online ads and billboards.

More about the Bill:

The attached Fact Sheets from the authors of SB 52 and from the California Clean Money Campaign provide more detail:

Registered Support (as of 5/20/13)

California Clean Money Campaign (sponsor)
Brennan Center for Justice at New York University School of Law
California Alliance of Retired Americans
California Democratic Council
California Church IMPACT
California Common Cause
California League of Conservation Voters
California National Organization for Women
California Public Interest Research Group (CalPIRG)
City of Santa Cruz
City of Watsonville
Common Cause
Consumer Federation of California

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~~June 6, 2013~~

SB 52 (Leno & Hill)

As amended May 16, 2013

The California DISCLOSE Act

FACT SHEET

SUMMARY

SB 52 will increase the information available in political campaigns to help voters make rational, well-informed decisions and raise voter confidence in the electoral process. The bill will require the three largest funders of political advertisements for or against candidates or ballot measures to be clearly and unambiguously identified directly on all advertisements, including television, radio, print and mass mailer ads. It will also require campaign committees to maintain a website where the largest funders are disclosed.

PURPOSE

Over the last several years, there has been an unprecedented rise in campaign spending with hundreds of millions of dollars being spent in California alone. Despite limits on direct candidate contributions, funders can make unlimited campaign contributions to ballot measure committees and to influence candidate elections through independent expenditure committees. Some of these committees are purposely established to hide the source of their funding from voters. SB 52 will increase transparency of campaign spending in elections by replacing current law fine print disclosures with clear and

prominent disclosures of major contributors on campaign advertisements.

SB 52 also closes a loophole in existing California disclosure law by requiring the disclosure of major funders on issue advocacy advertisements and electioneering communications. Issue advocacy advertisements are meant to influence state legislative or administrative action, whether or not they identify specific candidates. Electioneering communication, commonly referred to "sham issue ads," avoid current disclosure requirements by praising or attacking candidates without expressly advocating for their election or defeat.

EXISTING LAW

The Political Reform Act of 1974 requires regular reports of political contributions to the Secretary of State. Ballot measures or independent expenditure committees are also required to include their name and the names of their top two funders of \$50,000 or more in every political advertisement. However, weak disclosure requirements currently in place allow campaigns to obfuscate their top funders and make it difficult for voters to clearly identify the true source of campaign messages.

BACKGROUND

On the 100th anniversary of California's adoption of the initiative process, the California *Field Poll* conducted a survey that found Californians remained supportive of statewide ballot proposition elections, but believed reforms could be made to ensure greater direct democracy and weaken the influence of special interests. The *Field Poll* found that 84% of voters believed that disclosures by initiative sponsors should more clearly identify their major funders.

In 2010, the Supreme Court's *Citizens United* decision authorized unlimited spending by corporations, unions and individuals on political campaigns, but the court also upheld that "disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

During the 2012 election, more than \$475 million was spent on ballot measures in California, with a significant portion coming from committees with vague and misleading names. There has never been a greater need to prevent voter deception and misinformation. Strengthening disclosure requirements on political advertisements will give voters the tools they need to be informed.

DISCLOSE is an acronym for Democracy is Strengthened by Casting Light on Spending in Elections.

SUPPORT

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University School of Law
California Alliance of Retired Americans
California Democratic Council
California Church IMPACT
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California National Organization for Women
California Public Interest Research Group
(CalPIRG)
City of Santa Cruz
City of Watsonville
Common Cause
Consumer Federation of California
County of Santa Cruz
Courage Campaign
Democracy for America
Endangered Habitats League
Fresno Stonewall Democrats
Friends Committee on Legislation
Global Exchange
Green Chamber of Commerce
Green Party of Monterey County
Los Angeles County Democratic Party
League of Women Voters of California
Lutheran Office of Public Policy - California
MapLight
Marin County Democratic Party
National Council of Jewish Women
Orange County Democratic Party
Pacific Palisades Democratic Club
Progressives United
Public Citizen's Congress Watch
Sacramento County Democratic Party
San Diego County Democratic Party
San Francisco Democratic Party
San Mateo County Democratic Party
Santa Clara County Democratic Party
Santa Cruz County Democratic Party
Sierra Club of California
Sonoma County Democratic Party
Southwest California Synod, Evangelical
Lutheran Church in America
Southwest Voter Registration Education Project
Ventura County Democratic Party

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Version: 5/20/2013

SB 52, California DISCLOSE Act of 2013

Summary of Provisions

SB 52, the *California DISCLOSE Act*, would improve disclosure on political advertisements to help voters make well-informed decisions and have greater confidence in the electoral process. SB 52 is authored by Senators Mark Leno and Jerry Hill, has Senate Elections Chair Lou Correa and Assembly Elections Chair Paul Fong as Principal Co-Authors, and is sponsored by the California Clean Money Campaign.

Requires Clear and Prominent Disclosure of Top Three Funders of Political Ads

SB 52 requires all state and local political ads in California, except those paid for by candidate-controlled committees for their own races, to clearly and prominently list their top three funders of \$10,000 or more (\$2,000 for local races). It also requires committees to maintain a campaign website that lists all funders of \$10,000 or more for state races (\$2,000 for local races).

TV ads: Replaces fine print disclosures with a bold listing of the top three funders on the bottom 1/3 of the screen on a solid black background for five seconds at the start of the ad (ten seconds for ads longer than 30 seconds), plus the name of the committee paying and a link to a disclosure website for more information.

— *Same amount of time and space as current law, but infinitely more effective at showing top funders.*

Radio ads and robocalls: Replaces confusing speed reader disclosure with a requirement to read simple clear disclosure: "*The top three funders of this ad are X, Y, and Z. Paid for by <Committee Name>*". It must be read in a similar pitch and tone to the rest of the ad.

— *Much shorter than current law disclosures (which can take 12-14 seconds) because it does not require committees' economic interests or major funders to be read separately as part of their name. But more effective because funders are not obscured by speed-reading gobbledygook.*

— *Disclosures will not have to name the top three funders if the ad names each of them and identifies the speaker as speaking on behalf of them.*

Print Ads and Mass Mailings: Must clearly list their top three funders and the name of the committee playing for the ad, along with a link to a disclosure website for more funding information.

— *Disclosures allowed to be shorter for smaller ads, but still must clearly show at least top funder.*

Other Mediums (e.g. online ads and billboards): Gives the FPPC the ability to define regulations requiring them to at least their top funder and the committee name, when feasible.

Campaign Website: Must clearly list their top ten funders on their home pages, plus a link to see the rest of their significant funders (all funders of \$10,000 or more for state measures and candidates).

Applies to Ballot Measures, Outside Groups, and Issue Advocacy Advertisements

SB 52 requires disclosures on all political ads regarding state or local ballot measures or candidates for which a committee has spent at least \$10,000, except ads paid for by candidate-controlled committees for their own races.

Ballot Measures: Any ad for or against state or local ballot measures.

Independent Expenditures: Any ad paid for by outside organizations that expressly advocates the election or defeat of a clearly identified candidate (current Government Code 82031).

Example: "Vote for Senator Jones."

Electioneering Communications (sometimes known as “sham issue ads”): SB 52 will require its disclosures on any ad that clearly identifies a state or local candidate from 120 days before the primary to the general election, whether or not they expressly call for their election or defeat. Current law doesn’t require disclosure on outside ads identifying candidates unless they are independent expenditures (Government Code 82031), i.e. an ad that “expressly advocates the election or defeat of a clearly identified candidate.”

Example: “Senator Jones kicks puppies. Call Senator Jones and tell him to stop kicking them.” *Examples of the need for this include sham issue ads against Jerry Brown 64 days before the primary in 2010 and in the Presidential election several months before Presidential primaries in 2011.*

Issue Advocacy Advertisements: SB 52 will require its disclosures on advertisements that are made to influence state legislative or administrative action, whether or not they identify specific candidates.

Examples: Harry and Louise ads against national health care reform in 1993 and for health care reform in 2009. Another example is that in Michigan last year, right-to-work legislation passed after a secretive new non-profit called “Michigan Freedom Fund” spent \$1 million on issue ads supporting it.

Does not apply to candidate ads paid for by the candidate’s committee: State candidates have strict limits on what they can receive from any single contributor (\$4,100 for legislative races), and all their contributors are listed on the Secretary of State website, so no separate disclosure of their top funders on ads is needed.

Proposed Follow-the-Money Disclosure Will Reveal the Original Contributors

Current disclosure reporting law has a fundamental limitation in that organizations must only report their direct contributors that gave them money, not the original contributors of that money – i.e. the original individuals, corporations, or unions that gave it. In fact, they may not even know who gave the money in the first place. Current law also allows contributors to evade disclosure by giving before arbitrary disclosure cutoff dates.

Other disclosure bills like SB 27 and AB 45 will help “pierce through the veil” of organizations like 501c4s that are often used to hide big contributors, so they have to report their direct contributors to the Secretary of State. But because committees are only required in current law to reveal (and know) their direct contributors, we need to go further to stop political ads from listing misleading committee or non-profit names as their major funders.

SB 52 proposes to address this by requiring “follow-the-money” disclosure that tracks significant-sized politically-available funds starting from the beginning – the original contributions. It would require the organizations that they are passed through to account for them so that every step of the way, organizations know the original contributors of their politically-available funds and must report them if pay for political ads. Only donations of \$2,000 or more would need to be tracked.

Language implementing follow-the-money disclosure is currently being developed to make sure it is effective, constitutional, and isn’t unnecessarily burdensome. The current language shows the intent by defining “identifiable contributors” that are eligible to be displayed on the ads as:

“Identifiable contributor” means a person that is the original source of contributions received by a committee that cumulatively meet or exceed the disclosure threshold, notwithstanding the fact that the contributions were transferred, in whole or in part, through one or more other committees or persons.